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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 18–11]

RIN 1515–AE40

Extension of Import Restrictions Imposed on Archaeological Material From Cambodia

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain archaeological material from Cambodia. The restrictions, which were originally imposed by CBP Dec. 03–28, and last extended by CBP Dec. 13–15, are due to expire on September 19, 2018. The Acting Under Secretary for Public Diplomacy and Public Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension through September 19, 2023. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act. CBP Dec. 08–40 contains the amended Designated List of archaeological material from Cambodia to which the restrictions apply.

DATES: *Effective Date:* September 19, 2018.

FOR FURTHER INFORMATION CONTACT: For regulatory aspects, Lisa L. Burley, Branch Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0215, *ototrrculturalproperty@cbp.dhs.gov.* For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, (202) 863–6554, *William.R.Scopa@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, ''the Cultural Property Implementation Act'' or ''the Act''), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, ''1970 UNESCO Convention'' or ''the Convention'' (823 U.N.T.S. 231 (1972))), the United States entered into a bilateral agreement, or Memorandum of Understanding (MOU), with Cambodia on September 19, 2003 to impose import restrictions on certain Khmer archaeological material from the 6th century through the 16th century A.D. On September 22, 2003, U.S. Customs and Border Protection (CBP) published a final rule (CBP Dec. 03–28) in the **Federal Register** (68 FR 55000), which amended § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions and included a list covering certain Khmer stone, metal and ceramic archaeological material. These import restrictions subsumed emergency import restrictions on certain stone archaeological material (T.D. 99–88), which were published in the **Federal Register** (64 FR 67479) on December 2, 1999. These restrictions were to be effective through September 19, 2008.

On September 19, 2008, CBP published a final rule (CBP Dec. 08–40) in the **Federal Register** (73 FR 54309), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until September 19, 2013. This document also amended the Designated List to include new categories of objects (glass and bone) and additional subcategories of stone and metal objects from the Bronze Age (c. 1500 B.C.–500 B.C.) and the Iron Age (c. 500 B.C.–550 A.D.), covering archaeological material from the Bronze Age through the Khmer Era (16th c. A.D.).

On January 7, 2013, the United States Department of State proposed in the **Federal Register** (78 FR 977) to extend the MOU between the United States and Cambodia concerning the imposition of import restrictions on archaeological material from Cambodia. On June 10, 2013, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, made the determination to extend the import restrictions for an additional five years. On September 16, 2013, CBP published a final rule (CBP Dec. 13–15) in the **Federal Register** (78 FR 56832), which further extended the import restrictions for an additional five years. The import restrictions are due to expire on September 19, 2018.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists.

On April 11, 2018, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendations by the Cultural Property Advisory Committee, determined that the cultural heritage of Cambodia continues to be in jeopardy from pillage of certain archaeological material and that the import restrictions should be extended for an additional five years. Diplomatic notes have been exchanged reflecting the extension of those restrictions for an additional five-year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The amended Designated List of archaeological material from Cambodia covered by these import restrictions is set forth in CBP Dec. 08–40.

The Designated List and additional information may also be found at the following website address: *https://*

eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements by clicking on ''Cambodia.'' The restrictions on the importation of archaeological material from Cambodia are to continue in effect through September 19, 2023. Importation of such material from Cambodia continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. In § 12.104g(a), the table is amended in the entry for Cambodia by removing the words ''CBP Dec. 13–15'' in the column headed ''Decision No.'' and adding in its place the words ''CBP Dec. 18–11''.

Kevin K. McAleenan,

Commissioner, U.S. Customs and Border Protection.

Approved: September 13, 2018.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2018–20316 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 571

[Docket No. USA–2018–HQ–0012]

RIN 0702–AA78

Recruiting and Enlistments

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Army's regulation governing recruiting and enlistments. This part does not impose obligations on members of the public that are not already imposed by statute. The language in this part already exists elsewhere in the Code of Federal Regulations, and thus is duplicative.

DATES: This final rule is effective on September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Alphonsa Green, (703) 695–7490.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing content from the CFR which already exists at 32 CFR part 66 and for which public comment was taken.

Army internal guidance governing recruiting and enlistments will continue to be published in AR 601–210, Regular Army and Reserve Components Enlistment Program, and is available at *http://www.apd.army.mil/Search/ePubsSearch/ePubsSearchForm.aspx?x=AR.*

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

List of Subjects in 32 CFR Part 571

Recruiting and enlistment eligibility.

PART 571—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 571 is removed.

Dated: September 13, 2018.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–20365 Filed 9–18–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2018–0245]

RIN 1625–AC45

Ballast Water Management—Annual Reporting Requirement

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is eliminating the requirement for certain vessels that operate on voyages exclusively within a single Captain of the Port Zone to submit an Annual Ballast Water Summary Report for calendar year 2018. We view this current reporting requirement as unnecessary for us to analyze and understand ballast water management practices. This final rule will reduce the administrative burden on this regulated population of U.S. non-recreational vessels equipped with ballast tanks.

DATES: This final rule is effective October 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0245 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. John Morris, Program Manager, Environmental Standards Division, Coast Guard; telephone 202–372–1402, email *environmental_standards@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

ANS Aquatic nuisance species
BLS Bureau of Labor Statistics
BWM Ballast water management
CFR Code of Federal Regulations
COI Collection of Information
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
ICR Information Collection Request
NANPCA Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
NBIC National Ballast Information Clearinghouse
NISA National Invasive Species Act of 1996
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
Pub. L. Public Law
RA Regulatory analysis
REC Record of Environmental Consideration
§ Section
U.S.C. United States Code

II. Basis and Purpose, and Regulatory History

In this section we identify our statutory authority for this rule, the regulatory history of this rulemaking and the regulations we are amending, this rule's effective date, and the problem we intend this rule to address.

A. Legal Authority

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA, Pub. L. 101–646), as amended by the National Invasive Species Act of 1996 (NISA, Pub. L. 104–332), requires the Secretary of the Department of Homeland Security (DHS) to ensure, to the maximum extent practicable, that aquatic nuisance species (ANS) are not discharged into waters of the United States from vessels (16 U.S.C. 4701 *et seq.*). These statutes also direct the Secretary to issue regulations and collect records regarding vessel ballasting practices as a means for determining vessel compliance with the ballast water management (BWM) program (16 U.S.C. 4711(c) and (f)) and they authorize the Secretary to revise such regulations, as necessary, on the basis of best scientific information, and in accordance with criteria developed by the Aquatic Nuisance Species Task Force (ANS Task Force) (16 U.S.C. 4711(e)). The Secretary has delegated the regulatory functions and authorities in 16 U.S.C. 4711 to the Commandant of the Coast Guard (Department of Homeland Security Delegation No. 0170.1 (II)(57)).

B. Regulatory History

On May 9, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) (83 FR 21214) in the **Federal Register**. In the NPRM, we proposed to amend our regulations on ballast water management by eliminating the requirement for vessels operating on voyages exclusively within a single Captain of the Port (COTP) Zone to submit an Annual Ballast Water Summary Report for calendar year 2018. Ten individuals or organizations submitted comments relevant to the NPRM during the comment period that ended June 9, 2018.

Coast Guard regulations regarding BWM are located in 33 CFR part 151, subparts C (§§ 151.1500 through 151.1518) and D (§§ 151.2000 through 151.2080). The existing regulations we are amending, §§ 151.2015 and 151.2060, were issued in 2015 and concern BWM reporting and recordkeeping requirements. *See* ''Ballast Water Management Reporting and Recordkeeping'' final rule (80 FR 73105, Nov. 24, 2015). We noted in the NPRM that we received recommendations to issue a rule like the one we proposed in the NPRM. These three recommendations were in response to our June 8, 2017 (82 FR 26632), request to the public to identify rules that should be repealed, replaced, or modified to alleviate unnecessary regulatory burdens.[1]

Pursuant to 5 U.S.C. 553(d)(1) and (d)(3), the Coast Guard is making this rule effective less than 30 days after publication in the **Federal Register**. Under 5 U.S.C. 553(d)(1), agencies may make a rule effective less than 30 days after publication if the rule is ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' This rule relieves a restriction by allowing vessels operating on voyages exclusively within a single COTP Zone to do so without having to file an Annual Ballast Water Summary Report for 2018. Therefore, 5 U.S.C. 553(d)(1) allows us to make this rule effective less than 30 days after the rule is published. Moreover, under 5 U.S.C. 553(d)(3), agencies may make a rule effective less than 30 days after publication if the agency finds good cause for dispensing with the delayed effective date requirement. In this instance, it would be unnecessary for the Coast Guard to wait to make the rule effective 30 days after publication. The October 1, 2018 effective date makes it clear that as of that date vessels that operate on voyages exclusively within a single COTP Zone no longer need to obtain or retain information that would have been required for the Annual Ballast Water Summary Report for calendar year 2018. Also, it would be contrary to public interest to continue to impose a requirement into the month of October when the requirement to report those data in March 2019 has been removed.

C. Purpose of the Rule

The purpose of this rule is to remove an unnecessary burden. The Coast Guard determined that the annual reporting requirement in 33 CFR 151.2060(e) for vessels operating in a single Captain of the Port (COTP) Zone is unnecessary for us to analyze and understand ballast water management practices. As stated in the NPRM, the Coast Guard reviewed the 2016 annual reports and concluded that the reports do not contribute to the quality and breadth of BWM data as originally intended because the current annual reporting data fields are too simplistic to capture vessel movements and ballasting operations in the necessary level of detail. (83 FR 21214, 21216) Our amendments to 33 CFR 151.2015 and 151.2060 are in accordance with 16 U.S.C. 4711(e), which authorizes the Secretary to revise such regulations, as necessary, on the basis of best scientific information, and in accordance with criteria developed by the ANS Task Force.

The 2015 final rule established a 3-year requirement starting in 2016 for the master, owner, operator, agent, or person in charge of certain vessels with ballast tanks to submit an annual report of their BWM practices. The requirement applies to U.S. non-recreational vessels that operate on voyages exclusively between ports or places within a single COTP Zone. The annual reports contain information, specified in § 151.2060(f), about the vessel, the number of ballast tanks on

[1] See items –0102, –0143, and –0147 in docket USCG–2017–0480, Evaluation of Existing Coast Guard Regulations and Collections of Information.

board, total ballast water capacity, and a record of ballast water loadings and discharges. The reports are submitted to the National Ballast Information Clearinghouse (NBIC).

Under current regulations, the annual report for calendar year 2018 is due on March 31, 2019. This rule will eliminate the annual reporting requirement in § 151.2060(e) before the 2018 report is due.

III. Discussion of Comments

The Coast Guard received 11 public submissions in response to the NPRM, 10 of which were germane to the proposed rule. Of those 10 submissions, 7 supported the proposed rule and 3 opposed it. The Coast Guard appreciates these commenters taking the time to submit comments.

In the following discussion, we summarize the reasons or information some commenters gave in support of their position or recommendation. After each summary, we state our response.

Most of the seven commenters who wrote in support of the rule tended not to provide detailed reasons for their support. They said that the annual report had no value or was unnecessary and burdensome, that vessels operating in a limited geographic area pose a low risk of introducing ANS, or simply indicated their support for the rule as proposed. One commenter pointed out that the annual reports do not have a field to indicate if the vessel is using ballast water from a U.S. public water system. The Coast Guard is removing the reporting requirement because the annual reports did not provide data to help the Coast Guard determine whether vessels that operate solely in a single COTP Zone should be subject to the same or similar BWM regulations as those applicable to vessels operating in multiple COTP Zones.

One commenter who opposed the proposed rule stated that, without information, there is no way to determine any adverse or advantageous results and that the annual reports should continue so we can be certain of no ill effects. We have received and reviewed annual reports for 2016 and 2017 and have concluded that they do not contribute to the quality and breadth of BWM data as we originally intended. The objective of our annual reporting requirement was to gather sufficient data—without imposing an undue burden on vessels that were otherwise not required to report—to determine whether vessels that operate solely in a single COTP Zone should be subject to the same or similar BWM regulations as those applicable to vessels operating in multiple COTP Zones.[2] We have concluded that the annual reports do not effectively contribute to the quality and breadth of BWM data to the extent necessary for us to make the determination, including determining whether there are any ill effects. The information called for in the report is a simplistic summary of discharges rather than detailed information on the volume, number, and location of discharges. This level of detail is insufficient to determine whether this population of vessels presents a threat of spreading ANS and, as explained later in this document, we are unable to improve the reporting fields before the reporting requirement expires. Accordingly, we are issuing this final rule to relieve an unnecessary burden by eliminating the annual report requirement for calendar year 2018.

This same commenter suggested that the staff resources necessary to remove the annual reporting requirement for 2018 is sharply higher than the total savings we estimated for this final rule in the NPRM. We disagree with the premise that this deregulatory effort was not worth doing. The Coast Guard received multiple requests from the public to remove this reporting requirement. This rule will not require additional Coast Guard resources to implement and will be budget neutral. Executive Order 12866 calls for agencies not to impose unreasonable costs on society. Having concluded the annual reporting requirement is an unnecessary burden, it would be unreasonable to impose its cost on those required to comply with 33 CFR 151.2060(e).

A public interest group that focuses on Hawaii suggested that the Coast Guard revise the reporting form instead of eliminating the reporting requirement if the requirement does not provide necessary information or, alternatively, identify a different way to assess risk and mitigation measures. Although we have described weaknesses in the annual reports, the Coast Guard has not identified revisions to the reporting form that would effectively contribute to the quality and breadth of existing BWM data and could be implemented in time for the final reporting deadline. The reporting requirement itself would expire before we could identify better reporting parameters and implement them in regulation. In that situation, it is important to remove an unnecessary burden in a timely manner before the affected population has to submit its 2018 annual reports.

The Coast Guard will consider future improvements to reporting requirements and forms. The Coast Guard's investment in ballast water management research and data collection is significant. There are currently multiple existing sources of information that effectively contribute to the quality and breadth of BWM data. The Coast Guard, in partnership with other federal agencies, has coordinated a shared approach to ballast water management and data collection.

As stated in the NPRM, the annual reporting requirement failed to meet the objective, which was to serve as a minimally burdensome method of gathering data to help the Coast Guard determine whether vessels that operate solely in a single COTP zone should be subject to the same or similar BWM regulations as those applying to vessels operating in multiple COTP zones. A discussion of the objective can be found in the preamble of the 2015 final rule (80 FR 73105, 73106). The 2016 and 2017 annual reports do not contribute to the quality and breadth of BWM data, nor do they contribute to a better understanding of patterns of ballast water management and discharge, including in Hawaii and the Honolulu COTP Zone.

This same public interest group stated that the exemption for vessels traveling within a single COTP Zone from ballast water management and annual reporting requirements may make some sense for some parts of the United States, but not for the Honolulu COTP Zone, which includes many islands, some separated by thousands of miles. This group stated that the areas of ocean between each of these islands serve as barriers that result in unique marine communities for each of the islands, yet ballast water and vessel biofouling provide species the opportunity to move thousands of miles to new areas within the COTP Zone. It also stated that it is not clear whether the unique and non-contiguous nature of the Honolulu COTP Zone was considered during the National Environmental Policy Act review or in the drafting of the proposed rule. The commenter believed that the Coast Guard should provide an analysis of the proposed rule's impact on the vast and diverse ecologies of the Honolulu COTP Zone.

The public interest group's comment begins by referencing two separate issues. One issue is the requirement to conduct ballast water management. The other issue is the requirement to submit ballast water annual reports.

In our NPRM, we did not propose to amend any ballast water management requirements, and this final rule does

[2] From the preamble of the 2015 final rule, 80 FR 73105, 73106, November 24, 2015.

not relieve ship owners and operators of any existing mandatory ballast water management practices. As we plan to do with other comments not directed at the annual reporting requirement, we will take this comment into consideration for possible future action. However, we did not revise this final rule in response to it, because this rulemaking is narrowly focused on removing an annual reporting requirement that the Coast Guard has concluded does not provide useful information. The reporting requirement was intended to obtain data that would lead to a better understanding of patterns of ballast water management and discharge. The Coast Guard considers the requirement for the 2018 annual report to be unduly burdensome because the data submitted in annual reports from vessels operating exclusively in one COTP Zone have not been helpful in analyzing trends in transport, management, or discharge of ballast water.

The preliminary Record of Environmental Consideration (REC) for the NPRM did not mention Hawaii or the Honolulu COTP Zone, but the REC for this final rule does respond to these comments. Again, this rule is narrowly focused on removing the requirement to file a 2018 annual report.

Finally, this commenter states that ballast water reports should be available to the states, and that the Coast Guard should also be sampling ballast discharges to verify whether ballast water mitigation measures detailed in annual reports are effective. For information related to ballast water reports, states and interested persons may contact the NBIC for information through its website.[3]

Regarding the sampling of ballast water discharges, it would be impracticable under the current annual reporting requirement for the Coast Guard to sample ballast discharges because vessel owners and operators are not required to report in advance when they discharge their ballast water. Also, the annual report does not require detailed information about mitigation measures. As a possible future action, we may consider changing the annual reporting requirement to include more on mitigation measures and to facilitate discharge sampling, but such changes would need to go through notice-and-comment rulemaking and that would take more time to complete than the limited time we have to effectively remove the 2018 annual report requirement.

[3] Visit NBIC website at: *http://invasions.si.edu/nbic/index.html.*

A Hawaii state agency commented that the Honolulu COTP Zone (described in 33 CFR 3.70–10) stretches across a vast and ecologically diverse expanse of the Pacific Ocean and that the unique geographic circumstances of Hawaii (and other Pacific Islands within U.S. jurisdiction) make this annual reporting requirement of particular value to the state of Hawaii. Certain islands in the Honolulu COTP Zone are more than 2,500 miles from each other. The agency urges the Coast Guard to reject the proposed rule because it says information obtained from the annual report required under 33 CFR 151.2060 is the only way to track and understand the possible threat these vessels pose in terms of ballast water discharge. They stated this information will also become an integral part of the ''best scientific information available'' that is required as guidance in developing future Coast Guard regulations.

This Hawaii state agency points to differences between COTP Zones in other jurisdictions and the COTP Honolulu Zone. Noting that Hawaii is the only purely archipelagic state in the United States, the agency requests not only that the 2018 annual reporting requirement be kept in place, but that annual reporting be made permanent. This state agency views vessel ballast water and biofouling as the only vector for most aquatic invasive species to reach Hawaiian waters because each county in Hawaii is separated by deep channels of open ocean. It views these annual reports as an integral part of their understanding of the movement of ballast water into and between the islands in the Hawaiian Archipelago and vital to the protection of Hawaiian aquatic resources.

The Coast Guard appreciates the unique geographic circumstances of Hawaii identified in this comment. The comments we received with respect to the Honolulu COTP Zone caused us to reexamine how we describe COTP Zones for purposes of ballast water regulations intended to prevent the discharge of ANS into waters of the United States from vessels. But, the reporting requirement did not produce data to help the Coast Guard understand trends in transport, management, or discharge of ballast water. As stated earlier in this preamble, the 2016 and 2017 annual reports do not contribute to the quality and breadth of BWM data, nor do they contribute to a better understanding of patterns of ballast water management and discharge, including in Hawaii and the Honolulu COTP Zone. The aggregate volumes of ballast water taken up and discharged by each vessel over the course of a calendar year do not provide enough detail on vessel movement or ballasting operations. The Coast Guard also disagrees that this is the only source of relevant information, and notes that states may require vessels in their jurisdiction to start submitting more detailed data for their own uses.

As stated in the NPRM (83 FR 21216) and earlier in this section, the Coast Guard views the existing reporting requirement as not meeting the necessary objective for any COTP Zone, including the Honolulu COTP Zone. Therefore, in this final rule, we have eliminated the annual and final reporting requirements for calendar year 2018.

In calling for a permanent annual reporting system for these vessels, the Hawaii state agency requested that all avenues of receiving and documenting information regarding ballast water as a vector for aquatic invasive species be retained to ensure that future regulations are based on the full spectrum of facts presented. Instead of removing a reporting requirement, this commenter stated that shortcomings of the current system should be used to inform the development of future regulations. Finally, the state agency commented that if the annual reports were freely accessible to state government entities through the NBIC website, these annual reports could help guide the development of state regulations.

The Coast Guard agrees that there are lessons to be learned from the shortcomings in the annual reporting requirement. We may consider in the future whether a different, possibly permanent, reporting requirement is appropriate, but it would take time to evaluate what fields to include and then to offer proposed changes for public notice and comment. To attempt to do that in this rulemaking would prevent us from removing an unnecessary burden within the limited time frame we have to do so. We do not believe the 2018 annual report will contribute to a comprehensive understanding of the threats posed by ballast water. Accordingly, we do not believe that we should continue to impose the unnecessary burden of requiring a 2018 annual report. Therefore, this final rule eliminates the annual and final reporting requirements for calendar year 2018. All other reporting and recordkeeping requirements remain in effect. In addition, states may contact the NBIC regarding access to information from annual reports.

One commenter recommended that the Coast Guard make ballast water reporting an annual requirement for all

vessels operating on the Great Lakes and allow for an aggregate total rather than a tank-by-tank accounting. If the Coast Guard does not implement annualized submissions for vessels operating on the Great Lakes, the commenter recommended that we modify the Equivalent Reporting Program requirement of 10 or more arrivals per month. These recommendations would affect the BWM reporting requirements for vessels that travel between COTP Zones and are therefore outside the scope of this rulemaking, which focuses on eliminating an annual reporting requirement for vessels that operate exclusively in one COTP Zone.

The commenter also expressed a concern that the NBIC's web-based reporting form allows only one log-in per company. This concern is also beyond the scope of this rulemaking, but the Coast Guard will take it into consideration for future improvements.

One company that supported our proposed rule appeared to believe that the amendments to § 151.2015 created a new exemption from reporting requirements. We want to make clear that our amendment to the table in § 151.2015 is a conforming change in response to our change in § 151.2060(b). Under this final rule, as well as under existing regulations, vessels operating exclusively in a single COTP Zone are not required to comply with § 151.2060(b) reporting requirements.

In this final rule, we made no changes from the proposed rule based on our consideration of comments we received on the NPRM.

IV. Discussion of the Rule

This final rule removes the Annual Ballast Water Summary Report requirement for vessels equipped with ballast tanks that operate exclusively in a single COTP Zone so that they will not be required to file the 2018 annual report. In this section, we describe the changes we are making to 33 CFR 151.2015 and 151.2060 to accomplish the removal of this reporting requirement. The text of this final rule is the same as we proposed in the NPRM.

Section 151.2015. Currently § 151.2015(c) exempts vessels that operate exclusively on voyages between ports or places within a single COTP Zone from the ballast water management requirements in § 151.2025 and from the recordkeeping requirements in § 151.2070. We have added the reporting requirements in § 151.2060 to this list of exemptions in § 151.2015(c). This makes it clear to vessels that operate exclusively on voyages between ports or places within a single COTP Zone that they are not subject to the reporting requirements in § 151.2060.

We have amended Table 1 to § 151.2015, which lists specific exemptions for types of vessels. Specifically, we are amending the column ''151.2060 (Reporting)'' to reflect that vessels operating exclusively on voyages between ports or places within a single COTP Zone are exempt from the reporting requirements in § 151.2060.

We also added a footnote to the same table for non-seagoing vessels. This footnote replaced the current lengthy qualifying language in the ''151.2070 (Recordkeeping)'' column of the table for those non-seagoing vessels that operate exclusively on voyages between ports or places within a single COTP Zone. We extend the footnote to the table's ''151.2060 (Reporting)'' column in that row based on our amendment to § 151.2015(c). Non-seagoing vessels are the only category of vessels in the table that may need this potential exemption reminder because the other categories of vessels are either exempt or operate in multiple COTP Zones.

Section 151.2060. Section 151.2060(e) and (f) applied only to vessels operating exclusively on voyages between ports or places within a single COTP Zone. We have removed § 151.2060(e) and (f). Paragraph (e) contained the requirement to submit the Annual Ballast Water Summary Report to the NBIC, and paragraph (f) described the information to be included in that report. The only remaining reporting requirement in § 151.2060 is now based in paragraph (b). That paragraph contained language exempting vessels operating exclusively on voyages between ports or places within a single COTP Zone. We are deleting that language because it is now unnecessary. With the removal of § 151.2060(e) and (f), we can now state in § 151.2015(c) that vessels operating exclusively on voyages between ports or places within a single COTP Zone are exempt from any and all reporting requirements in § 151.2060. With our amendment to § 151.2060(b), vessels subject to the reporting requirements of paragraph (b) will not need to first read through an exemption that does not apply to them.

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 or 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, OMB has not reviewed it. DHS considers this rule to be an Executive Order 13771 deregulatory action. *See* the OMB Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis (RA) follows.

The Coast Guard received no comments regarding the RA. However, the Coast Guard did receive revised data from the NBIC for year 2017. The updated data increase the affected population by 112 vessels, bringing the total affected population to 278 vessels. We have amended the final rule RA to reflect the new information from NBIC.

This is a deregulatory rulemaking that removes reporting requirements for vessels with ballast tanks operating exclusively within a single COTP. The removal of the reporting requirement will provide a one-time cost savings for those vessels affected by this deregulatory action. We estimate an industry cost saving of $5,796 (non-discounted), and individual vessel cost savings of $20.85. We provide a detailed analysis of the cost savings associated with this deregulatory rule below. This final rule will not impose costs on industry.

The Coast Guard considers all estimates and analysis in this RA final. Table 1 presents a summary of the economic impact of the final rule.

TABLE 1—SUMMARY OF THE ECONOMIC IMPACT OF THE FINAL RULE

Change	Description	Affected population	Cost savings	Benefits
Eliminate the requirement for vessels operating exclusively within a single COTP Zone to report ballast management practices to the NBIC.	Owners or operators of vessels with ballast tanks and operating exclusively on voyages between ports and places within one COTP Zone will not have to report their ballast management practices for the final year of a 3-year requirement to report ballasting operations.	70 owners or operators of 278 vessels operating in one COTP Zone.	No Costs. One-time industry savings of $5,796.	The final rule removes the reporting requirement for the remainder of 2018 and provides a one-time partial year savings for owners or operators.

Under this final rule, the Coast Guard will no longer require owners or operators of vessels with ballast tanks operating exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report of their ballast water management practices.

Starting with the 2016 annual report, owners or operators of vessels affected by the 2015 final rule provision in § 151.2060(e) have submitted annual summary reports, as required, to the NBIC. These summary reports were used to estimate the number of vessels that operated and the amount of ballast water discharged within a single COTP Zone. Based on the data received and analyzed by the NBIC, the Coast Guard was able to determine the actual number of vessels affected by the 2015 final rule. The NBIC data confirms that 70 owners or operators of 278 U.S.-flagged vessels [4] have reported ballasting operations in accordance with § 151.2060(e). Table 2 presents the vessel types and number of these vessels.

TABLE 2—U.S.-FLAGGED VESSELS OPERATING EXCLUSIVELY WITHIN A SINGLE COTP ZONE AFFECTED BY THIS FINAL RULE

Vessel type	Affected population	
	NPRM	FR
Tanker—Other	1	1
Tug only	57	126
Offshore supply vessel	38	41
Other (research, fishing, etc.)	21	24
Passenger	2	7
Bulk Carries	2	.....
Tug—Barge Combo	.....	1
Barge only	45	77
General Cargo	.....	1
Total	166	278

Source: NBIC Data *https://invasions.si.edu/nbic/.*

We estimated in the 2015 final rule that the total annual amount of burden hours for owners or operators completing the reporting requirement at 40 minutes per vessel per year. We break down those 40 minutes as 25 minutes to account for time needed throughout the year to record ballast management operations, and 15 minutes for time needed by owners or operators to aggregate and calculate the recorded ballast water discharge information and to complete the electronic form submitted to the NBIC.

This final rule, which becomes effective October 1, 2018, allows the Coast Guard to stop enforcing of the requirements of § 151.2060(e) at the end of fiscal year 2018, which is September 30, 2018. The current regulation requires annual reports only through the calendar year 2018. Therefore, any realized savings from this final rule will account for the last 3 months of calendar year 2018. We estimate that the total time saved by this final rule will be 21.25 minutes per vessel (15 minutes for submission of report + 6.25 total minutes from the last 3 months of 2018). Converting this time to an hourly equivalent, we arrive at 0.35 hours (21.25 minutes ÷ 60 minutes).

We anticipate that the person charged with collecting and reporting the information to NBIC will be a vessel Captain, Mate, or Pilot. The mean hourly wage rate associated with these professions is reported by the Bureau of Labor Statistics (BLS) to be $39.19 per hour.[5] We calculated the load factor from data collected in the Employer Cost for Employee Compensation survey conducted by the BLS and applied it to the mean hourly wage rate to obtain a fully loaded wage rate, which more accurately represents the employer's cost per hour for an employee's work.[6] The load factor we used for this economic analysis is 1.52.[7] [8] The loaded mean hourly wage rate used to assess the savings estimates for this final rule is calculated at $59.57 ($39.19 × 1.52).

We anticipate that by eliminating the reporting requirement from the last quarter of the year, this final rule will reduce industry's economic burden by 97.3 hours (278 vessels × 0.35 hours). We calculate the dollar value saved to be $20.85 per vessel ($59.57 wage × 0.35 hours). The estimated one-time total savings for removing the reporting requirement for the 278 vessels operating exclusively between ports or places within a single COTP Zone is $5,796 ($20.85 per vessel savings × 278 vessels), non-discounted. Table 3 presents the total savings to the affected population.

TABLE 3—TOTAL SAVINGS FOR AFFECTED VESSELS

Hourly Wage Paid to Employee	$39.19
Load Factor to Account for Cost of Benefits	1.52
Loaded Wage	$59.57
Hours Saved Per Vessel	0.35
Savings per Vessel (Hours × Loaded Wage Rate)	$20.85

[4] We estimated the population of affected vessels in the 2015 final rule to be 1,280. This was an estimate based on potential vessels that might operate exclusively within a single COTP Zone. Since the publication of the 2015 final rule, vessel owners or operators have been providing information to the NBIC regarding their ballasting operations and area of operation. From this information, we are able to determine the actual vessel population that operates exclusively within a single COTP Zone. This final rule, in addition to eliminating § 151.2060(e), also reduces the affected population estimated in the 2015 final rule from 1,280 to 278 vessels.

[5] Information about the wage rates for Captains, Mates and Vessel Pilots (53–5021) can be found at *https://www.bls.gov/oes/2016/may/oes535021.htm.*

[6] A loaded wage rate is what a company pays per hour to employ a person, not the hourly wage the employee receives. The loaded wage rate includes the cost of benefits (health insurance, vacation, etc.).

[7] From the BLS, Employer Cost for Employee Compensation survey. Total compensation divided by wage and salary compensation.

[8] The load factor for wages is calculated by dividing total compensation by wages and salaries. For this report, we used the Transportation and Materials Moving Occupations, Private Industry report (Series IDs, CMU2010000520000D and CMU2020000520000D) for all workers using the multi-screen data search. Using 2016 Q2 data, we divide $27.55/$18.08 to get the load factor of 1.52. *See https://data.bls.gov/cgi-bin/srgate.*

TABLE 3—TOTAL SAVINGS FOR AFFECTED VESSELS—Continued

Affected Population	278
Total Savings* (Savings per Vessel × Affected Population)	$5,796

*Represents undiscounted savings totals. Totals may not sum due to rounding.

This final rule will not have annual recurring savings. It does not require additional Coast Guard resources to implement it, and it is budget neutral. In addition, a one-time savings of $5,796 in 2018 is equivalent to approximately $331 in 2016 dollars using perpetual time horizon discounting at 7 percent.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. 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.

As described in the ''Regulatory Planning and Review'' section of this RA, we expect that the savings per vessel will be $20.85 for the remainder of 2018. The Coast Guard is eliminating the reporting requirement under § 151.2060(e), which applies to owners or operators of vessels operating exclusively between ports or places within a single COTP Zone. Based on our economic assessment of the rule, we conclude that this final rule will add no cost burden to industry.

Therefore, 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

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. 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.

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).

D. Collection of Information

This rule calls for a change to an existing collection of information (COI) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Ballast Water Management Reporting and Recordkeeping.

OMB Control Number: 1625–0069.

Summary of the Collection of Information: This rule modifies the existing BWM reporting and recordkeeping requirement in § 151.2060(e). In the current regulation, the Coast Guard requires vessels with ballast tanks that operate exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report on their ballast water practices. The final rule published in 2015 requires vessels to report to the NBIC for a 3-year period, after which a sunset clause in the rule has this provision expiring at the end of the 2018 calendar year. This final rule will remove the last year of reporting requirements for the population affected by the 2015 final rule and prior to the provision's sunset, thereby returning the overall COI burden estimates to the 2015 final rule's level.

Need for Information: The Coast Guard is removing the reporting requirement under § 151.2060(e) because the value of information provided by the affected population did not meet the expectations of the Coast Guard.

Proposed Use of Information: The collection of this BWM data was intended to fill a limited gap in information about vessels operating exclusively within a single COTP Zone. The data was to measure ballast water practices within a COTP Zone by vessels that operated exclusively within a single COTP Zone. We removed § 151.2060(e) and (f) because the data collected did not help the Coast Guard to better understand these ballasting practices.

Description of the Respondents: The respondents are the owners or operators of vessels with ballast water tanks operating exclusively on voyages between ports or place within a single COTP Zone.

Number of Respondents: The current number of respondents is 9,663. However, in the 2015 final rule, we incorrectly estimated the additional number of respondents in the COI to be 1,280. The population of 1,280 was an overestimation because information about vessels operating exclusively within a single COTP Zone had not been documented prior to the 2015 final rule. For the purpose of maintaining continuity between the number of respondents in the 2015 final rule and number of respondents in the overall COI OMB Control Number: 1625–0069, the Coast Guard estimates changes to the overall COI using the 2015 final rule COI values to obtain a net result of zero.[9] Therefore, in order to revert back to the 2015 baseline, we needed to subtract the 1,280 respondents we incorrectly estimated in the 2015 final rule.[10] With this change, we are maintaining the 2015 baseline of 8,383 respondents because we would be subtracting the incorrect estimated population of 1,280 respondents. The incurred cost savings and burden-hour reduction we estimate in this final rule will affect only 278 respondents for the last 3 months of this calendar year. After this time, the OMB-approved number of respondents would remain at the 2015 baseline level of 8,383 respondents because of the sunset clause in the 2015 final rule. We show these calculations, for illustrative purposes, in Table 4.

[9] The goal is to revert the COI Control No. 625–0069 back to its original collection prior to the 2015 ballast water recordkeeping and reporting final rule.

[10] Appendix A of COI OMB Control No. 1625–0069.

TABLE 4—SUMMARY OF COLLECTION OF INFORMATION, RESPONDENTS

Reporting items (A)	Current COI respondents (B)	Final rule change (C)	New COI values (B − C)
Voyage Reports	8,383	0	8,383
Annual Reports	1,280	1,280	0
Compliance Extension Request	0	0	0
Total	9,663	1,280	8,383

Frequency of Response: The reporting requirement under this COI is scheduled to occur annually. With this final rule, current respondents under § 151.2060(e) are no longer required to maintain and submit BMW information on an annual basis.

Burden of Response: The Coast Guard anticipates that the elimination of the rule will decrease burden by approximately 40 minutes per report for vessels with ballast water tanks operating exclusively on voyages between ports or places within a single COTP Zone.

Estimate of Total Annual Burden: The annual reduction in burden is estimated as follows:

(a) Annual reduction in burden resulting from removing reporting requirement for vessels operating within a single COTP Zone.

This final rule will reduce the private sector burden hours for this COI by 97.3 hours (278 vessels × 0.35 hours [3 months of savings]). There are three items associated with this COI: Voyage reports, annual reports (which are applicable to this final rule), and compliance extension requests. The voyage reports and compliance extension requests are not included in this final rule. The burden estimates in this COI stemming from these voyage reports and compliance requests will be unaffected. Voyage reports account for 60,727 hours, annual reports account for 858 hours, and compliance extension requests account for 234 hours, for a total of 61,819 hours. Essentially, with this final rule, we are accounting for the 97.3 burden hours of reduction in annual reports in the last 3 months of this calendar year only, prior to the sunset clause becoming effective. To capture this change we must first correct for the erroneously estimated hourly burden of 858 hours. First, we subtract the 858 erroneous burden hours from the total of 61,819 hours and replace it with the correct burden estimate of 97 hours. This gives us a total burden of 61,058 hours and represents the corrected amount from which to estimate the burden reduction due to the final rule. The final rule will then remove the corrected 97 burden hours that should have been included in the 2015 COI. After December 31, 2018, the burden hours will return to the 2015 baseline level of 60,961 hours.

Moreover, due to the establishment of a sunset clause in the 2015 final rule, all recordkeeping and reporting burden associated with this regulation will be eliminated. This adjustment would only reduce current Information Collection Request (ICR) burden levels prior to the 2015 final rule. We show the burden hour calculations in Table 5.

TABLE 5—SUMMARY OF COLLECTION OF INFORMATION, BURDEN HOURS

Reporting items (A)	Current COI respondents (B)	Final rule change (C)	New COI values (B − C)
Voyage Reports	60,727	0	60,727
Annual Reports	858	858	0
Compliance Extension Request	234	0	234
Total	61,819	858	*60,961

*Although this final rule would subtract 97.3 hours for the last 3 months of this year, after this time, the total hour burden estimate would revert back to the 2015 baseline level or current OMB inventory amount of 60,961 due to the fact that there will no longer be a need to complete annual reports for vessels traveling exclusively between ports or places within a single COTP Zone.

(b) Reduction of annual burden due to the elimination of the current rule.

This final rule will result in a reduction of annual burden of 97.3 hours for the last 3 months of the year ending December 31, 2018. However, after correcting for the overestimated burden in the 2015 COI, the reduction in annual burden hours as reflected in the Supporting Statement for this COI is 858 hours (as explained above).

As required by 44 U.S.C. 3507(d), we will submit a copy of this final rule to OMB for its review of the collection of information. You are not required to respond to a COI unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This final rule will revise the Coast Guard's BWM reporting and recordkeeping requirements promulgated under the authority of NANPCA, as amended by NISA. Specifically, we are removing the requirement that an Annual Ballast Water Summary Report for calendar year 2018 be submitted for vessels operating on voyages exclusively between ports or places within a single COTP Zone. NANPCA, as amended by

NISA, contains a ''savings provision'' that saves to States their authority to ''adopt or enforce control measures'' for ANS (16 U.S.C. 4725). Nothing in the Act would diminish or affect the jurisdiction of any State over species of fish and wildlife. This type of BWM reporting and recordkeeping is a ''control measure'' saved to States under the savings provision and would not be preempted unless State law makes compliance with Coast Guard requirements impossible or frustrates the purpose of Congress. Additionally, the Coast Guard has long interpreted this savings provision to be a congressional mandate for a Federal-State cooperative regime in which Federal preemption under NANPCA, as amended by NISA, would be unlikely. The Coast Guard does not intend for the removal of this Federal reporting requirement to be a determination, or have any implications, with regard to the necessity of existing or future state BWM reporting requirements. Therefore, this final rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. 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 1 year. Although this final rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD (COMDTINST M16475.1D), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural. This rule involves the removal of the last year of a 3-year annual ballast water reporting requirement.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Ballast water management, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151, subpart D, as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151, subpart D, is revised to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1(II)(57).

■ 2. Amend § 151.2015 as follows:

■ a. In paragraph (c), after the text ''(ballast water management (BWM) requirements),'' add the text ''151.2060 (reporting),''; and

■ b. Revise the fourth and sixth rows in table 1 to § 151.2015.

The revisions read as follows:

§ 151.2015 Exemptions.

* * * * *

TABLE 1 TO § 151.2015—TABLE OF 33 CFR 151.2015 SPECIFIC EXEMPTIONS FOR TYPES OF VESSELS

	151.2025 (management)	151.2060 (reporting)	151.2070 (recordkeeping)
* * * *	*	*	*
Vessel operates exclusively on voyages between ports or places within a single COTP Zone.	Exempt	Exempt	Exempt.
* * * *	*	*	*
Non-seagoing vessel	Exempt	Applicable [1]	Applicable.[1]
* * * *	*	*	*

[1] Unless operating exclusively on voyages between ports or places within a single COTP Zone.

§ 151.2060 [Amended]

■ 3. Amend § 151.2060 as follows:
■ a. In paragraph (b), remove the words ''Unless operating exclusively on voyages between ports or places within a single COTP Zone, the'' and add, in their place, the word ''The''; and
■ b. Remove paragraphs (e) and (f).

Dated: September 14, 2018.

J.P. Nadeau,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2018–20374 Filed 9–18–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0859]

RIN 1625–AA00

Safety Zone; Snowbirds Over Fort Erie, Lake Erie, Niagara River, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie and the Niagara River, Buffalo, NY. This safety zone is intended to restrict vessels from a portion of Lake Erie and the Niagara River during the Snowbirds over Fort Erie air show on September 19, 2018. This temporary safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with aerial stunts, low flying aircraft, and aircraft maneuvers. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo (COTP).

DATES: This rule is effective from 3:30 p.m. to 5:30 p.m. on September 19, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0859 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 LTJG Sean Dolan, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@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 due to it being impracticable and contrary to public interest. The final details of this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish a NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the Snowbirds over Fort Erie air show.

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 Buffalo (COTP) has determined that potential hazards associated with an air show over a navigable waterway pose a significant risk to public safety and property within the immediate location of the show.

IV. Discussion of the Rule

This rule establishes a safety zone on September 19, 2018, from 3:30 p.m. until 5:30 p.m. The safety zone will encompass all waters of Lake Erie and the Niagara River starting at position 42°54′01.25″ N, 78°54′21.07″ W, then East to 42°54′01.20″ N, 78°54′17.35″ W, then South to 42°53′18.18″ N, 78°54′21.94″ W, then West to 42°53′18.39″ N, 78°54′43.64″ W, and then North along the international boundary line to the point of origin. The duration of the zone is intended to ensure the safety of spectators and vessels during the Snowbirds over Fort Erie air show. 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 a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

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

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 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.T09–0859 to read as follows:

§ 165.T09–0859 Safety Zone; Snowbirds over Fort Erie, Lake Erie, Niagara River, Buffalo, NY.

(a) *Location.* The safety zone will encompass all waters of Lake Erie and the Niagara River starting at position 42°54′01.25″ N, 78°54′21.07″ W, then East to 42°54′01.20″ N, 78°54′17.35″ W, then South to 42°53′18.18″ N, 78°54′21.94″ W, then West to 42°53′18.39″ N, 78°54′43.64″ W, and

then North along the international boundary line to the point of origin.

(b) *Enforcement period.* This regulation will be enforced from 3:30 p.m. until 5:30 p.m. on September 19, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

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

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: September 13, 2018.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2018–20291 Filed 9–18–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9984–02—Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Whitehouse Oil Pits Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Whitehouse Oil Pits Superfund Site, also known as ''Whitehouse Waste Oil Pits'', (Site) located in Whitehouse, Florida, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Florida, through the Florida Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This action is effective September 19, 2018.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1983–0002. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not 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 *https://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

USEPA Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8909, Monday through Friday, 7:30 a.m. to 4:30 p.m.

Or

West Regional Jacksonville Public Library, 1425 Chaffee Road S, Jacksonville, FL 32221, Monday through Thursday: 10 a.m. to 9 p.m., Friday & Saturday: 10 a.m. to 6 p.m., Sunday: CLOSED.

FOR FURTHER INFORMATION CONTACT: Rusty Kestle, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8909, (404) 562–8819, email: *kestle.rusty@epa.gov.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Whitehouse Oil Pits, Whitehouse, Florida. A Notice of Intent to Delete for this Site was published in the **Federal Register** (83 FR 33171) on July 17, 2018.

The closing date for comments on the Notice of Intent to Delete was August 16, 2018. Two public comments were received; one of the public comments does not address the rulemaking or deletion. The other public comment was about the risk posed by the waste that was left on the Site in the containment remedy, the potential to support recreational or ecological land uses in the future on the Site, and monitoring and additional cleanup at the Site. This comment is addressed by the requirements and procedures in the Site Operations, Monitoring and Maintenance Plan which requires ongoing groundwater sampling and analysis, as well as requiring Site appropriate operations and maintenance, including inspections to ensure the on-going remedy is performing as designed. Also, the ongoing Five Year Review process will continue as long as there is waste left on the Site to assess remedy performance and protectiveness and assess any changing site conditions. This deletion does not preclude future actions under the Superfund rule-making that EPA can take action after deletion, as needed, and restore the site to the NPL, if there is any change found in the protectiveness of the remedy for the Site. Therefore, after evaluating these comments, EPA believes the deletion action for the Site is appropriate. A responsiveness summary was prepared and placed in both the docket, EPA–HQ–SFUND–1983–0002, on *www.regulations.gov,* and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1of appendix B to part 300 is amended by removing the entry ''FL'', ''Whitehouse Oil Pits'', ''Whitehouse''.

[FR Doc. 2018–20390 Filed 9–18–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 18–120]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues its ongoing efforts to ensure that calls are completed to all Americans, including those in rural America. This Third Report and Order (*Order*) begins the Commission's implementation of the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act). Pursuant to the RCC Act, the *Order* adopts rules to establish a registry for intermediate providers and require intermediate providers to register with the Commission before offering to transmit covered voice communications. In addition, the *Order* adopts rules to require covered providers to use only registered intermediate providers to transmit covered voice communications and requires covered providers to maintain the capability to disclose the identities of any intermediate providers relied on in the call path to the Commission.

DATES: Effective October 19, 2018, except for the addition of 47 CFR 64.2115, which requires approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of this requirement and the date the rule will become effective.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Zach Ross, at (202) 418–1033, or *zachary.ross@fcc.gov.* For further 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 *Third Report and Order* in WC Docket No. 13–39, adopted on August 13, 2018 and released on August 15, 2018. The full text of this document, including all Appendices, 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 also available on the Commission's website at *https://www.fcc.gov/document/fcc-registry-boost-provider-accountability-rural-call-completion.*

I. Synopsis

1. As directed by the RCC Act and informed by the record of this proceeding, in this *Third Report and Order* we establish a registry for intermediate providers and require intermediate providers to register with the Commission before offering to transmit covered voice communications. In addition, we adopt rules to require covered providers to use only registered intermediate providers to transmit covered voice communications, and we require covered providers to maintain the capability to disclose the identities of any intermediate providers relied on in the call path to the Commission. We also adopt a narrowly tailored exception to our rules in instances of *force majeure.* The RCC Act requires the Commission to promulgate rules establishing service quality standards ''[n]ot later than 1 year after the date of enactment,'' or by February 26, 2019. We accordingly sought comment on proposed service quality standards in the *Third RCC FNPRM,* 83 FR 21983. We will address the RCC Act's service quality requirements in a subsequent Order.

A. Establishment of Intermediate Provider Registry

2. In accordance with the RCC Act, we adopt our proposal to establish an intermediate provider registry. To ''ensure the integrity of the transmission of covered voice communications to all customers in the United States[] and . . . prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications,'' new section 262 of the Act requires the Commission to establish a publicly available intermediate provider registry on the Commission's website. We will require intermediate providers to register via a portal on the Commission's website furnishing the same five categories of information that we proposed in the *Third RCC FNPRM:*

(1) The intermediate provider's business name(s) and primary address;

(2) the name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process;

(3) all business names that the intermediate provider has used in the past;

(4) the state(s) in which the intermediate provider provides service; and

(5) the name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues.

Further, this information will be made publicly available.

3. As explained in the *Third RCC FNPRM,* the first four categories of information are similar to the Commission's existing registration requirements for interconnected VoIP and telecommunications carriers in other contexts. For example, ''a telecommunications carrier that will provide interstate telecommunications service'' is required to provide the following information via FCC Form 499–A ''under oath and penalty of perjury'': (1) The carrier's business name(s) and primary address; (2) The names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company; (3) The carrier's regulatory contact and/or designated agent; (4) All names that the carrier has used in the past; and (5) The state(s) in which the carrier provides telecommunications service.'' The Commission's rules also require common carriers, interconnected VoIP providers, and non-interconnected VoIP providers to provide the contact information, including ''a name, business address, telephone or voicemail number, facsimile number, and, if available, internet email address,'' for service of process purposes. Such entities are also required to ''list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company.'' The record reflects that ''the

burden to providers arising out of reporting such information is minimal—it requires no more than logging into an account and typing in the most basic information about a company.'' With respect to contact information for the person and department responsible for addressing rural call completion issues, we find, based on the record before us, that requiring this information will facilitate inter-provider cooperation to solve and prevent call completion issues. We also find that this requirement is consistent with Congress's mandate that our implementing rules ensure the integrity of the transmission of covered voice communications to all customers in the country and prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications. The record reflects no opposition to requiring these five information categories.

4. In addition to the five categories of information we proposed, we also require intermediate providers to furnish the name(s), business address, business telephone number(s), and email address for an executive leadership contact, such as the chief executive officer, chief operating officer, or owner(s) of the intermediate provider, or person performing an equivalent function, who directs or manages the entity. Verizon expressed concern that delisted intermediate providers could regain registered status by subsequently re-incorporating under other names for the purpose of circumventing Commission removal from the intermediate provider registry. To assist in preventing circumvention of our rules, Verizon proposes requiring this additional information, which ''is a common requirement across state and foreign corporation registrations, business licensing, and trade licensing,'' and thus presents no additional burden in furnishing such existing information to the Commission. We agree with Verizon that requiring this additional information will ''provide the Commission . . . additional visibility into the individuals that direct and manage the entity,'' and aid the Commission in enforcing our rules and the RCC Act. We observe, however, that because the primary purpose of this information is to aid the Commission in preventing circumvention of our registry requirements, unlike the other five categories of information, this latter category of information will not be made routinely available for public inspection.

B. Definitions

5. As we proposed in the *Third RCC FNPRM,* we adopt the definition of ''intermediate provider'' provided by Congress in section 262(i)(3). This definition replaces the definition of ''intermediate provider'' currently in our rules. Thus, for purposes of our pre-existing rural call completion rules and those we adopt pursuant to the RCC Act, we define an intermediate provider as any entity that: ''(A) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed (i) from an end user connection using a North American Numbering Plan resource; or (ii) to an end user connection using such a numbering resource; and (B) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.'' We observe that in section 262(i)(1), Congress explicitly adopted the Commission's definition of ''covered provider,'' suggesting that, to the extent that section 262(i)(3) offers a different or narrower interpretation of ''intermediate provider'' than the current definition in our rules, Congress intended the definition provided in the RCC Act to apply to our rules implementing the RCC Act.

6. The definition of ''intermediate provider'' in section 262(i)(3) is substantially similar to the definition previously applicable to our rural call completion rules, with the added requirement that an intermediate provider ''have a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic.'' As we observed in the *Third RCC FNPRM,* the legislative history surrounding the RCC Act suggests that Congress intended to exclude from the definition of ''intermediate provider'' entities ''that only incidentally transmit voice traffic, like internet Service Providers who may carry voice traffic alongside other packet data.'' The additional requirement that intermediate providers have a business arrangement to carry voice traffic effectuates this intent. Thus, entities like internet Service Providers that may carry voice traffic only incidentally, absent any business arrangement with a covered provider or intermediate provider pertaining to that traffic, will not be considered intermediate providers subject to our registry and service quality rules.

7. We decline to adopt an exemption from this definition for ''facilities-based carriers that provide backbone network capacity'' to mobile virtual network operators (MVNOs), as urged by Sprint. To the extent that such providers carry voice traffic that originates or terminates with a North American Numbering Plan (NANP) resource pursuant to a specific business relationship with a covered provider or other intermediate provider for said voice traffic, and does not itself serve as a covered provider in the context of originating or terminating a given call, that entity is an intermediate provider under the RCC Act and the rules we adopt today. We agree with NTCA's argument that any effect of this rule on entities that, like Sprint, supply wholesale capacity to MVNOs is likely to be ''minimally burdensome.'' As USTelecom observes, the information submission needed to comply with our registration requirement ''[is] of a highly routine nature that should be unproblematic for any legitimate company to provide.''

8. In addition, consistent with our proposal in the *Third RCC FNPRM,* we also adopt the definition of ''covered voice communication'' provided by Congress in the RCC Act. The RCC Act defines ''covered voice communication'' as ''a voice communication (including any related signaling information) that is generated—(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and (B) through any service provided by a covered provider.''

9. We decline to adopt the proposal advanced by Verizon and USTelecom to limit the definitions of ''intermediate provider'' and ''covered voice communications'' to ''apply only to intermediate providers that handle covered voice communications that are destined for rural areas.'' We also decline to adopt alternative suggestions that we forebear from applying the RCC Act and our implementing rules to non-rural areas. Forbearance is appropriate if the Commission determines that: (1) Enforcement of a provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. As we explain, the RCC Act reflects Congress's judgment that uniform rules are the best means to ensure rural call

completion; and limiting the RCC Act's registry requirements to rural areas would undermine the newly passed law's effectiveness. Because forbearance would be inconsistent with the public interest and the Commission's responsibility to protect consumers, as well as Congress's direction in the RCC Act that the Commission ''ensure the integrity of the transmission of covered voice communications to all customers in the United States,'' we decline USTelecom's request that the Commission forbear from applying the RCC Act to non-rural areas. We disagree with Verizon's suggestion that ''[t]he RCC Act's text supports construing the statute to ensure application only to rural areas.'' If Congress had intended to apply the RCC Act definitions only to rural areas, it easily could have done so. As Verizon itself notes, ''[t]he RCC Act on its face does not include a limitation to rural areas.'' Indeed, apart from the short title of the RCC Act, the word ''rural'' appears nowhere in its text. As enacted, section 262 is entitled ''Ensuring the integrity of voice communications,'' and none of the law's provisions or definitions—including those for ''intermediate provider'' and ''covered voice communication''—contain the word ''rural.'' Nor is the Commission's definition of ''covered provider,'' which Congress adopted by reference in the RCC Act, limited to providers who originate traffic destined for rural areas.

10. Although we agree with USTelecom's suggestion that Congress ''intended to implement measures to ensure completion of calls to rural areas,'' we disagree with the argument that we should therefore read the word ''rural'' into the RCC Act where it does not appear. This line of reasoning fails to differentiate between Congress's stated objective—to improve rural call completion—and the specific means by which Congress has directed the Commission to achieve this goal. Indeed, limitation of the RCC Act's provisions to traffic destined to rural areas would appear to contravene Congress's explicit instructions to the Commission in promulgating rules pursuant to the RCC Act, which are to ''ensure the integrity of the transmission of covered voice communications to all customers in the United States;'' and to ''prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.'' The rules we adopt today are designed to achieve these ends. Despite Verizon's and USTelecom's arguments to the contrary, Congress concluded that the best way to address rural call completion issues is to craft uniform rules applicable to intermediate providers regardless of a call's geographic destination. As HD Tandem argues, call completion issues are not inherently limited to rural areas, and limiting application of the rules we adopt pursuant to the RCC Act to rural areas may have the unintended consequence of simply shifting bad actors into new markets. Unscrupulous providers may cause call completion issues in non-rural areas as well, and our construction of the registry provisions of the RCC Act is consistent with Congress's explicit direction to the Commission, as noted above. Therefore, assuming arguendo that the Act is ambiguous, we believe our approach is likely to be more effective in curtailing the use of these providers and achieving Congress's clearly stated objective of improving rural call completion than the reading of the Act suggested by Verizon and USTelecom.

11. Nor are we persuaded that that we should modify the plain meaning of the RCC Act's language to correspond with the scope of our recently adopted monitoring rule, which, unlike the RCC Act, does apply only to ''call attempts to rural telephone companies.'' The monitoring rule adopted in the *Second RCC Order,* 83 FR 21723, requires covered providers to monitor the performance of intermediate providers when they direct calls to rural areas, and to take action to address identified problems. The RCC Act and our implementing rules require certain intermediate providers to register with the Commission and abide by service quality standards, and prevent covered providers from using unregistered intermediate providers to deliver covered voice communications. The monitoring rule and the rules adopted pursuant to the RCC Act are complementary, but because covered providers and intermediate providers are differently situated and play different roles in the delivery of voice traffic, we find that it is appropriate that our rules, and the RCC Act, treat them differently. For this reason, we also disagree with Verizon's suggestion that our safe harbor, referenced in the RCC Act in Section 262(h), compels limiting the RCC Act to rural areas. Given the heightened vigilance our monitoring rule requires of covered providers, it is appropriate that it applies more narrowly than the RCC Act's prohibition on covered provider use of unregistered intermediate providers.

12. Finally, we disagree with arguments that we should apply our rules implementing section 262 only to rural areas to increase ''[a]dministrative efficiency'' or to decrease the burdens that the RCC Act imposes on affected entities. In particular, we disagree with Verizon's argument that the burdens of complying with the RCC Act will ''vastly increase'' absent a limitation of section 262 to traffic destined to rural areas. Verizon argues that without this restriction ''[t]he number of OCNs required to be monitored would more than triple, from the over 1,300 OCNs required for monitoring rural destinations, to more than 4,700 rural and non-rural OCNs.'' The monitoring rule, however, remains limited to requiring that covered providers monitor intermediate provider performance in the completion of call attempts to rural telephone companies. Further, because the RCC Act and our implementing rules require intermediate providers to register with the Commission, we disagree that requiring covered providers to only use registered intermediate providers, without cabining such requirements to calls to rural areas, would be burdensome. We therefore expect that the burdens of our registry rules on both intermediate providers and covered providers will be minimal.

C. Intermediate Providers Who Must Register With the Commission

1. Scope of Registry Requirement

13. Consistent with the text of section 262(a), we adopt our proposal in the *Third RCC FNPRM* to require any intermediate provider ''that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission'' to register with the Commission. In adopting this proposal, we decline to simply apply the registry obligations of section 262(a) to all intermediate providers, as that term is defined in section 262(i)(3). As we suggested in the *Third RCC FNPRM,* the RCC Act's registry requirements and service quality standards apply to a subset of ''intermediate providers,'' namely those that ''charge[] any rate'' for the transmission of covered voice communications.

14. We agree with commenters who argue that the ''charge[] any rate'' language in section 262(a) is best interpreted broadly. Thus, we conclude that the application of section 262(a) is not limited only to intermediate providers who charge a per-call fee for service; rather, section 262(a) encompasses broader remuneration agreements, as well as entities offering service in exchange for in-kind or other,

non-monetary forms of consideration. We therefore disagree with commenters who express concern that the ''charge[] any rate'' qualifier may exclude entities that Congress intended to reach with the RCC Act. To be deemed an intermediate provider under section 262(i), an entity must have a ''business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting'' voice traffic originating or terminating with a NANP resource. Although section 262(a) adds the requirement that an intermediate provider ''charge[] any rate'' for transmitting covered voice communications, we find that to ''charge any rate'' in this context is merely to demand compensation for services based on a fixed ratio, scale, or standard. Nothing in the language of the RCC Act requires that the relevant ''rate'' charged be in the form of monetary consideration. We agree with ANI, HD Tandem, and Verizon that relying on remuneration as a qualifier may open the possibility for non-fee arrangements to circumvent the RCC Act and our implementing rules, and thus interpret section 262(a) as applying to any intermediate provider that demands monetary or non-monetary consideration for its services.

2. Registration Deadline

15. We adopt our proposal in the *Third RCC FNPRM* to require intermediate providers to submit their registration to the Commission within 30 days after a Public Notice announcing the approval by the Office of Management and Budget of the final rules establishing the registry. We find, and the record supports, that a 30-day timeframe will allow existing intermediate providers adequate time to come into compliance with our registry rules. In addition, as we explained in the *Third RCC FNPRM,* this phase-in period is consistent with the filing timeframe for Form 499–A, which requires that new filers register with the Commission within 30 days. Pursuant to sections 262(a) and (b), upon expiration of the initial 30-day registration window, new intermediate providers will be required to register with the Commission before beginning to transmit covered voice communications for covered providers.

16. We require intermediate providers to submit any necessary updates regarding their registration to the Commission within 10 business days. The record reflects that our proposal to require intermediate providers to update their registrations within seven days may not provide intermediate providers sufficient time to make necessary changes. As such, we permit intermediate providers up to 10 business days to submit any necessary registration updates. As ATIS argues, this additional time will better enable intermediate providers to respond to changes related to mergers or similar events. And, as West Telecom notes, ''there should be little adverse impact from the slightly longer compliance period.'' Because we agree with Verizon that ''[t]he required information should be readily available,'' we decline to increase the time period for updates to 30 days, as Verizon requests. As USTelecom notes, the information to be collected is generally of a ''routine nature that should be unproblematic for any legitimate company to provide.'' Further, because covered providers and members of the public will rely on the information contained in the registry, for example, in making routing decisions or attempting to discover point of contact information to resolve rural call completion issues, we find that a 30-day update period would unnecessarily undermine the effectiveness of the registry requirement by increasing the likelihood that the information contained within the registry is out-of-date.

3. Enforcement

17. Intermediate providers that fail to register with the Commission on a timely basis, as required by our rules, shall be subject to enforcement under the Act and our rules, including forfeiture. For the Commission to exercise its forfeiture authority for violations of the Act and the Commission's rules without first issuing a citation, the wrongdoer must hold (or be an applicant for) some form of license, permit, certificate, or other authorization from the Commission, or be engaged in an activity for which such a license, permit, certificate, or other authorization is required. Because intermediate providers that provide service to covered providers are required, under section 262(a)(1), to register with the Commission, we conclude that an intermediate provider offering such services is engaged in an activity for which Commission license or authorization is required under sections 503(b)(5) and 262(a)(1) of the Act.

18. We disagree with Verizon's unsupported assertion that the Commission ''should not interpret the act of registration itself as a grant of authorization to exercise its forfeiture authority without first issuing a citation.'' We note that no other parties commented our proposal to ''interpret the act of registration itself as a grant of Commission authorization to intermediate providers and allow us to exercise our forfeiture authority against registered providers without first issuing a citation.'' The RCC Act makes clear that Congress intended the intermediate provider registry to function as a qualification for entry into the intermediate provider market, and, as such, the requirements to register and subsequently maintain that registration in good standing serve as Commission license or authorization to function as an intermediate provider transmitting covered voice communications in the United States. Consistent with the Administrative Procedure Act's definition of ''license,'' which includes ''whole or part of an agency . . . registration,'' the Commission has found that the term ''license'' encompasses registrations.

19. Accordingly, we conclude that, under our rules, we may exercise our forfeiture authority against intermediate providers that fail to register, without first issuing a citation. When determining the amount of a forfeiture, we will consider ''the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.'' To the extent that an intermediate provider is a common carrier, the intermediate provider may be assessed a forfeiture of up to $196,387 per violation or each day of a continuing violation and up to a statutory maximum of $1,963,870 for any single act or failure to act. These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act ($100,000 per violation or per day of a continuing violation and $1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (2015 Inflation Adjustment Act) requires the Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. Further, the 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the violations associated with the penalties predate the increase. An intermediate provider that is not a common carrier is subject to a forfeiture of up to $19,639 per violation or each day of a continuing violation and up to a statutory maximum of $147,290 for any single act

or failure to act. These same penalties also apply to an entity that does not hold (and is not required to hold) a Commission license, permit, certificate, or other instrument of authorization.

20. In addition, we decline to apply the Commission's ''red-light'' rule prior to intermediate providers' registration with the Commission. In the *Third RCC FNPRM,* we sought comment on whether intermediate providers should be prohibited from registering with the Commission if they are ''red-lighted'' by the Commission for unpaid debts or other reasons. Under the red light rule, the Commission will not process applications and other requests for benefits by parties that owe non-tax debt to the Commission. In the context of our rules implementing the Debt Collection Improvement Act, the Commission has noted that ''[i]n some instances . . . filings with the Commission go into effect immediately (or within one day), thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect.'' The Commission noted that in such situations, the Commission has the ability to take appropriate action after the fact for noncompliance with any of the Commission's rules. Because we will make registrations immediately effective upon receipt, this is a situation which precludes a check to determine if the intermediate provider is a delinquent debtor before the registration goes into effect. As a result, any applicable red-light check will be conducted after intermediate provider registration; appropriate action, if any, will be taken against intermediate providers who are later discovered to be delinquent debtors, including de-registration.

D. Covered Providers May Not Use Unregistered Intermediate Providers

1. Covered Providers Must Take Steps Reasonably Calculated To Prevent Use of Unregistered Intermediate Providers Anywhere in the Call Path

21. We find that section 262(b) requires a covered provider to ensure that all intermediate providers involved in the transmission of its covered voice communications are registered with the Commission. The definition of ''intermediate provider'' contained in section 262(i) broadly refers to providers at all intermediate points in the call chain, excluding covered providers who originate or terminate a given call; and, section 262(a) requires any of these entities that offer to transmit covered voice communications for a rate to register with the Commission and meet our service quality standards. We note, however, that some intermediate providers may be exempted from our service quality standards pursuant to section 262(h) and our safe harbor provisions. Thus, we conclude that Congress's requirement that covered providers ''may not use'' an unregistered intermediate provider to transmit traffic is best understood to mean that a covered provider may not rely on any unregistered intermediate providers in the path of a given call. Consistent with our recently-adopted monitoring rule, we allow covered providers to use contractual restrictions that flow down the entire intermediate provider call path to fulfill their obligations under section 262(b).

22. We conclude that this interpretation best supports Congress's aims in enacting the RCC Act by placing responsibility for compliance with section 262(b) with a single, easily identifiable entity. Our construction of section 262(b) is supported by the record in this proceeding, and is consistent with the rules adopted in the *Second RCC Order,* which highlighted the importance of ''hold[ing] a central party responsible for call completion issues.'' As we found in the *Second RCC Order,* because ''covered providers select the initial long-distance path and therefore can choose how to route a call,'' it is ''appropriate that they should have responsibility for monitoring rural call completion performance'' along the entire path of a given call.

23. We agree with arguments advanced by NTCA that limiting the application of section 262(b) only to the first contracted intermediate provider would ''defeat the spirit and intent of [the RCC Act]'' and potentially allow ''unscrupulous carriers or intermediate providers to circumvent their ultimate responsibility to complete calls.'' As we have explained, a call often travels through a chain of multiple intermediate providers before reaching its destination. Because nothing in our rules or section 262 requires intermediate providers to use other registered intermediate providers to transmit covered voice communications, interpreting the restrictions of section 262(b) to apply only to the first contracted intermediate provider would substantially undermine the purpose of the RCC Act, which is to improve rural call completion by, among other things, requiring any intermediate provider involved in the transmission of covered voice communications to register (and maintain a registration) with the Commission. Section 262(b) would do little to improve call completion if it was construed only to require that the first of many intermediate providers in a call path register with the Commission.

24. We disagree with commenters who argue in favor of such a narrow reading of section 262(b). In particular, we disagree with Comcast's claims that covered providers ''lack . . . control over intermediate providers with which they have no direct contractual relationship.'' To the contrary, we have found that as the first party in the call path, covered providers have significant ability to affect the behavior of downstream providers—including those with which there is no direct relationship—through the use of contractual provisions that travel along the entire chain of providers.

25. Consistent with the monitoring rule for covered providers, pursuant to section 262(b) we require covered providers to (i) ensure that any directly contracted intermediate provider is registered with the Commission; and (ii) implement ''contractual restrictions . . . that are reasonably calculated to ensure'' that any subsequent intermediate providers with which the covered provider does not directly contract are registered under section 262(a). As with the monitoring rule, covered providers must ''ensure that these [contractual] restrictions flow down the entire intermediate provider call path.'' For example, covered providers may require that, as a condition of accepting traffic, (i) any directly contracted intermediate providers must agree to not hand off traffic to any unregistered intermediate providers; and (ii) that they will impose this same restriction on any subsequently contracted intermediate providers.

26. Because we allow covered providers to use indirect contractual restrictions to satisfy their obligations under section 262(b), we disagree with arguments that our interpretation of section 262(b) to encompass all intermediate providers in the call path will be impractical, inefficient, or excessively burdensome. As West Telecom notes, ''[n]egotiated arrangements, when combined with active monitoring procedures, are an accepted and proven industry approach to ensuring satisfactory performance by downstream providers.'' We disagree with ITTA's assertions that construing section 262(b) ''to mean that the covered provider must 'ensure' only that the first intermediate provider in the call path is registered is far more consistent with the principles of privity applied by the Commission in the *Second RCC Order.*'' To the contrary, as we have explained, the construction of section 262(b) we adopt today uses the same notion of

privity as that which formed the basis of our monitoring rule. As NTCA notes, ITTA's argument ''ignores the fact that covered providers have contractual relationships with the first Intermediate Provider in the call path, [which is] capable of then contractually binding downstream providers to only use registered providers from an identified list.'' Instead, as NTCA and HD Tandem argue, because covered providers are responsible for monitoring the entire call path pursuant to our monitoring rule, it is reasonable to require them to ensure through contractual provisions that all intermediate providers in the call path are registered with the Commission. Indeed, as we have explained, this construction of section 262(b) most reasonably gives effect to Congress's intent in passing the RCC Act.

27. We require covered providers to use the intermediate provider registry to ensure that the intermediate providers with which they contract are registered with the Commission at the time any agreement for the transmission of covered voice communications is finalized. We agree with West Telecom, however, that it is unnecessary to require covered providers to repeatedly check the registry to confirm the registration status of all intermediate providers in the chain of a call. Therefore, once an agreement for the transmission of covered voice communications is effective, we allow covered providers to use contractual restrictions to ensure that all intermediate providers in the call path maintain an active registration with the Commission. As West Telecom notes, it may be more effective and cost-efficient to require downstream providers to promptly report de-registrations to the upstream provider, rather than forcing the upstream provider to repeatedly recheck the registry to verify the continued registration of downstream providers. Notwithstanding any contractual provisions, however, if a covered provider gains actual knowledge that it is using an unregistered intermediate provider anywhere in its call routing, it must cease that practice.

28. We agree with NCTA that ''covered provider[s] should be afforded a reasonable period of time to transition to alternative providers without penalty or threat of enforcement.'' As NCTA notes, ''[i]t takes time for covered providers to restructure their call routes, renegotiate their relationships with intermediate providers, or make the appropriate contractual arrangements to transition to alternative providers.'' Without a transition period, covered providers might be left with no option other than to decline to complete calls on an affected route. Therefore we grant covered providers a reasonable period of time, but no more than 45 days, in which to adjust their call routing practices to avoid use of an unregistered intermediate provider after gaining knowledge of its deregistration or lack of registration. We remind covered providers that, with respect to rural destinations that a provider knows or should know are experiencing call completion problems, the *Second RCC Order* requires covered providers to ''promptly resolve[ ] any anomalies or problems and take[ ] action to ensure they do not recur.'' Our experience investigating individual call completion complaints has shown that two weeks from reporting is ample time for a provider to resolve a specific call completion problem. Although we find, based upon our experience, that 45 days will provide covered providers with sufficient time to adjust their call routing practices, covered providers should remove deregistered or unregistered intermediate providers as soon as reasonably practicable.

29. *Exception for Force Majeure.* We adopt a limited exception to our rules and exempt covered providers from the prohibition on the use of unregistered intermediate providers in circumstances where, due to *force majeure* for which the covered provider invokes a disaster recovery plan, no registered intermediate providers are available to transmit covered voice communications to their destination. This limited exemption that we adopt today is similar in nature to exemptions found in our copper retirement rules. Under those provisions, incumbent local exchange carriers (LECs) are exempted from certain provisions of our copper retirement rules in the case of a *force majeure* for which the incumbent LEC invokes a disaster recovery plan. For the purposes of this exemption, we give the terms ''*force majeure*'' and ''disaster recovery plan'' the definitions contained in 47 CFR 51.333(g). As with our copper retirement notification rules, allowing an exception in response to *force majeure* will ensure that service providers are able ''to restore their networks and service to consumers as quickly as possible rather than jump through regulatory hoops.''

30. We believe that the language of the RCC Act provides sufficient authority for us to create a narrow and time-limited exemption of the statutory prohibition on covered provider use of unregistered intermediate providers. In directing the Commission to promulgate rules to implement the RCC Act, Congress specifically instructed the Commission to ''ensure the integrity of the transmission of covered voice communications to all customers in the United States.'' We conclude that permitting covered providers to use unregistered intermediate providers to deliver covered voice communications in the case of *force majeure,* as described above, for a limited period of time while the provider has invoked a disaster recovery plan is necessary to help ''ensure the integrity'' of covered voice communications to all customers in the United States.

31. We find that carving out this limited exception provides regulatory certainty to covered providers in these limited circumstances where strict compliance with our rules would not be possible or in the public interest. We have found that ''it is vital that we do everything we can to facilitate rapid restoration of communications networks in the face of natural disasters and other unforeseen events.'' By codifying an exception to our rules implementing section 262(b) for circumstances under which covered providers would otherwise need to seek a waiver, we ensure that our rules enable covered providers to restore service as quickly as possible following *force majeure.*

32. Therefore, in circumstances where, due to *force majeure,* no registered intermediate providers are available to transmit covered voice communications to their destination, we exempt covered providers from the prohibition on use of unregistered intermediate providers. To obtain relief under this provision, we require covered providers to submit to the Commission a certification explaining the circumstances justifying an exemption as soon as practicable. The certification must be signed by a corporate officer or official with authority to bind the corporation, and knowledge of the details of the covered provider's inability to comply with our rules. The exemption period will last a period of 180 days, after which time a covered provider will be required to submit a request for an extension of the exemption period, which must include a status report on the covered provider's attempts to come into compliance with section 262(b), including a statement of how the covered provider intends to ensure that calls are completed notwithstanding the lack of available registered intermediate providers.

2. Covered Providers Must Be Capable of Disclosing to the Commission the Identity of All Intermediate Providers in the Call Path

33. Consistent with our proposal in the *Third RCC FNPRM,* we require covered providers to know, or be capable of knowing, the identity of all intermediate providers in the path of a given call. We further require covered providers to disclose this information to the Commission upon request. As we explained in the *Second RCC Order,* this requirement is a natural outgrowth of section 262(b), which prohibits covered providers from using unregistered intermediate providers anywhere in the call path.

34. We agree with HD Tandem that ''[a] registration process without this oversight mechanism will likely be very ineffective.'' Permitting covered providers to route calls without any means of determining which intermediate providers participate in delivery of covered voice communications would render the requirements in section 262(b), and the registry scheme of the RCC Act, meaningless. As we noted in the *Second RCC Order,* ''allowing covered providers to not know the identities of their intermediates amounts to allowing willful ignorance: *i.e.,* it would allow covered providers to circumvent their duties by employing unknown or anonymous intermediate providers in a call path.''

35. We disagree with commenters who suggest that this requirement should be limited to apply only to intermediate providers with which a covered provider shares a direct contractual relationship. As NTCA observes, the requirement ''that intermediate providers be contractually bound and identifiable'' is essential to enforcing the registry and service quality standards imposed by the RCC Act. Furthermore, as we have explained, our rural call completion rules are premised on the fact that a central party—covered providers—must be responsible for ensuring that calls are completed. The RCC Act complements this scheme by making covered providers responsible for preventing the use of unregistered intermediate providers anywhere in the path of a given call.

36. We therefore disagree with the proposal advanced by Comcast that would put the onus on the Commission to assemble this information by making separate inquiries of a covered provider and each of its individual intermediate providers in order to obtain a full picture of the routing of a given call. Requiring covered providers to know and disclose to the Commission only the identities of the intermediate providers with which they immediately contract would be administratively inefficient, insofar as it would require the Commission to expend scarce resources in an effort to piece together the identities of all parties in the path of a given call. Pursuant to the Commission's rural call completion rules and section 262(b), it is covered providers, and not the Commission, that are ultimately responsible for ensuring that calls are completed using only registered intermediates. Moreover, covered providers, as the party initiating calls and making the initial routing decisions for covered voice communications, are the most logical and efficient party to bear the responsibility for obtaining the identities of their intermediate providers and relaying this information to the Commission. As HD Tandem observes, ''since covered providers are accountable for exercising oversight regarding the performance of all intermediate providers (in the path of calls for which the covered provider makes the initial long-distance call path choice), they must be responsible for obtaining and retaining this information.''

37. We agree with West Telecom that it is not necessary under section 262 to require covered providers to ''know at all times 'the identity of all intermediate providers in a call path,' '' and that it is sufficient that ''such information be promptly obtainable when there is a call completion problem requiring investigation or a request from regulatory authorities.'' Several commenters express concern that requiring covered providers to maintain a current list of every intermediate provider participating in every transmission of covered voice communications would be excessively burdensome relative to the benefits of such a rule. For this reason, as with our monitoring rule and the prohibition on covered provider use of unregistered intermediaries, we allow covered providers to satisfy their obligations through the use of contractual restrictions that permit the discovery within two weeks of the identities of any intermediate providers in the path of a given call. We note that we currently allow a provider two weeks to investigate a rural call competition complaint and file a write written report with the Commission's Enforcement Bureau on the results of its investigation and how it resolved the problem. As West Telecom argues, this will permit the Commission to access necessary information related to rural call completion failures, while avoiding the costs and burdens associated with unnecessary monitoring efforts.

3. Compliance Deadline

38. We require covered providers to comply with our rules requiring the use of registered intermediate providers within 90 days after the date by which intermediate providers must register with the Commission. As Comcast notes, ''most contracts in place today do not obligate intermediate providers to disclose the names of other service providers to which the intermediate providers deliver traffic further downstream.'' A number of commenters expressed concern that our proposed 60-day phase-in period would be insufficient for covered providers to renegotiate their contracts for routing voice traffic in order to come into compliance with the prohibition on use of unregistered intermediates. We find, based on the record before us, that a 90-day phase-in period following the date by which intermediate providers must register with the Commission will permit covered providers adequate time to make adjustments to existing contractual arrangements.

39. We disagree with commenters who suggest that a longer, or shorter, timeframe is appropriate. Waiting for a period of a year or more to require covered providers to comply with their obligations under section 262 and our rules would frustrate the purpose of the RCC Act by needlessly delaying its implementation. A shorter time period, however, could prove unnecessarily difficult for providers to comply with. As several commenters note, a 90-day phase-in period following the date by which intermediate providers must register with the Commission will provide an appropriate period of adjustment, allowing covered providers to renegotiate contracts with registered intermediate providers. Furthermore, because our registry requires OMB approval and contains its own 30-day implementation period, covered providers should have approximately six-months, if not more, to come into compliance, which is about the same as the six-month phase-in period recently adopted by the Commission for the monitoring rule, which similarly required covered providers to ''evaluate and renegotiate contracts with intermediate providers.'' The prohibition on use of unregistered intermediate providers will therefore go into effect 90 days after the date by which intermediate providers must register with the Commission. Once our

registry rules are approved by OMB, intermediate providers will have 30 days to register with the Commission. Our rules regarding covered provider use of registered intermediate providers will take effect 90 days after the expiration of this 30-day initial registration period.

E. Denial of USTelecom Petition for Stay

40. USTelecom filed a petition to stay aspects of the April 17, 2018 *Second RCC Order,* specifically the covered provider monitoring requirements adopted in the *Second RCC Order,* pending completion of the rulemaking process to implement the RCC Act. USTelecom argues that absent a stay, covered providers will ''unnecessarily be forced to incur the cost of renegotiating their vendor contracts multiple times, or be placed in a position where they risk . . . noncompliance with [section] 64.2111.'' NTCA filed an opposition to the Petition for Stay, while ITTA filed comments in support. For the reasons discussed below, we find that USTelecom has failed to meet its burden for a grant of a stay and accordingly deny its petition.

41. To qualify for the extraordinary remedy of a stay, a petitioner must show that: (1) It is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay. The Commission's consideration of each factor is weighed against the others, and no single factor is dispositive. USTelecom has not introduced arguments into the record regarding the first factor, therefore we do not consider it here. Because we find that USTelecom has not shown that any of the remaining three factors weigh in favor of a stay, we conclude that USTelecom has failed to meet the test for this extraordinary remedy.

1. USTelecom Has Failed To Demonstrate Irreparable Injury

42. We find that USTelecom's claims that it ''will be irreparably injured absent grant of the requested stay'' are unsupported by the record. USTelecom rests its claims regarding irreparable injury on the theory that covered providers ''will unnecessarily be forced to incur the cost of renegotiating their vendor contracts multiple times'' if section 64.2111 becomes effective before we have established registry and service quality standards for intermediate providers pursuant to of the RCC Act.

43. The record reflects disagreement as to whether multiple rounds of contractual negotiations will be required as a result of the monitoring rule coming into effect prior to full implementation of the RCC Act. ITTA argues that covered provider contracts with intermediate providers ''cannot be renegotiated or amended until all parties in the call chain have an understanding of the service quality standards to which intermediate providers will be subject.'' As NTCA points out, however, there are steps that covered providers can take in negotiating contracts to implement the monitoring requirement that could help to mitigate the need for re-negotiation and its attendant costs, including, for example, incorporating an express ''change of law'' provision to import whatever standards may thereafter be adopted by the Commission for intermediate providers.

44. Even assuming covered providers will in fact be required to undergo separate rounds of contractual negotiations with intermediate providers absent a stay, as USTelecom asserts, USTelecom has failed to meet the high bar required to demonstrate irreparable injury. USTelecom makes no attempt to quantify the costs associated with multiple rounds of contractual negotiations; it merely offers unsupported assertions that such an outcome would be ''highly disruptive and burdensome.'' As a form of equitable relief, a stay generally is granted only where petitioners show that remedies at law—for example, the award of monetary damages—are insufficient. For this reason, according to well-established judicial precedent, ''economic loss does not, in and of itself, constitute irreparable harm,'' and ''[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.'' Recoverable monetary loss may constitute an irreparable injury in narrow circumstances where ''the loss threatens the very existence of the movant's business;'' however, USTelecom makes no assertions to this effect.

45. Moreover, to justify a stay of the Commission's *Second RCC Order,* the alleged injury ''must be both certain and great; it must be actual and not theoretical.'' A stay is warranted only if ''[t]he injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'' USTelecom asserts that absent a stay, covered providers will be forced to ''incur the cost of renegotiating their vendor contracts multiple times,'' and that these costs, ''which need not be incurred, could potentially result in higher rates for end users.'' We find that the speculative potential incurrence of an unquantified amount of costs to renegotiate contracts does not rise to the level of a ''certain and great'' injury. For these reasons, we find that USTelecom has failed to demonstrate irreparable injury.

2. USTelecom Has Failed To Demonstrate That a Stay Is in the Public Interest and Will Not Harm Other Parties

46. We also find that USTelecom has failed to demonstrate that granting a stay is in the public interest and will not harm other parties to the proceeding. Indeed, we find that staying the effectiveness of section 64.2111 would be contrary to the public interest and would threaten harm to consumers by needlessly undermining the effectiveness of our rural call completion rules.

47. We disagree with USTelecom's suggestion that any compliance costs associated with prompt enforcement of our covered provider monitoring rule are ''unnecessary in light of the fact that rural call completion complaints continue to fall.'' Even assuming this were correct, rural call completion issues continue to have significant ramifications for affected consumers, as we have repeatedly observed. Although USTelecom cites the *Second RCC Order* in support of this assertion, it misconstrues our findings. As the *Second RCC Order* observes, ''[t]rends in [rural call completion] complaints are mixed.'' While carrier complaints have indeed fallen in the last several years, consumer complaints have increased, on a yearly basis, for much of this time. Further, we note that rural carrier complaints filed with the Commission have increased significantly over this time last year. Call completion problems in rural areas ''have serious repercussions, imposing needless economic and personal costs, and potentially threatening public safety in local communities.'' In enacting the RCC Act, Congress and the President have clearly signaled that they agree with this assessment. For these reasons, solving rural call completion issues has been, and remains, a pressing concern for the Commission.

48. Despite its claims that ''the public interest strongly favors a stay of [section 64.2111],'' USTelecom offers little evidence in support of its argument. USTelecom rests its claims that a stay would not harm other parties, including consumers, on the basis that the cost of multiple rounds of contract renegotiation ''could potentially result in higher rates for end users.'' As NTCA observes, however, both the existence of

these costs, and their ultimate impact on consumers in the form of higher prices, are speculative. As noted above, USTelecom fails to attempt to quantify these costs.

49. We find that the significant public interest benefits resulting from effective rural call completion rules outweigh the hypothetical financial harms suggested by USTelecom. As NTCA observes, the public has a clear interest in rules that address rural call completion issues. Rural carriers, too, have a substantial interest in prompt enforcement of our rules, as their business interests are harmed when calls initiated elsewhere fail to reach their intended destination. The monitoring rule is a critical component of our rural call completion regulatory regime. In adopting the *Second RCC Order,* we considered, but declined to adopt, a longer phase-in period for section 64.2111, finding that ''the monitoring requirement addresses the ongoing call completion problems faced by rural Americans, and delay only postpones when rural Americans will see the fruit of this solution.'' The monitoring rule is an obligation of covered providers to ensure that calls they initiate to rural areas are in fact completed. This obligation complements, but exists independently of, the registry and service quality obligations contained in the RCC Act and any rules the Commission adopts to implement that Act. For the foregoing reasons, we deny USTelecom's request for a stay of section 64.2111 pending full implementation of the RCC Act.

II. Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third RCC FNRPM* for the Rural Call Completion proceeding. The Commission sought written public comment on the proposals in the *Third RCC FNRPM,* including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

51. In this Order, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas. Specifically, we require intermediate providers to register in a publicly available intermediate provider registry, maintained by the Commission. We also require that covered providers not use unregistered providers to carry, route, or otherwise transmit covered voice communications, except in cases of *force majeure.* The requirements we adopt today implement the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act). The RCC Act directs us to (1) promulgate registration requirements for intermediate providers within 180 days of enactment, and create a registry for such providers on our website; and (2) establish service quality standards for intermediate providers within one year of enactment.

52. In implementing the RCC Act, first, we adopt a new rule requiring ''intermediate providers'' to provide and update as needed the following information on a publicly available online registry maintained by the Commission: (1) The intermediate provider's business name(s) and primary address; (2) the name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process; (3) all business names that the intermediate provider has used in the past; (4) the state(s) in which the intermediate provider provides service; (5) the name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues a telephone number and email address for the express purpose of receiving and responding promptly to any rural call completion issues, and; (6) the name(s), business address, and business telephone number(s) for an executive leadership contact, such as the chief executive officer, chief operating officer, or owner(s) of the intermediate provider, or persons performing an equivalent function, who directs or manages the entity.

53. This Order also requires intermediate providers to register in our publicly available intermediate provider registry within 30 days after a Public Notice announcing the approval by the Office of Management and Budget of the final rules establishing the registry; prohibits covered providers from using any unregistered intermediate providers in the path of a given call; and requires covered providers to be responsible for knowing or obtaining knowledge of the identity of all intermediate providers in a call path. To ease burdens covered providers may experience during *force majeure,* covered providers are exempted from the prohibition on unregistered providers during such events, for an initial period of up to 180 days. Covered providers may seek an extension of this exemption period upon submission of a status report on the covered provider's attempts to comply with our rules, and a statement detailing how the covered provider intends to ensure that calls are completed notwithstanding the unavailability of registered intermediate providers.

54. We conclude these rules and procedures are necessary to inject transparency and accountability into the call routing system, ''to ensure the integrity of voice communications and to prevent unjust or unreasonable discrimination among areas of the United States in the delivery of such communications.''

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

55. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

56. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

57. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Third RCC FNPRM.* 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.

58. *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 percent of all businesses in the United States which translates to 28.8 million businesses.

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

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

61. *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.

62. *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 for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 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. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

63. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. 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. One thousand three hundred and seven (1,307) 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.

64. *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 11 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. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

65. *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 in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to 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 and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

66. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers 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 network operators (MVNOs) are included in this

industry. 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, all 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.

67. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers 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 network operators (MVNOs) are included in this industry. 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. 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 this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

68. *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 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 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 Third RCC FNRPM.

69. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

70. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, 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. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

71. *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.

72. *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.

73. *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.

74. *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.

75. *Cable System Operators (Telecom Act Standard).* 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 one 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 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 $250,000,000, 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.

76. *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 Bureau 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 conclude that the majority of All Other Telecommunications firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

77. In this Order, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas; namely, providing insight into the identity of intermediate providers in the voice call market, and accountability to both covered providers and the Commission. In so doing, we require intermediate providers to furnish information to a publicly available online registry maintained by the Commission that allows for better transparency and accountability these entities in the voice call routing system.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

78. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

79. The Order adopts reforms that apply across the voice calling system, including small entities. As described in the Order, in adopting these reforms, we sought comment on the impact of our rule changes on all size providers, and considered significant alternatives to provide insight into the identity of intermediate providers in the voice call market, and establish accountability to covered providers and the Commission.

80. First, we apply our registration requirement to all intermediate providers, as we define them in this *Third Report and Order,* but we clarify that this requirement does not apply to entities incidentally carrying, routing, or transmitting voice traffic. This clarification will reduce the burden on all entities, including small providers, which do not have specific business arrangements to carry traffic, but which transmission of voice traffic is merely incident to operation. Because this measure involves furnishing presently existing information on intermediate provider company leadership, rural call completion technical point of contact, contact information thereof, and places of operation, we find little if no additional burden to providers in consolidating such information and furnishing this information to the Commission via an online registry. As such we find that this is a low-cost measure to facilitate industry collaboration to address call completion issues, and increase accountability and transparency of intermediate providers in the voice call market.

81. In addition, we revised our proposal to require intermediate provider registry changes within one week of the change, to a time period of ten business days, based upon record concerns that the proposed time period was burdensome.

82. Finally, we adopted an exception to our prohibition on use of unregistered intermediate providers by covered providers transmitting covered voice communications in the case of *force majeure,* to minimize burdens covered providers may experience in complying with our rules during *force majeure,* and accordingly provide for an initial exemption period of up to 180 days, which may be extended upon covered provider request.

G. Report to Congress

83. 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 *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

84. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA)

of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this *Third Report and Order.* The FRFA is set forth above. The Commission will send a copy of this *Third Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Paperwork Reduction Act

85. This *Third Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. 3507. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

86. In this present document, we require intermediate providers to register in our publicly available intermediate provider registry within 30 days after a Public Notice announcing the approval by the Office of Management and Budget of the final rules establishing the registry. We have assessed the effects of this rule and find that any burden on small businesses will be minimal because this is a low-cost measure seeking readily available information that will improve transparency and accountability in the call routing system.

C. Congressional Review Act

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

D. Contact Person

88. For further information about this proceeding, please contact Zach Ross, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C211, 445 12th Street SW, Washington, DC 20554, at (202) 418–1033 or *Zachary.Ross@fcc.gov.*

IV. Ordering Clauses

89. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, and 262 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, and 262, this *Third Report and Order* and Order *is adopted.*

90. *It is further ordered* that Part 64 of the Commission's rules *are amended* as set forth in Appendix A.

91. *It is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this *Third Report and Order shall be effective* 30 days after publication of a summary in the **Federal Register**, except for the addition of section 64.2115 to the Commission's rules, which will become effective 30 days after the announcement in the **Federal Register** of Office of Management and Budget (OMB) approval and an effective date of the rules.

92. *It is further ordered* that pursuant to the authority contained in sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262, USTelecom's Petition for Stay filed on June 11, 2018 in WC Docket No. 13–39 is *denied.*

93. *It is further ordered* that the Commission *shall send* a copy of this *Third Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

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

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. Revise the authority citation for part 64 to read as follows:

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.2101 by adding a definition of ''covered voice communication'' in alphabetical order and revising the definition of ''intermediate provider'' to read as follows:

§ 64.2101 Definitions.

* * * * *

Covered voice communication. The term ''covered voice communication'' means a voice communication (including any related signaling information) that is generated—

(1) From the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and

(2) Through any service provided by a covered provider.

* * * * *

Intermediate provider. The term ''intermediate provider'' means any entity that—

(1) Enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—

(i) From an end user connection using a North American Numbering Plan resource; or

(ii) To an end user connection using such a numbering resource; and

(2) Does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.

■ 3. Add § 64.2115 to subpart V to read as follows:

§ 64.2115 Registration of Intermediate Providers.

(a) *Registration.* An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission shall register with the Commission in accordance with this section. The intermediate provider shall provide the following information in its registration:

(1) The intermediate provider's business name(s) and primary address;

(2) The name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process;

(3) All business names that the intermediate provider has used in the past;

(4) The state(s) in which the intermediate provider provides service;

(5) The name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues, and;

(6) The name(s), business address, and business telephone number(s) for an executive leadership contact, such as the chief executive officer, chief operating officer, or owner(s) of the intermediate provider, or persons performing an equivalent function, who directs or manages the entity.

(b) *Submission of registration.* An intermediate provider that is subject to the registration requirement in paragraph (a) of this section shall submit the information described therein to the intermediate provider registry on the Commission's website. The registration shall be made under penalty of perjury.

(c) *Changes in information.* An intermediate provider must update its submission to the intermediate provider registry on the Commission's website within 10 business days of any change to the information it must provide pursuant to paragraph (a) of this section.

■ 4. Add § 64.2117 to subpart V to read as follows:

§ 64.2117 Use of Registered Intermediate Providers.

(a) *Prohibition on use of unregistered intermediate providers.* A covered provider shall not use an intermediate provider to carry, route, or transmit covered voice communications unless such intermediate provider is registered pursuant to section 64.2115 of this subpart.

(b) *Force majeure exemption.* (1) If, due to a *force majeure* for which a covered provider has instituted a disaster recovery plan, there are no registered intermediate providers available to carry, route, or transmit covered voice communications, a covered provider need not comply with paragraph (a) of this section for a period of up to 180 days with respect to those covered voice communications. A covered provider shall submit to the Commission a certification, signed by a corporate officer or official with authority to bind the corporation, and knowledge of the details of the covered provider's inability to comply with our rules, explaining the circumstances justifying an exemption under this section as soon as practicable.

(2) A covered provider seeking an extension of the exemption described in paragraph (b)(1) of this section must submit a request for an extension of the exemption period to the Commission. Such an extension request shall, at minimum, include a status report on the covered provider's attempts to comply with paragraph (a) of this section; and a statement detailing how the covered provider intends to ensure that calls are completed notwithstanding the unavailability of registered intermediate providers.

(3) For purposes of this section, ''*force majeure*'' means a highly disruptive event beyond the control of the covered provider, such as a natural disaster or a terrorist attack.

(4) For purposes of this section, ''disaster recovery plan'' means a disaster response plan developed by the covered provider for the purpose of responding to a *force majeure* event.

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BILLING CODE 6712–01–P

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2017–0056]

RIN 0579–AE42

Removal of Emerald Ash Borer Domestic Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the domestic quarantine regulations for the plant pest emerald ash borer. This action would discontinue the domestic regulatory component of the emerald ash borer program as a means to more effectively direct available resources toward management and containment of the pest. Funding previously allocated to the implementation and enforcement of these domestic quarantine regulations would instead be directed to a nonregulatory option of research into, and deployment of, biological control agents for emerald ash borer, which would serve as the primary tool to mitigate and control the pest.

DATES: We will consider all comments that we receive on or before November 19, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0056*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0056, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0056* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 851–2283; *Robyn.I.Rose@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Emerald ash borer (EAB, *Agrilus planipennis*) is a destructive wood-boring pest of ash (*Fraxinus* spp.) native to China and other areas of East Asia. First discovered in the United States in southeast Michigan in 2002, EAB is well-suited for climatic conditions in the continental United States and is able to attack and kill healthy trees in both natural and urban environments. As a result, EAB infestations have been detected in 31 States and the District of Columbia, with additional infestations that have not yet been detected likely. The Animal and Plant Health Inspection Service (APHIS) instituted a domestic quarantine program for EAB that has been in place since 2003.

The regulations in ''Subpart—Emerald Ash Borer'' (7 CFR 301.53–1 through 301.53–9, referred to below as the regulations) list quarantined areas that contain or are suspected to contain EAB, and identify, among other things, regulated articles and the conditions governing the interstate movement of such regulated articles from quarantined areas in order to prevent the spread of EAB more broadly within the United States. Since the implementation of the domestic quarantine program, several factors have adversely affected its overall effectiveness in managing the spread of EAB.

First, during the Midwestern housing boom that began in the 1990s, ash trees often were planted in new housing developments because of their hardiness and general resistance to drought conditions; however, developers frequently sourced these trees from nurseries that were later determined to be heavily infested with EAB and that were subsequently put under quarantine. It was several years after the issuance of domestic quarantine regulations before surveys identified many long-standing infestations of EAB in residential areas, leading to a substantial increase in the number of counties under quarantine.

Second, the regulations cannot preclude the spread of EAB throughout its geographical range, which has expanded over time. In recent years, this has led to a significant number of regulatory actions to place additional counties under quarantine. In fiscal year (FY) 2016 alone, APHIS issued 16 Federal Orders designating additional quarantined areas for EAB, and many of these designated multiple quarantined areas.

In light of these difficulties, we propose to remove the domestic quarantine regulations for EAB. Funding previously allocated to the implementation and enforcement of the regulations would instead be directed toward nonregulatory efforts involving research into, and release of, biological control (biocontrol) agents. Emphasis in the EAB program on the development and deployment of biocontrol agents in this way provides a promising approach to mitigate and control infestations by focusing directly on the pest and, ultimately, its ability to spread.

The ongoing monitoring of current EAB biocontrol measures shows encouraging results in protecting ash regrowth in areas that had been previously affected by EAB. For example, a biocontrol agent released in urban quarantined areas has shown significant population growth and has spread throughout urban communities, demonstrating preliminary evidence of the efficacy of biocontrol for EAB in areas that have experienced significant tree loss due to infestation. Reallocating funding from regulatory to nonregulatory control measures also would facilitate achievement of the Agency goal to release and establish biocontrol agents in every known EAB-infested county where the agent populations can be sustained.

Accordingly, we are proposing to remove the EAB domestic quarantine regulations to more effectively direct available resources toward management and containment of the pest.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the

Office of Management and Budget. This proposed rule, if finalized as proposed, is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the information available to APHIS, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

APHIS is proposing to remove the domestic quarantine regulations for EAB. This action would discontinue the domestic regulatory component of the EAB program. Funding allocated to the implementation and enforcement of these quarantine regulations would instead be directed to a nonregulatory option of research and deployment of biocontrol agents for EAB. Biocontrol would be the primary tool used to control the pest and mitigate losses.

There are currently more than 800 active EAB compliance agreements, covering establishments that include sawmills, logging/lumber producers, firewood producers, and pallet manufacturers. The purpose of the compliance agreements is to ensure observance of the applicable requirements for handling regulated articles. Establishments involved in processing, wholesaling, retailing, shipping, carrying, or other similar actions on regulated articles require a compliance agreement to move regulated articles out of a Federal quarantine area.

Under this proposal, establishments operating under EAB compliance agreements would no longer incur costs of complying with Federal EAB quarantine regulations, although States could still impose restrictions. Businesses would forgo the paperwork and recordkeeping costs of managing Federal compliance agreements. However, some businesses may still bear treatment costs, if treatment is for purposes besides prevention of EAB dissemination. Costs avoided under the proposed rule would depend on the type of treatment and whether treatment would still occur for purposes other than those related to the Federal EAB regulatory restrictions on interstate movement.

Articles currently regulated for EAB include hardwood firewood, chips, mulch, ash nursery stock, green lumber, logs, and wood packaging material (WPM) containing ash. Articles can be treated by bark removal, kiln sterilization, heat treatment, chipping, composting, or fumigation, depending on the product.

For affected industries, we can estimate the cost savings if treatment were to cease entirely. Currently, there are 166 active EAB compliance agreements where sawmills and logging/lumber establishments have identified kiln sterilization as a method of treatment. If all of these producers stop heat treating ash lumber or logs as a result of this rule, the total cost savings for producers could be between about $920,000 and $1.6 million annually. There are 103 active EAB compliance agreements where heat treatment of firewood is identified as a treatment. If all of these firewood producers stop heat treating firewood as a result of this rule, the total cost savings for producers could be between about $99,400 and $746,000 annually.

There are 70 active EAB compliance agreements where heat treatment is identified as the pallet treatment. If all of these producers are producing ash pallets and stop heat treating as a result of this rule, the total cost savings for producers could be between about $8.8 million and $13.2 million annually. If all 349 establishments with compliance agreements where debarking is identified as a treatment stop their secondary sorting and additional bark removal in the absence of EAB regulations, the total annual labor cost savings for producers could be about $1.7 million annually. If all 397 establishments with compliance agreements where chipping or grinding is identified as a treatment stop re-grinding regulated materials in the absence of EAB regulations, the total annual cost savings for producers could be about $10.6 million annually. The annual cost savings for these various entities could total between about $9.8 million and $27.8 million annually.

Since no effective quarantine treatments are available for ash nursery stock, there are no compliance agreements issued for interstate movement of that regulated article. In 2014, there were 316 establishments selling ash trees, 232 with wholesale sales, operating in States that are at least partially quarantined for EAB. Sales volumes for at least some of these operations could increase if their sales are constrained because of the Federal quarantine.

Internationally, deregulation of EAB may affect exports of ash to Norway and Canada, the two countries that have import restrictions with respect to EAB host material. Norway uses pest-free areas in import determinations. With removal of the domestic quarantine regulations, it is unlikely that Norway would recognize any area in the United States as EAB free. All exports of ash logs and lumber to Norway would likely be subject to debarking and additional material removal requirements. From 2013 through 2017, exports to Norway represented less than one-tenth of 1 percent of U.S. ash exports. We estimate that labor costs for overseeing the debarking on these exports would total less than $500.

The United States also exports to Canada products such as hardwood firewood, ash chips and mulch, ash nursery stock, ash lumber and logs, and WPM with an ash component from areas not now quarantined. New Canadian restrictions would likely depend on the product and its destination within Canada. From 2013 through 2017, Canada received about 3 percent of U.S. ash lumber exports, and about 9 percent of U.S ash log exports. Of about 72,000 phytosanitary certificates (PCs) issued from January 2012 through August 2017 for propagative materials exported to Canada, a little more than 1 percent was specifically for ash products. Although APHIS does not have sufficient data to fully evaluate the costs of additional mitigations on all ash materials and welcomes public comment to help determine these costs, we estimate that additional heat treatment costs and labor costs for overseeing debarking of ash lumber and logs exported to Canada would range from about $54,000 to $90,700.

Taking into consideration the expected cost savings shown in table A of the full analysis and these estimated costs of exporting ash to Norway and Canada following deregulation, and in accordance with guidance on complying with E.O. 13771, the single primary estimate of the cost savings of this proposed rule is $18.8 million, the mid-

point estimate annualized in perpetuity using a 7 percent discount rate.

EAB is now found in 31 States and the District of Columbia and it is likely that there are infestations that have not yet been detected. Newly identified infestations are estimated to be 4 to 5 years or more in age. Known infestations cover about 27 percent of the native ash range within the conterminous United States.

It is probable that without the EAB program, human-assisted dispersal of EAB would have extended to areas that are not yet infested, that is, regulatory activities have slowed the spread of EAB, delaying losses. However, the volume of regulatory activities needed to effectively contain EAB depends on the size of the quarantined area.

Any delay in EAB spread attributable to the quarantine regulations would end with the proposed rule. EAB program emphasis and resources would turn to the development and release of biocontrol agents to control infestations and mitigate losses. Ongoing monitoring and evaluation of EAB biocontrol methods are showing promising results in protecting ash regrowth in areas previously affected by EAB. For example, a biocontrol agent released in urban quarantined areas has spread significantly throughout these communities. Reallocation of program funds to biocontrol would support the goal of establishing biocontrol agents in every EAB-infested county where control agent populations can be sustained. Still, we are unable to evaluate the change in EAB risk, by using biocontrol in place of regulatory quarantines, for operations not yet affected by this pest. Public outreach activities outside the EAB regulatory program would continue, such as the ''Don't move firewood'' campaign which focuses on a significant pathway for EAB and other forest pests.

In sum, elimination of compliance requirements under the proposed rule would yield cost savings for affected entities within EAB quarantined areas. Moreover, sales volumes for at least some of these operations could increase if their sales have been constrained because of the Federal quarantine. Costs avoided would depend on the type of treatment and whether treatment would still occur for non-quarantine purposes. Costs ultimately borne also would depend on whether States decide to continue to enforce their own EAB quarantine programs. We anticipate States will continue to impose movement restrictions on firewood and the regulatory requirements vary from State to State. Strategies to address firewood as a pathway for forest pests are being developed. Internationally, the proposed rule may affect exports of ash products to Norway and Canada. Longer term, the impact of the proposed rule on ash populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process ash—is indeterminate.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 13175

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

APHIS has assessed the impact of this rule on Indian tribes and determined that this rule does have tribal implications that require tribal consultation under E.O. 13175. In January 2018, APHIS State Plant Health Directors sent a letter to the leaders of all federally recognized Tribes in their States informing them of the agency's intent to publish a proposed rule to remove the EAB domestic quarantine and inviting tribal members to provide comments. In May 2018, consultations were held with the four federally recognized Tribes in Maine; all four Tribes expressed concern with the proposed action and requested APHIS delay deregulating the EAB until more work can be done to lessen the impact of the pest on native ash in the State. We will consider these requests, as well as any additional information received during the comment period for this proposed rule, as we determine whether or how to proceed with this rulemaking. If these or other Tribes request new or additional consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

This proposed rule contains no reporting, recordkeeping, or third party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Subpart—Emerald Ash Borer [Removed]

■ 2. Subpart—Emerald Ash Borer, consisting of §§ 301.53–1 through 301.53–9, is removed.

Done in Washington, DC, this 12th day of September 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–20296 Filed 9–18–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2018–0028]

RIN 1557–AE51

OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking; revised guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its enforceable guidelines relating to recovery planning standards for insured national banks, insured federal savings associations, and insured federal branches (Guidelines) to increase the average total consolidated assets threshold for applying the Guidelines from $50 billion to $250 billion. In addition, the proposed change to the Guidelines would decrease from 18 months to 12 months the time within which a bank should comply with the Guidelines after the bank becomes subject to them. Finally, the proposal would make technical amendments to remove outdated compliance dates.

DATES: Comments must be received by November 5, 2018.

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0028'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0028'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0028'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect 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 hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Lori Bittner, Large Bank Supervision—Resolution and Recovery, (202) 649–6210; Andra Shuster, Senior Counsel or Rima Kundnani, Attorney, Chief Counsel's Office, (202) 649–5490; or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The 2008 financial crisis provided valuable lessons about the need for financial institutions to have strong risk governance frameworks, including plans for how to respond to and recover from the financial effects of severe stress. This was particularly true for larger, more complex banks in light of systemic risks and contagion effects that they pose. In response to these lessons, on September 19, 2016, the OCC published the Guidelines establishing minimum standards for recovery planning by insured national banks, insured federal savings associations, and insured federal branches of foreign banks (banks) with average total consolidated assets [1] equal to or greater than $50 billion (covered banks).[2] The Guidelines state that a recovery plan should identify (1) quantitative or qualitative indicators of the risk or existence of severe stress that reflect a covered bank's particular vulnerabilities and (2) a wide range of credible options that a covered bank could undertake in response to the stress to restore its financial strength and viability.

Under the Guidelines, a recovery plan should also address: (1) Procedures for escalating decision-making to senior management or the board of directors, (2) management reports, and (3) communication procedures. In addition, the Guidelines explain how a bank should calculate its average total consolidated assets and reserve the OCC's authority to apply the Guidelines to a bank below the $50 billion threshold if the agency determines a bank is highly complex or otherwise presents a heightened risk. Finally, the Guidelines set out phased-in compliance dates based on bank size.

II. Proposed Changes

Threshold. The OCC noted in the **SUPPLEMENTARY INFORMATION** section of the final Guidelines that large, complex institutions should undertake recovery

[1] Average total consolidated assets is defined in the Guidelines and means the average total consolidated assets of the bank or covered bank as reported on the bank's or covered bank's Consolidated Reports of Condition and Income for the four most recent consecutive quarters. *See* 12 CFR 30, Appendix E, paragraph I.E.1.

[2] 81 FR 66791 (Sep. 29, 2016). The Guidelines were issued pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1, which authorizes the OCC to prescribe enforceable safety and soundness standards.

planning to be able to respond quickly to and recover from the financial effects of severe stress on the institution. Based on its experience to date in reviewing recovery plans, the OCC believes that it is appropriate to raise the threshold for the Guidelines to focus on those institutions that present greater systemic risk to the banking system. These larger, more complex, and potentially more interconnected banks present the types of risks that could benefit most from having the types of governance and planning processes that identify and assist in responding to significant stress events.

In addition, at the time the Guidelines were published, the $50 billion recovery planning threshold was consistent with the scope of Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System regulations [3] that require systemically important financial institutions to prepare resolution plans under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[4] On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (Act) was enacted to promote economic growth, provide tailored economic relief, and enhance consumer protections.[5] Section 401 of the Act raises from $50 billion to $250 billion the section 165 resolution planning threshold.

Accordingly, the proposal would increase from $50 billion to $250 billion the average total consolidated assets threshold at which the Guidelines apply to covered banks. This change would reduce the number of covered banks to which the Guidelines apply from 25 to 8, based on the most recent data available. It would provide necessary and appropriate burden relief to the affected banks while retaining the requirements for the largest, most complex institutions. Furthermore, the proposed increased threshold is consistent with section 401 of the Act's increase in the section 165 resolution planning threshold applicable to systemically important bank holding companies.

Compliance Date. Under the current Guidelines, a bank with less than $50 billion in average total consolidated assets that subsequently becomes a covered bank is required to comply with the Guidelines within 18 months. The OCC proposes to amend this provision so that a bank that has less than $250 billion in average total consolidated assets on the effective date of a final rule and subsequently becomes a covered bank should comply with the Guidelines within 12 months. Based upon supervisory experience, the OCC has observed that 12 months is a sufficient period of time for any bank that becomes a covered bank to comply with the Guidelines. Finally, the OCC proposes technical amendments to remove the compliance dates listed in the current Guidelines, as the dates have all passed.

Effective Date

The proposed Guidelines would have an effective date of October 19, 2018. The OCC requests comment on the proposed effective date.

Comment Invitation

The OCC invites comment on all aspects of the proposed revisions to the Guidelines.

Regulatory Analysis

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

As part of its analysis, the OCC considers whether the proposed rule will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 886 small entities. Because the proposed rule will generally have no impact on banks with less than $50 billion in total consolidated assets, no OCC-supervised small entities will be affected. Therefore, the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This notice of proposed rulemaking includes changes to an approved collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with PRA, the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The OCC submitted the information collections contained in the notice of proposed rulemaking to OMB for review and approval, pursuant to 44 U.S.C. 3506 and section 1320.11 of the OMB implementing regulations (5 CFR part 1320).

The Guidelines found in 12 CFR part 30, appendix E, sections II.B., II.C., and III contain information collection requirements previously approved by OMB. Section II.B. specifies the elements of the recovery plan, including an overview of the covered bank; triggers; options for recovery; impact assessments; escalation procedures; management reports; and communication procedures. Section II.C. addresses the relationship of the plan to other covered bank processes and coordination with other plans, including the processes and plans of its bank holding company. Section III outlines management's and the board's responsibilities. The threshold triggering these requirements is being changed under this notice of proposed rulemaking, resulting in a reduction in the number of respondents under this collection.

The following revised information collection was submitted to OMB for review.

Title: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

OMB Control No.: 1557–0333.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Burden Estimates:

Total Number of Respondents: 8 National Banks.

Total Burden per Respondent: 7,543 hours.

Total Burden for Collection: 60,344 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (2) the accuracy of the OCC's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

[3] *See* 12 CFR 381.2(f) and 243.2(f), respectively. *See also* 12 CFR 360.10.

[4] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[5] Public Law 115–174, 132 Stat. 1296 (May 24, 2018).

Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that the proposed rule does not impose new mandates. Therefore, we conclude that the proposed rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the OCC organized the material to inform your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the OCC incorporate to make the proposed regulation easier to understand?

List of Subjects in 12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—SAFETY AND SOUNDESS STANDARDS

■ 1. The authority citation for Part 30 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p–1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

■ 2. Appendix E to part 30 is amended by:

■ a. Removing the phrase ''$50 billion'' and adding in its place the phrase ''$250 billion'' everywhere that it appears;

■ b. Revising section I.B.1;

■ c. Removing section I.B.2 and I.B.3;

■ d. Redesignating the current section I.B.4 as I.B.2 and removing ''January 1, 2017'' and adding in its place the words ''[EFFECTIVE DATE]'';

■ e. In newly designated section I.B.4, removing the phrase ''18 months'' and adding in its place the phrase ''12 months''.

The revisions read as follows:

Appendix E to Part 30—OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

* * * * *

I. Introduction

* * * * *

B. Compliance Date

1. A covered bank with average total consolidated assets, calculated according to paragraph I.E.1. of this appendix, equal to or greater than $250 billion as of [EFFECTIVE DATE] should be in compliance with this appendix on [EFFECTIVE DATE].

* * * * *

Dated: September 11, 2018.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2018–20166 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0799; Product Identifier 2018–NM–117–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 BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by reports of dislodged cargo compartment blow-out panels. This proposed AD would require repetitive inspections for any dislodged blow-out panel in the forward and aft cargo compartments, reporting of the inspection findings, and re-installation 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 November 5, 2018.

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; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0799; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone

516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0799; Product Identifier 2018–NM–117–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–15, dated June 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states:

> Multiple events of dislodged cargo compartment blow-out panels have been reported in-service. It was determined that these events were caused by baggage impacting the cargo panel cage, or the cargo compartment liner below the cargo panel cage, during baggage loading and unloading on the ground, or during flight due to shifting luggage.
>
> Dislodged cargo compartment blow-out panels create openings in the forward and aft cargo compartments. In the event of a cargo compartment fire, these unintended openings in the forward and aft cargo compartments would provide a path for smoke, fire, and Halon to enter the adjacent equipment bays, flight deck, and passenger cabin, which could delay smoke detection in the forward and aft cargo compartments and result in the forward and aft cargo compartments not being able to maintain Halon concentration required for fire suppression. The cargo compartment fire may become uncontrollable if this condition is not corrected.
>
> This AD mandates repetitive [detailed] inspections of the affected forward and aft cargo compartment blow-out panels, and reporting of inspection findings where dislodged blow-out panels have been found [and re-installation of dislodged blow-out panels].

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0799.

Related Service Information Under 1 CFR Part 51

Bombardier has issued C Series Data Module BD500–A–J50–10–01–01AAA–310B–A, ''Forward and aft cargo compartment blow-out panels—Visual check,'' Issue 002, dated May 16, 2018. This service information describes procedures for an inspection for any dislodged blow-out panel in the forward and aft cargo compartments.

Bombardier has issued C Series Data Module BD500–A–J50–10–01–00AAA–521A–A, ''Decompression panels dislodging—Return to basic configuration,'' Issue 002, dated May 16, 2018. This service information describes procedures for re-installation of dislodged forward and aft cargo compartment blow-out panels.

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

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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD also would require sending positive inspection results to Bombardier.

Costs of Compliance

We estimate that this proposed AD affects 21 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$1,785

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$0	$170

We estimate that it would take about 1 work-hour per product to comply with the proposed on-condition reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a

collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this NPRM is 2120–0056. The paperwork cost associated with this NPRM has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this NPRM is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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–2018–0799; Product Identifier 2018–NM–117–AD.

(a) Comments Due Date

We must receive comments by November 5, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model BD–500–1A10 airplanes, serial numbers 50001 and subsequent, equipped with blow-out panel part number D762213–503, D762216–505, or D762209–503.

(2) Model BD–500–1A11 airplanes, serial numbers 55001 and subsequent, equipped with blow-out panel part number D762213–503, D762216–505, or D762209–503.

(d) Subject

Air Transport Association (ATA) of America Code 50, Cargo and accessory compartment.

(e) Reason

This AD was prompted by reports of dislodged cargo compartment blow-out panels. We are issuing this AD to address this condition, which could result in openings in the forward and aft cargo compartments. In the event of a cargo compartment fire, these unintended openings in the forward and aft cargo compartments would provide a path for smoke, fire, and Halon to enter the adjacent equipment bays, flight deck, and passenger cabin, which could delay smoke detection in the forward and aft cargo compartments and result in the forward and aft cargo compartments not being able to maintain Halon concentration required for fire suppression. The cargo compartment fire may become uncontrollable if this condition is not addressed, which could result in the loss of controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections of the Forward and Aft Cargo Compartment Blow-Out Panels and Re-Installation

Within 7 days or 50 flight cycles, whichever occurs first, after the effective date of this AD, do a detailed inspection for any dislodged blow-out panel in the forward and aft cargo compartments, in accordance with C Series (Bombardier) Data Module BD500–A–J50–10–01–01AAA–310B–A, ''Forward and aft cargo compartment blow-out panels—Visual check,'' Issue 002, dated May 16, 2018. Re-install all dislodged forward and aft cargo compartment blow-out panels before further flight, in accordance with C Series (Bombardier) Data Module BD500–A–J50–10–01–00AAA–521A–A, ''Decompression panels dislodging—Return to basic configuration,'' Issue 002, dated May 16, 2018. Thereafter, at intervals not to exceed 100 flight cycles, repeat the detailed inspection for any dislodged blow-out panel in the forward and aft cargo compartments.

(h) Reporting

If any blow-out panel in the forward or aft cargo compartments is found dislodged during any inspection required by paragraph (g) of this AD, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, report findings to the Bombardier customer response center (CRC) via email: *crc_cseries@aero.bombardier.com*. Reportable findings include the airplane serial number on which any dislodged blow-out panel was found, the date of inspection, and the part number and location of each dislodged blow-out panel.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction

Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–15, dated June 6, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0799.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 10, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20105 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0167; Product Identifier 2017–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposal for all ATR–GIE Avions de Transport Régional Model ATR42 and Model ATR72 airplanes. This action revises the notice of proposed rulemaking (NPRM) by increasing the number of affected parts that must be inspected. We are proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, we are reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on March 29, 2018 (83 FR 13436), is reopened.

We must receive comments on this SNPRM by November 5, 2018.

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

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

For service information identified in this SNPRM, contact Safran Landing Systems, Inovel Parc Sud—7, rue Général Valérie André, 78140 VELIZY–VILLACOUBLAY—FRANCE; phone: +33 (0) 1 46 29 81 00; internet: *www.safran-landing-systems.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this SNPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0167; Product Identifier 2017–NM–131–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. We will consider all comments received by the closing date and may amend this SNPRM 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 SNPRM.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all ATR–GIE Avions de Transport Régional Model ATR42 and

Model ATR72 airplanes. The NPRM published in the **Federal Register** on March 29, 2018 (83 FR 13436). The NPRM was prompted by reports of cracking in main landing gear (MLG) universal joints (U-joints). The NPRM proposed to require repetitive detailed inspections of the affected U-joints for cracks, and replacement if necessary. The NPRM also provided an optional terminating action for the repetitive inspections.

Actions Since the NPRM Was Issued

Since we issued the NPRM, the number of affected parts that must be inspected has increased. In addition, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA Airworthiness Directive 2018–0080, dated April 11, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), which supersedes EASA AD 2017–0172, dated September 7, 2017 (referred to in the NPRM).

The MCAI was issued to correct an unsafe condition on all ATR–GIE Avions de Transport Régional Model ATR42 and Model ATR72 airplanes. The MCAI states:

> Occurrences were reported of finding cracks in certain MLG U-joints. Subsequent investigation identified a batch of affected U-joints which have possibly been subjected to non-detected thermal abuse during the grinding process by the U-joint manufacturer in production, or by a maintenance organization during overhaul and/or repair.
>
> This condition, if not detected and corrected, could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> To address this potential unsafe condition, SLS [Safran Landing Systems] published the applicable SB [service bulletin] to provide inspection instructions. Consequently, EASA issued AD 2017–0172 to require repetitive detailed visual inspection (DVI) of the affected U-joints for cracks, and, depending on findings, replacement.
>
> Since that AD was issued, SLS identified that certain s/n [serial numbers] of affected U-joints were inadvertently not included in the list of the original issue of the applicable SB. Consequently, SLS issued Revision 02 of the applicable SB to clarify the s/n tables of P/N [part number] D56805 and P/N D56805–2, and to add those missed s/n of affected U-joints.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2017–0172, which is superseded, and includes reference to Revision 02 of the applicable SB.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167.

Related Service Information Under 1 CFR Part 51

Safran Landing Systems has issued Service Bulletin 631–32–249, Revision 2, dated February 13, 2018; Service Bulletin 631–32–250, Revision 2, dated February 13, 2018; and Service Bulletin 631–32–251, Revision 2, dated February 13, 2018. The service information describes procedures for detailed inspections of the affected U-joints for cracking, and replacement if necessary. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comment received.

Request To Refer to Revised Service Information

Empire Airlines requested that we refer to Service Bulletin 631–32–249, Revision 2, dated February 13, 2018; Service Bulletin 631–32–250, Revision 2, dated February 13, 2018; and Service Bulletin 631–32–251, Revision 2, dated February 13, 2018, because the number of affected parts increased with these revisions.

We agree with the commenter's request. We have revised this proposed AD to refer to the new service bulletins. We have given credit for affected parts listed in Service Bulletin 631–32–249, Revision 1, dated June 26, 2017; Service Bulletin 631–32–250, Revision 1, dated June 26, 2017; and Service Bulletin 631–32–251, Revision 1, dated June 26, 2017. Any affected parts not identified in Revision 1 of the applicable service bulletins must still comply with the requirements of paragraphs (h) and (i) of this proposed AD.

FAA's Determination and Requirements of This SNPRM

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

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this proposed AD affects 62 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	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$5,270 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	8 work-hours × $85 per hour = $680	$14,083	$14,763

According to the manufacturer, some or all 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 known 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.

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

Regulatory Findings

We determined that this 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):

ATR–GIE Avions de Transport Régional: Docket No. FAA–2018–0167; Product Identifier 2017–NM–131–AD.

(a) Comments Due Date

We must receive comments by November 5, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking in certain main landing gear (MLG) universal joints (U-joints). We are issuing this AD to detect and correct cracking in MLG U-joints, which could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Definitions

(1) For the purposes of this AD, an affected U-joint is any U-joint identified by part number (P/N) and serial number listed in the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) For Model ATR42–200, –300, and –320 airplanes: Safran Landing Systems Service Bulletin 631–32–249, Revision 2, dated February 13, 2018.

(ii) For Model ATR42–500 airplanes: Safran Landing Systems Service Bulletin 631–32–250, Revision 2, dated February 13, 2018.

(iii) For Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes: Safran Landing Systems Service Bulletin 631–32–251, Revision 2, dated February 13, 2018.

(2) For the purposes of this AD, a serviceable part is an affected U-joint, as defined in paragraph (g)(1) of this AD, released to service by Safran Landing Systems, free of defect, with the letter ''V'' added on the part (on the identification plate, or in the vicinity of the P/N marking); or a new (never installed) U-joint; or a U-joint repaired as specified in the applicable component maintenance manual (CMM) identified in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii).

(i) For Model ATR42–200, –300, and –320 airplanes: Safran Landing Systems CMM 32–18–28, Rev. 10 or Safran Landing Systems CMM 32–18–30, Rev. 8, both dated June 2, 2017.

(ii) For Model ATR42–500 airplanes: Safran Landing Systems CMM 32–18–45, Rev. 5 or Safran Landing Systems CMM 32–18–63, Rev. 6, both dated June 2, 2017.

(iii) For Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes: Safran Landing Systems CMM 32–18–34, Rev. 9, dated June 2, 2017.

(h) Repetitive Inspections

Within 3 months or 500 flight cycles (FC), whichever occurs first, after the effective date of this AD, and thereafter at intervals not to exceed 500 FC: Do a detailed inspection for cracking of each affected U-joint, as identified in paragraph (g)(1) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraphs (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) Corrective Action

If, during any inspection required by paragraph (h) of this AD, any cracked U-joint is found, before further flight: Replace the cracked U-joint with a serviceable part, as defined in paragraph (g)(2) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(j) Terminating Action

Replacement of all affected U-joints on an airplane, as identified in paragraph (g)(1) of this AD, with serviceable parts, as defined in paragraph (g)(2) of this AD, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD for that airplane.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an affected U-joint, as identified in paragraph (g)(1) of this AD, unless it is a serviceable part, as defined in paragraph (g)(2) of this AD.

(l) No Reporting Requirement

Although the Accomplishment Instructions of the service bulletins identified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using the service bulletins specified in paragraphs (m)(1), (m)(2), or (m)(3) of this AD, provided that affected U-joints not identified in the service bulletins specified in paragraphs (m)(1), (m)(2), or (m)(3) of this AD comply with the requirements of paragraphs (h) and (i) of this AD.

(1) Safran Landing Systems Service Bulletin 631–32–249, Revision 1, dated June 26, 2017.

(2) Safran Landing Systems Service Bulletin 631–32–250, Revision 1, dated June 26, 2017.

(3) Safran Landing Systems Service Bulletin 631–32–251, Revision 1, dated June 26, 2017.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0080, dated April 11, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(3) For service information identified in this AD, contact Safran Landing Systems, Inovel Parc Sud—7, rue Général Valérie André, 78140 VELIZY–VILLACOUBLAY—FRANCE; phone: +33 (0) 1 46 29 81 00; internet: *www.safran-landing-systems.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 10, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20099 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0797; Product Identifier 2018–NM–096–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2018–11–07, which applies to all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. AD 2018–11–07 requires a one-time inspection of an affected lug attaching the aileron bellcrank support bracket to the rear spar of the wing and the adjacent area of the installed support brackets, a thickness measurement of the affected lug, repetitive inspections of the affected aileron bellcrank support brackets, and corrective actions if necessary. AD 2018–11–07 also provided an optional terminating action for the repetitive inspections. Since we issued AD 2018–11–07, we have determined that it is necessary to require the terminating action. This proposed AD would retain the actions of AD 2018–11–07 and require the terminating action for the repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 5, 2018.

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 Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0797; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone 800–647–5527) is in the

ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0797; Product Identifier 2018–NM–096–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We issued AD 2018–11–07, Amendment 39–19295 (83 FR 24399, May 29, 2018) (''AD 2018–11–07''), for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. AD 2018–11–07 requires a one-time inspection of the affected lug attaching the aileron bellcrank support bracket to the rear spar of the wing and the adjacent area of the installed aileron bellcrank support brackets, a thickness measurement of the affected lug attaching the support bracket to the rear spar of the wing, repetitive inspections of the affected aileron bellcrank support brackets, and corrective actions if necessary. AD 2018–11–07 also provides an optional terminating action for the repetitive inspections. AD 2018–11–07 resulted from the identification of a manufacturing defect on certain aileron bellcrank support brackets that resulted in the material thickness of the affected lug attaching the support bracket to the rear spar of the wing to be insufficient. We issued AD 2018–11–07 to detect and correct the defect of the aileron bellcrank support bracket, which, in the event of an aileron jam, could lead to failure of the support bracket and result in reduced controllability of the airplane.

Actions Since AD 2018–11–07 Was Issued

In the preamble of AD 2018–11–07, we stated that we were considering further rulemaking to require the replacement of all affected support brackets. The planned compliance time for the support bracket replacements allowed adequate time for notice and opportunity for public comment on the merits of the replacement. Therefore, the requirement for the replacement was not included in AD 2018–11–07. We have now determined that further rulemaking is necessary to include this requirement.

Related Service Information Under 1 CFR Part 51

Saab AB, Saab Aeronautics has issued Saab Service Bulletin 2000–27–056, dated April 18, 2018. This service information describes procedures for a detailed visual inspection for cracks, corrosion, and damage (including missing paint) of the affected lug and the adjacent area of the installed aileron bellcrank support brackets on the left-hand and right-hand wings; a thickness measurement of the affected lug attaching the support bracket to the rear spar of the wing; and replacement of aileron bellcrank support brackets. 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

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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would retain the requirements of AD 2018–11–07, and change the optional terminating action into a requirement. This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would remove the requirement to send the inspection results to the manufacturer.

Differences Between This Proposed AD and the MCAI or Service Information

Where the MCAI specifies to submit an inspection report, this proposed AD would not require reporting.

Costs of Compliance

We estimate that this proposed AD affects 8 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 19 work-hours × $85 per hour = $1,615	Up to $18,074	Up to $19,689	Up to $157,512.

We have received no definitive data for the on-condition costs 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.

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

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

Regulatory Findings

We determined that this 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) 2018–11–07, Amendment 39–19295 (83 FR 24399, May 29, 2018), and adding the following new AD:

Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Docket No. FAA–2018–0797; Product Identifier 2018–NM–096–AD.

(a) Comments Due Date

We must receive comments by November 5, 2018.

(b) Affected ADs

This AD replaces AD 2018–11–07, Amendment 39–19295 (83 FR 24399, May 29, 2018) (''AD 2018–11–07'').

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by the identification of a manufacturing defect on certain aileron bellcrank support brackets that resulted in insufficient material thickness of the affected lug attaching the support bracket to the rear spar of the wing. We are issuing this AD to detect and correct a defect of the aileron bellcrank support bracket, which, in the event of an aileron jam, could lead to failure of the support bracket and result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Definitions, With No Changes

(1) This paragraph restates the definition specified in paragraph (g)(1) of AD 2018–11–07, with no changes. For the purposes of this AD, affected support brackets are aileron bellcrank support brackets, part number (P/N) 7327993–813 and P/N 7327993–814, for which it has been determined that the affected lug attaching the support bracket to the rear spar of the wing has a thickness of less than 2.75 mm (0.108 in.), as specified in Saab Service Bulletin 2000–27–056, dated April 18, 2018.

(2) This paragraph restates the definition specified in paragraph (g)(2) of AD 2018–11–07, with no changes. For the purposes of this AD, serviceable support brackets are aileron bellcrank support brackets, P/N 7327993–813 and P/N 7327993–814, for which it has been determined that the affected lug attaching the support bracket to the rear spar of the wing has a thickness of 2.75 mm (0.108 in.) or more, as specified in Saab Service Bulletin 2000–27–056, dated April 18, 2018.

(h) Retained One-Time Inspection, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2018–11–07, with no changes. Within 100 flight cycles or 30 days, whichever occurs first after June 13, 2018 (the effective date of AD 2018–11–07), accomplish a detailed visual inspection for cracks, corrosion, and damage (including missing paint) of the affected lug and the adjacent area of the aileron bellcrank support brackets installed on the left-hand (LH) and right-hand (RH) wings, and measure the thickness of the affected lug attaching the aileron bellcrank support bracket to the rear spar of the wing, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–27–056, dated April 18, 2018.

(i) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2018–11–07, with no changes. If, during the measurement required by paragraph (h) of this AD, it is determined that the affected lug attaching the aileron bellcrank support bracket to the rear spar of the wing has a thickness of less than 2.75 mm (0.108 in.), at intervals not to exceed 100 flight cycles, accomplish a detailed visual inspection for cracks, corrosion, and damage (including missing paint) of that affected support bracket in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–27–056, dated April 18, 2018. Accomplishing the replacement specified in paragraph (l) of this AD terminates the repetitive inspections required by this paragraph for that bracket.

(j) Retained Corrective Actions, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2018–11–07, with no changes. If, during any inspection required by paragraph (h) or (i) of this AD, any crack, corrosion, or damage (including missing paint) is found, before further flight, obtain corrective actions instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Accomplish the corrective actions within the compliance time specified therein. If no compliance time is specified in the corrective actions instructions, accomplish the corrective action before further flight.

(k) Retained Parts Installation Limitation, With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2018–11–07, with no changes. As of June 13, 2018 (the effective date of AD 2018–11–07), it is allowed to install on any airplane an aileron bellcrank support bracket P/N 7327993–813 or P/N 7327993–814, provided it is a serviceable support bracket.

(l) New Requirement of This AD: Replacement

Within 6 months after the effective date of this AD, replace each affected support bracket with a serviceable support bracket, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–27–056, dated April 18, 2018. Replacing each affected support bracket terminates the inspections required by paragraph (i) of this AD for that airplane.

(m) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal

inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2018–11–07, are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0103, dated April 30, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0797.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 10, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20106 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[Docket Number USCG–1998–3868]

RIN 1625–AA18

Outer Continental Shelf Activities

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing the proposed rule entitled ''Outer Continental Shelf Activities'' that we published on December 7, 1999. The Coast Guard is withdrawing this proposed rule due to the passage of time, advances in technology, and changes in industry practices that have rendered the proposed rule obsolete.

DATES: The proposed rule published December 7, 1999 (64 FR 68416) is withdrawn as of September 19, 2018.

ADDRESSES: To view documents mentioned in this withdrawal, go to *http://www.regulations.gov,* type ''USCG–1998–3868'' in the search box and click ''Search'' then click on ''Open Docket Folder.''

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Charles Rawson, Commandant (CG–ENG), U.S. Coast Guard; telephone 202–372–1390, email *Charles.E.Rawson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

FR Federal Register
NPRM Notice of proposed rulemaking
OCS Outer continental shelf

II. Background

The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 7, 1999, (64 FR 68416), entitled ''Outer Continental Shelf Activities.'' In our NPRM, we proposed revisions of our Outer Continental Shelf (OCS) regulations that pertain to workplace safety and health on vessels and facilities engaged in the exploration for, or development or production of, minerals on the OCS. The Coast Guard initiated this rulemaking in response to the various advances that had changed the nature of the offshore industry since the last major revision of our OCS regulations in 1982. As detailed in the proposed regulatory text, this rulemaking would have reassessed all of our current OCS regulations in light of past experiences and new improvements in order to help make the OCS a safer work environment. The Coast Guard received comments from the public regarding the proposed rulemaking. These comments are available in the docket.

III. Withdrawal

In the nearly 20 years since the Coast Guard published the NPRM and the comment period closed, the offshore industry has continued to grow and evolve. Due to the passage of time, advances in technology, and changes in industry practice, we found that much of what we proposed in the NPRM is now obsolete and no longer applicable to the modern OCS work environment. Consequently, the NPRM is no longer suitable as a basis for further rulemaking action. Accordingly, the Coast Guard is withdrawing the ''Outer Continental Shelf Activities'' proposed rule announced in an NPRM published December 7, 1999 (64 FR 68416).

This document is issued under the authority of 5 U.S.C. 552(a), and 43 U.S.C. 1333(d) and 1348(c).

Dated: September 14, 2018.

J.P. Nadeau,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2018–20378 Filed 9–18–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0845]

Safety Zones; Spaceport Camden, Woodbine, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The U.S. Coast Guard announces a public meeting to receive comments on a Notice of Inquiry (NOI) involving a proposal to establish safety zones on the navigable waterways in the vicinity of the proposed Spaceport Camden, near Woodbine, Georgia, during rocket tests, launches, and landing operations. The NOI was published in the **Federal Register** on September 11, 2018. The purpose of this public meeting is to receive comments regarding the proposed safety zones.

DATES: A public meeting will be held on September 27, 2018 from 5 p.m. to 7 p.m. to provide an opportunity for oral comments. Written comments and

related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must be received by the Coast Guard on or before October 11, 2018.

ADDRESSES: The public meeting will be held at the Camden County Public Service Authority Recreation Center, 1050 Wildcat Drive, Kingsland, Georgia 31548. Parking is available at the Recreation Center.

You may submit written comments identified by docket number USCG–2018–0845 using the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or NOI, please call or email LT Joseph Palmquist, Coast Guard; telephone 912–652–4353 ext. 221, email *joseph.b.palmquist@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

We are announcing a public meeting to receive comments regarding a proposal to establish safety zones on the navigable waterways in the vicinity of the proposed Spaceport Camden, near Woodbine, Georgia. We published a Notice of Inquiry (NOI) in the **Federal Register** on September 11, 2018 (83 FR 45864), entitled ''Safety Zone; Spaceport Camden, Woodbine, GA.'' In it we stated our intention to hold a public meeting, and to publish a notice announcing the location and date (83 FR 45866). This document is the notice of that meeting.

In the NOI, we announced that the Board of County Commissioners of Camden County, Georgia proposes to develop and operate a commercial space launch site, called Spaceport Camden, in an unincorporated area of Camden County, Georgia, approximately 11.5 miles due east of the town of Woodbine, Georgia. The site, near Floyd Creek, is on the coast, surrounded by salt marshes to the east and south, and the Satilla River to the north. In support of Spaceport Camden, the Board of County Commissioners of Camden County, Georgia requested that the Coast Guard establish safety zones which would be effective during launch, landing, and rocket test activities at the site.

The Coast Guard establishes safety zones over areas of water and/or shore for safety or environmental purposes pursuant to the authority contained in 33 CFR part 165. A safety zone is a ''. . . water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels.''

The applicants for Spaceport Camden propose up to 12 annual launches and landings during daylight hours, with one possible nighttime launch per year, of liquid-fueled, small to medium-large lift-class, orbital and suborbital vertical launch vehicles. In support of the proposed launches, the applicants for Spaceport Camden propose up to 12 engine tests per year. Launch trajectories would vary from 83 to 115 degrees for vehicles up to and including medium-large lift class. Because the trajectory of these launches would take the rockets over various navigable waterways, creeks and tributaries, sections of land, and areas offshore, applicants are required to limit or restrict access to certain areas surrounding a rocket test/launch site based on specific hazard analysis. The applicant's request to establish safety zones during rocket launches, landings, and various tests is one element in meeting these safety requirements

The range of potential safety zones for launch and landing activities encompasses an area which accounts for safety concerns associated with all potential launch trajectories. Individual launch safety zones could be smaller and depend on several factors unique to each event, such as actual trajectory, lift class, and payload. The range of potential safety zones for rocket tests encompasses a smaller area directly around the commercial space launch site. In all instances, the potential safety zones would be necessary to safeguard persons, property, and the marine environment during rocket launches, landings, and rocket test activities.

You may view the NOI in our online docket and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert ''USCG–2018–0845'' in the ''Keyword'' box and click ''Search.''

We encourage you to participate in this NOI by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before October 11, 2018. We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

II. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Joseph Palmquist at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Public Meeting

The Coast Guard will hold a public meeting to receive comments on the proposal to establish safety zones on the navigable waterways in and near the proposed Spaceport Camden, near Woodbine, GA. The meeting will take place on September 27, 2018 from 5 p.m. to 7 p.m. at Camden County Public Service Authority Recreation Center, 1050 Wildcat Drive, Kingsland, Georgia 31548. Parking is available at the Recreation Center.

Dated: September 14, 2018.

N.C. Witt,

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

[FR Doc. 2018–20335 Filed 9–18–18; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[WC Docket No. 17–84; Report No. 3101]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding by Harold Feld, on behalf of Public Knowledge.

DATES: Oppositions to the Petition must be filed on or before October 4, 2018.

Replies to an opposition must be filed on or before October 1, 2018.

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

FOR FURTHER INFORMATION CONTACT: Michele Berlove, Wireline Competition Bureau, at: (202) 418–1477; email: *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3101, released September 4, 2018. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, FCC 18–74, published at 83 FR 31659, July 9, 2018, in WC Docket No. 17–84. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–20238 Filed 9–18–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BG91

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring

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

ACTION: Availability of proposed fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council submitted the New England Industry-Funded Monitoring Omnibus Amendment, incorporating the Environmental Assessment and the Initial Regulatory Flexibility Analysis, for review by the Secretary of Commerce. NMFS is requesting comments from the public on the proposed amendment, which was developed to allow for industry-funded monitoring in New England Council fishery management plans and implement industry-funded monitoring in the Atlantic herring fishery. This amendment would ensure consistency in industry-funded monitoring programs across New England fisheries and increase monitoring in the Atlantic herring fishery.

DATES: Public comments must be received on or before November 19, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0109, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0109;*

2. Click the ''Comment Now!'' icon and complete the required fields; and

3. Enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Industry-Funded Monitoring Amendment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the Industry-Funded Monitoring Omnibus Amendment, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone: (978) 281–9272 or email: *Carrie.Nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2013, the Mid-Atlantic and New England Fishery Management Councils initiated a joint omnibus amendment to allow for industry-funded monitoring in all of the fishery management plans (FMPs) that the Councils manage. The joint omnibus amendment was intended to standardize the process to develop and administer future industry-funded monitoring programs for Council FMPs, and would have implemented industry-funded monitoring in the Atlantic herring and mackerel fisheries.

On September 20, 2016 (81 FR 64426), NMFS announced the public comment period for the draft joint omnibus amendment. The 45-day public comment period extended from September 23 through November 7, 2016. During that time, NMFS and the Councils hosted five public hearings on the draft joint omnibus amendment. NMFS and the Councils held public hearings in Gloucester, Massachusetts; Portland, Maine; Cape May, New Jersey; Narragansett, Rhode Island; and via webinar.

In April 2017, the New England Council finalized its selection of preferred alternatives and recommended that NMFS consider the joint omnibus amendment for approval and implementation, while the Mid-Atlantic Council decided to postpone action on the joint omnibus amendment. Therefore, the joint omnibus amendment, initiated by both Councils to allow for industry-funded monitoring, has become the New England Industry-Funded Monitoring Omnibus Amendment and would only apply to FMPs managed by the New England Council. Accordingly, this amendment would only implement industry-funded monitoring in the Atlantic herring fishery. At its October 2018 meeting, the Mid-Atlantic Council is scheduled to re-consider whether it wants to continue developing industry-funded monitoring measures for its FMPs.

Proposed Measures

1. Omnibus Measures

This amendment would standardize the development and administration of

future industry-funded monitoring programs in New England Council FMPs. The proposed omnibus measures include:

- Standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry;
- A process to implement FMP-specific industry-funded monitoring via an amendment and revise via a framework adjustment;
- Standard administrative requirements for industry-funded observers/monitors and monitoring service providers;
- A process to prioritize industry-funded monitoring programs in order to allocate available Federal resources across all FMPs; and
- A process for monitoring set-aside programs to be implemented via a future framework adjustment.

2. Atlantic Herring Measures

This amendment would implement industry-funded monitoring in the Atlantic herring fishery. The purpose of increased monitoring is to better understand the frequency of discarding in the herring fishery, as well as improve the tracking of the incidental catch of haddock and river herring/shad catch against their catch caps in the herring fishery. The proposed herring measures include:

- Implementing a 50-percent coverage target for industry-funded at-sea monitoring on vessels issued All Areas (Category A) or Areas ⅔ (Category B) Limited Access Herring Permits; and
- Allowing midwater trawl vessels to purchase observer coverage to access Groundfish Closed Areas.

On April 19, 2018, the New England Council considered whether electronic monitoring in conjunction with portside sampling, would be an adequate substitute for at-sea monitoring coverage aboard midwater trawl vessels. The purpose of electronic monitoring would be to confirm catch retention and verify compliance with slippage restrictions, while the purpose of portside sampling would be to collect species composition data along with age and length information. Following discussion and public comment, the Council approved electronic monitoring and portside sampling as a monitoring option for midwater trawl vessels, but did not recommend requiring electronic monitoring and portside sampling as part of this action. Instead, the Council recommended NMFS use an exempted fishing permit (EFP) to further evaluate how to best permanently administer an electronic monitoring and portside sampling program. The EFP would exempt midwater vessels from the proposed requirement for industry-funded at-sea monitoring coverage and would allow midwater trawl vessels to use electronic monitoring and portside sampling coverage to comply with the Council-recommended 50-percent industry-funded monitoring coverage target. An EFP would enable NMFS to further evaluate monitoring issues in the herring fishery that are of interest to the Council and herring industry and provide an opportunity to improve the electronic monitoring and portside program's efficacy and efficiency. The Council recommended reconsidering herring industry-funded monitoring requirements two years after implementation. Using the results of the EFP, the Council would consider establishing electronic monitoring and portside sampling program requirements into regulation via a framework adjustment at that time.

Public Comment Instructions

Public comments on the Industry-Funded Monitoring Omnibus Amendment and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement the Amendment, including draft regulatory text, will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability to be considered in the approval/disapproval decision on the amendment. All comments received by November 19, 2018, whether specifically directed to Industry-Funded Monitoring Omnibus Amendment or the proposed rule for this amendment, will be considered in the approval/disapproval decision on the Industry-Funded Monitoring Omnibus Amendment. Comments received after that date will not be considered in the decision to approve or disapprove the Amendment. To be considered, comments must be received by close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 13, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–20259 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 182
Wednesday, September 19, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 1:00 p.m. (EDT) on Wednesday, October 3, 2018. The purpose of the meeting is to continue working on their education project post briefing.

DATES: Wednesday, October 3, 2018, at 1:00 p.m. (EDT).

Public Call-In Information:

Conference call-in number: 1–877–260–1479 and conference ID: 9379995.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–260–1479 and conference ID: 9379995. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). 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 conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–877–260–1479 and conference ID: 9379995.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=253,* click the ''Meeting Details'' and ''Documents'' links.Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Wednesday, October 3, 2018 at 1:00 p.m. (EDT)

- Rollcall
- Continue Planning on Education Briefing (Post Briefing)
- Other Business
- Open Comment
- Adjourn

Dated: September 14, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–20364 Filed 9–18–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–96–2018]

Approval of Expansion of Subzone 76A; ASML US, LLC; Wilton and Bethel, Connecticut

On July 2, 2018, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Bridgeport Port Authority, grantee of FTZ 76, requesting an expansion of Subzone 76A, subject to the existing activation limit of FTZ 76 on behalf of ASML US, LLC, in Wilton and Bethel, Connecticut.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (83 FR 31724, July 9, 2018). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 76A was approved on September 13, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 76's 476-acre activation limit.

Dated: September 13, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–20367 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2018]

Foreign-Trade Zone (FTZ) 44—Trenton, New Jersey; Notification of Proposed Production Activity; International Flavors & Fragrances, Inc. (Flavor and Fragrance Products); Hazlet, New Jersey

International Flavors & Fragrances, Inc. (IFF) submitted a notification of proposed production activity to the FTZ Board for its facility in Hazlet, New Jersey. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 6, 2018.

IFF already has authority to produce flavor and fragrance products within Subzone 44B. The current request would add sixteen 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 IFF from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, IFF would be able to choose the duty rates during customs entry procedures that apply to flavor and fragrance products (duty-free to 10%). IFF would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Glycerides mixed decanoyl and octanoyl; musk ketone supra; aldehyde C–16 strawberry; octinoxate; ivy carbaldehyde/methyl anthranilate Schiff's base; hydroxycitronellal/methyl anthranilate Schiff's base; herbal pyran; alpha-amyl cinnamylidene/methyl anthranilate Schiff's base; leeral/methyl anthranilate Schiff's base; coumarin; ethylene dodecanoate; aldehyde C–18; octahydrocoumarin; gamma decalactone; muskalactone; and, gamma-undecalactone (duty rate ranges from duty-free to 7.7%, or 8.8¢ per kg.).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 29, 2018.

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 Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: September 13, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–20368 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session Monday, November 5, 2018 through Friday, November 9, 2018, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The purpose of this meeting is to review recommendations from site visits and recommend 2018 Malcolm Baldrige National Quality Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held Monday, November 5, 2018 through Friday, November 9, 2018, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone number (301) 975–2361, email *robert.fangmeyer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel will meet on Monday, November 5, 2018 through Friday, November 9, 2018, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, with balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. Members are selected for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The purpose of this meeting is to review recommendations from site visits and recommend 2018 Malcolm Baldrige National Quality Award (Award) recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

The Acting Chief Financial Officer/Assistant Secretary for Administration and Deputy Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Employment, Litigation, and Information, formally determined on March 7, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4), because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential; and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–20297 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; California-Oregon-Washington Coastal Pelagic Fishery Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 19, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Hilger, *james.hilger@noaa.gov;* (858) 546–7140.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection of information.

The Southwest Fisheries Science Center (SWFSC) is undertaking an economic data collection effort for the West Coast Coastal Pelagic Species (CPS) fleet to improve the SWFSC's capability to do the following: (1) Describe and monitor economic performance (*e.g.,* profitability, capacity utilization, efficiency, and productivity) and impacts (*e.g.,* sector, community, or region-specific employment and income); (2) determine the quantity and distribution of net benefits derived from living marine resources; (3) understand and predict the behavior of participants in Federally managed commercial fisheries; (4) predict the economic, biological, and ecological impacts of existing management measures and alternative proposed management actions; and, (5) in general, more effectively conduct the analyses required under the MSA, the Endangered Species ACT (ESA), and the Marine Mammal Protection Act (MMPDA), the National Environmental Policy Act(NEP), and Regulatory Flexibility Act (RFA), Executive Order 12866, and other applicable law.

Coastal pelagic species (CPS) fishery participants are defined as U.S. west-coast vessels participating in CPS fisheries for species including: Jack mackerel, market squid, northern anchovy, Pacific mackerel, and/or Pacific sardine, using gears including but not limited to: Purse seine, drum seine, lampara, and dip net. We intend to survey all Washington-Oregon-California CPS coastal vessels in any year between 2015 and the initiation of the survey. This includes vessels fishing off California in the limited entry program under the CPS Fishery Management Plan (FMP) and State permitted vessels fishing off Washington and Oregon.

II. Method of Collection

CPS fishery participants will be contacted and screened to participate in the data collection. An economic survey will be scheduled and administered to eligible respondents as appropriate. Screener, scheduling and survey modes may include in-person, internet, phone, or mail.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Businesses or other for-profit organization.

Estimated Number of Respondents: 100.

Estimated Time per Response: 5 minutes for screener; 5 minutes to schedule survey for qualified and interested respondents; 90 minutes for the survey.

Estimated Total Annual Burden Hours: 111.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 14, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–20330 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Mammal Protection Act Annual Supplemental Data Report.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 4,604.

Average Hours per Response: 45 minutes.

Burden Hours: 3,453.

Needs and Uses: This request is for a new information collection.

The Atlantic Large Whale Take Reduction Plan (Plan), developed under the authority of the Marine Mammal Protection Act, seeks to enable the National Marine Fisheries Service (NMFS) to reduce injuries and deaths of large whales, especially right whales, due to incidental entanglement in United States commercial fishing gear. In order to develop fair and effective management measures, the Take Reduction Team (Team) requires comprehensive data on when, where, and how fixed gear vessels fish. While subsets of Plan's vessels report on aspects of their operations, the available data form an incomplete picture. NMFS recognizes that forthcoming changes under select fishery management plans (*e.g.,* the American Lobster Fishery Management Plan) may eventually introduce gear and activity reporting of the type requested. Until those requirements are implemented, however, operators of commercial fishing vessels deploying fixed gear (traps, pots, and gillnets) are requested to complete this annual supplemental data collection form, regardless of fishing location, permit type, or the provision of similar information to other Federal and state agencies. This information will allow NMFS to focus further risk reduction measures in certain areas or fisheries, where needed, to meet the goals of the Plan.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 14, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–20329 Filed 9–18–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors. This meeting is open to the public.

DATES: The WHINSEC Board of Visitors will meet from 9:00 a.m. to 4:00 p.m. on Thursday, October 11, 2018.

ADDRESSES: Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Procell, Acting Executive Secretary for the Committee, in writing at USACGSC, 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301, by email at *richard.d.procell2.civ@mail.mil,* or by telephone at (913) 684–2963.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), 41 CFR 102–3.140(c), and 41 CFR 102–3.150.

Purpose of the Meeting: The Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV) is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the institute; other matters relating to the institute that the board decides to consider; and other items that the Secretary of Defense determines appropriate. The board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The board also determines whether the instruction under the curriculum of the institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the committee's advice and recommendations.

Agenda: Status briefing from the institute's commandant; update briefings from the Office of the Under Secretary of Defense (Policy); Department of State; U.S. Northern Command; U.S. Southern Command; a public comments period; and presentation of other information appropriate to the board's interests.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. A 15-minute period between 9:30 to 9:45 will be available for verbal public comments. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Bradley Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least two business days prior to the meeting to be considered by the committee. The Designated Federal Officer will review all timely submitted written comments or statements with the committee chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date will be filed and presented to the committee during its next meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–20369 Filed 9–18–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0098]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Trends in International Mathematics and Science Study (TIMSS) 2019 Main Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2018.

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–2018–ICCD–0098. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://*

www.regulations.gov by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Trends in International Mathematics and Science Study (TIMSS) 2019 Main Study.

OMB Control Number: 1850–0695.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 91,765.

Total Estimated Number of Annual Burden Hours: 43,181.

Abstract: The Trends in International Mathematics and Science Study (TIMSS) is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years, with the next TIMSS assessment, TIMSS 2019, being the seventh iteration of the study. TIMSS provides a comparison of U.S. student performance with those of their international peers in mathematics and science at grades 4 and 8. TIMSS is coordinated by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that creates the assessment framework, assessments, and background questionnaires and provides procedures and technical standards which all countries must follow. In the U.S., the National Center for Education Statistics (NCES) conducts TIMSS. In preparation for the TIMSS 2019 main study, NCES conducted a field test in 2018 to evaluate new assessment items and background questions, to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. The request for the TIMSS 2019 Main Study recruitment & Field Test was approved in July 2017 with the latest change request approved in July 2018 (OMB# 1850–0695 v.10–13). The U.S. TIMSS 2019 main study recruitment began in May 2018, and data collection is scheduled to take place from April through May 2019. This request is to conduct the TIMSS 2019 Main Study. TIMSS 2019 results will be posted on NCES website.

Dated: September 14, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–20334 Filed 9–18–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2019 and 2020 Update

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2018.

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–2018–ICCD–0097. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2019 and 2020 Update.

OMB Control Number: 1850–0928.

Type of Review: A revision of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 379,934.

Total Estimated Number of Annual Burden Hours: 371,166.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Public Law 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. The nature of NAEP is that burden alternates from a relatively low burden in national-level administration years to a substantial burden increase in state-level administration years when the sample has to allow for estimates for individual states and some of the large urban districts. The request to conduct NAEP 2019 and 2020 was approved in September 2018 (OMB# 1850–0928 v.10) including operational assessments, pilot tests, and special studies. NAEP 2019 will include operational, national-level, Digitally Based Assessments (DBA) in mathematics, reading, and science at grades 4, 8, and 12; operational, state-level DBA in mathematics and reading at grades 4 and 8; pilot DBA for 2021 reading and mathematics at grades 4 and 8; a paper-based assessment (PBA) to DBA bridge studies in mathematics and reading at grade 12, and science at grades 4, 8, and 12; National Indian Education Study (NIES); Computer Access and Familiarity Study (CAFS); Socioeconomic Status (SES) Questionnaire Study; High School Transcript Study (HSTS); and Middle School Transcript Study (MSTS). This request updates the confidentiality pledges cited in NAEP and provides the final NAEP 2019 data collection and communication materials, including their Spanish-language translations where used. The NAEP results will be reported to the public through the Nation's Report Card as well as other online NAEP tools.

Dated: September 13, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–20310 Filed 9–18–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–461]

Application To Export Electric Energy; Saavi Energy Solutions, LLC

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Saavi Energy Solutions, LLC (Saavi Energy Solutions or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before October 19, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the United States Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 10, 2018, DOE received an application from Saavi Energy Solutions for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, Saavi Energy Solutions states that it ''does not own any electric generation or transmission facilities and . . . does not hold a franchise or service territory or native load obligation.'' The electric energy that Saavi Energy Solutions proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order No. 10,485, as amended by Executive Order No. 12,038, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Saavi Energy Solutions' application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–461. An additional copy is to be provided to both Esmeralda Viramontes Mayorga, Saavi Energy Solutions, LLC, Miguel de Cervantes Saavedra 301, Torre Norte, Piso 11, Colonia Granada, Delegación Miguel Hidalgo, Ciudad de México, México C.P. 11520 and Tracey L. Bradley, Bracewell LLP, 2001 M Street NW, Suite 900, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on September 13, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018–20370 Filed 9–18–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–1104–001.

Applicants: Rockies Express Pipeline LLC.

Description: Tariff Amendment: Second Errata to Administrative Updates to FERC Gas Tariff to be effective 10/1/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5001.

Comments Due: 5 p.m. ET 9/25/18.

Docket Numbers: RP18–1168–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: § 4(d) Rate Filing: Operational Transactions Provisions Tariff Filing to be effective 10/12/2018.

Filed Date: 9/12/18.

Accession Number: 20180912–5015.

Comments Due: 5 p.m. ET 9/24/18.

Docket Numbers: RP18–1169–000.

Applicants: HG Energy, LLC,Westmoreland Gas, LLC.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies, et al. of HG Energy, LLC, et al. under RP18–1169.

Filed Date: 9/12/18.

Accession Number: 20180912–5072.

Comments Due: 5 p.m. ET 9/19/18.

Docket Numbers: RP18–1170–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing AGT September 2018 OFO Penalty Disbursement Report to be effective N/A.

Filed Date: 9/12/18.

Accession Number: 20180912–5154.

Comments Due: 5 p.m. ET 9/24/18.

Docket Numbers: RP18–1171–000.

Applicants: Kinetica Deepwater Express, LLC.

Description: eTariff filing per 1430: Request for Extension of Time for Filing Form 501–G to be effective N/A.

Filed Date: 9/13/18.

Accession Number: 20180913–5014.

Comments Due: 5 p.m. ET 9/25/18.

Docket Numbers: RP18–1172–000.

Applicants: Kinetica Energy Express, LLC.

Description: eTariff filing per 1430: Request for Extension of Time for Filing Form 501–G to be effective N/A.

Filed Date: 9/13/18.

Accession Number: 20180913–5015.

Comments Due: 5 p.m. ET 9/25/18.

Docket Numbers: RP18–1173–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Gulf Markets—Global LNG and Marubeni Non-Conf Agreements to be effective 9/14/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5025.

Comments Due: 5 p.m. ET 9/25/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–20355 Filed 9–18–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–124–000.

Applicants: Atlantic City Electric Company, Public Service Electric and Gas Company, Delmarva Power & Light Company, Potomac Electric Power Company, PECO Energy Company, PPL Electric Utilities Corporation, UGI Utilities Inc., Baltimore Gas and Electric Company.

Description: Supplement [Exhibit M] to July 23, 2018 Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Atlantic City Electric Company, et al.

Filed Date: 9/12/18.

Accession Number: 20180912–5088.

Comments Due: 5 p.m. ET 9/26/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1567–001.

Applicants: South Carolina Electric & Gas Company.

Description: Compliance filing: Compliance filing to be effective 5/15/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5072.

Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: ER18–1959–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2018–09–13_SA 2677 GRE–NSP 2nd Substitute 3rd Rev GIA (J278) to be effective 6/21/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5057.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2311–001.

Applicants: SF Wind Enterprises, LLC.

Description: Tariff Amendment: Amendment to MBR Tariff Filing of SF Wind Enterprises, LLC to be effective 10/24/2018.

Filed Date: 9/12/18.

Accession Number: 20180912–5161.

Comments Due: 5 p.m. ET 10/3/18.

Docket Numbers: ER18–2415–000.

Applicants: S. D. Warren Company.

Description: § 205(d) Rate Filing: Notices of Succession Name change to be effective 9/17/2018.

Filed Date: 9/12/18.

Accession Number: 20180912–5162.

Comments Due: 5 p.m. ET 10/3/18.

Docket Numbers: ER18–2416–000

Applicants: nTherm,LLC.

Description: Baseline eTariff Filing: Initial Filing to be effective 12/31/9998.

Filed Date: 9/12/18.

Accession Number: 20180912–5174.

Comments Due: 5 p.m. ET 10/3/18.

Docket Numbers: ER18–2417–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp FERC Rate Schedule 184 extension to be effective 10/1/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5003.

Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: ER18–2418–000.

Applicants: Great River Hydro, LLC.

Description: Compliance filing: New eTariff Baseline Filing to be effective 9/14/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5028.

Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: ER18–2419–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–09–13_SA 2953 Quilt Block Wind Farm-ATC 2nd Rev GIA (J395 J652) to be effective 8/28/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5050.

Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: ER18–2420–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits four ECSAs, Service Agreement Nos. 4982, 4995, 4997, and 4999 to be effective 11/13/2018.

Filed Date: 9/13/18.

Accession Number: 20180913–5073.

Comments Due: 5 p.m. ET 10/4/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–20356 Filed 9–18–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2416–000]

nTherm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of nTherm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–20352 Filed 9–18–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0578; FRL–9984–03–OLEM]

Proposed Information Collection Request; Comment Request; Technical Assistance Needs Assessments (TANAs) at Superfund Remedial or Removal Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Technical Assistance Needs Assessments'' (EPA ICR No. 2470.02, OMB Control No. 2050–0211) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0578 online using *www.regulations.gov* (our preferred method), by email to *Shewack.robert@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert Shewack, Office of Site

Remediation and Restoration, (OSRR01–5), Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: (617) 918–1428; fax number: (617) 918–0428; email address: *Shewack.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers the usage of TANAs with members of the impacted community in order to determine how the community is receiving technical information about a Superfund remedial or removal site; whether the community requires additional assistance in order to understand and respond to site-related technical information; and whether there are organizations in the community that are interested or involved in site-related issues and capable of acting as an appropriate conduit for technical assistance services to the affected community. Given the specific nature of the TANA, 8 to 10 persons will be interviewed per site, with an estimated total of 80 persons being interviewed per year (8 sites). Responses to the collection of information are voluntary and the names of respondents will be protected by the Privacy Act. The TANA will help ensure the community's needs for technical information assistance are defined as early in the remedial/removal process as possible and enable meaningful community involvement in the Superfund decision-making process. Additionally, the TANA process produces a blueprint for designing a coordinated effort to meet the community's needs for additional technical assistance while minimizing the overlap of services provided.

Form numbers: None.

Respondents/affected entities: Respondents to this ICR are local/state government officials, potentially-responsible party (PRP) representatives, community organizations, businesses and individuals who may be impacted by a Superfund site or a removal action lasting 120 days or longer. These community members voluntarily participate in community involvement activities throughout the remedial phase of the Superfund process. SIC Codes are OSHA's Standard Industrial Classification System used to identify different groups. Local/state governments are categorized as Division J: Public Administration, Major Group 95: Administration of Environmental Quality, subgroup 9511: Air and Water Resource and Solid Waste Management. The other respondents, community members, do not have a SIC Code as they do not constitute an industry.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 80 (per year).

Frequency of response: Once during the remediation of the Site. Each TANA interview is expected to last approximately one hour in duration.

Total estimated burden: 80 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,860 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: A reduction in the total estimated respondent burden is expected when compared with the ICR currently approved by OMB.

Dated: September 12, 2018.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2018–20388 Filed 9–18–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 16–306 and GN Docket No. 12–268; DA 18–884]

Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is intended to remind stations that were assigned to new channels as a result of the incentive auction (repacked stations) of upcoming deadlines, application filing obligations, and notice requirements. This document also provides additional guidance concerning transition matters, including permissible station operations during the phase testing periods, when a station is expected to cease pre-auction operations, and the need to coordinate with other linked-stations.

FOR FURTHER INFORMATION CONTACT: Evan Morris, Media Bureau, (202) 418–1656.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, MB Docket MB Docket No. 16–306 and GN Docket No. 12–268, DA 18–884, adopted and released August 27, 2018, by the Chief of the Media Bureau pursuant to delegated authority. The full text of the Order is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/ and https://www.fcc.gov/edocs.*

Summary of the Public Notice

1. The Incentive Auction Task Force and the Media Bureau (Bureau) herein remind repacked stations of upcoming deadlines, application filing obligations, and notice requirements, and provide additional guidance concerning transition matters, including permissible station operations during the phase testing periods, when a station is expected to cease pre-auction operations, and the need to coordinate with other linked-stations. For purposes of this Public Notice, a ''repacked station'' means a full power or Class A broadcast television station that was assigned both a new channel and to a post-auction transition phase in the *Incentive Auction Closing and Channel Reassignment Public Notice.* This includes stations that submitted a

winning bid to move from the ultra-high frequency (UHF) band to the very-high frequency (VHF) band, or from the high VHF band to the low VHF band (*i.e.,* band changers). Unless otherwise specified, ''repacked station'' also includes channel sharee stations that are channel sharing with a repacked station. *Infra,* para. 19. This Public Notice does not address the obligations of displaced low power television and translator stations, non-repacked full power or Class A television stations with unbuilt construction permits, or the small number of Class A television stations that were not protected during the repacking process.

2. *Transition Timetable.* Each repacked station is assigned to one of 10 transition phases, each with specific dates on which the station, subject to any required coordination, can commence testing and operation on its post-auction channel (testing period start date) and must cease operating on its pre-auction channel (phase completion date). A repacked station's phase completion date is also the date listed on its construction permit as its construction expiration date. Below is the current phase transition schedule with each phase's applicable testing period start date and phase completion date.

Phase	Testing period start date	Phase completion date
1	09/14/2018	11/30/2018
2	12/01/2018	04/12/2019
3	04/13/2019	06/21/2019
4	06/22/2019	08/02/2019
5	08/03/2019	09/06/2019
6	09/07/2019	10/18/2019
7	10/19/2019	01/17/2020
8	01/18/2020	03/13/2020
9	03/14/2020	05/01/2020
10	05/02/2020	07/03/2020

3. *Repacked Station Transition Data.* Information on repacked stations' post-auction channel assignments, phase assignments, and linked-station sets, including changes made during the transition, can be found at the following website: *https://data.fcc.gov/download/incentive-auctions/Current_Transition_Files/* (Transition Data website). The date of any update is noted next to each file. All modifications to the Transition Data website can be viewed by clicking on the link entitled ''Change Log.'' Individual station's phase assignments and deadlines, including changes, can also be found on each repacked station's ''facility page'' in the Commission's Licensing and Management System (LMS) under the ''Transition Data'' tab. To access a station's ''facility page,'' perform a ''Facility Search'' by call sign in LMS and then click on the station's Facility ID number.

4. *Testing/Commencing Post-Auction Operations.* Repacked stations may not commence testing or operation on their post-auction channel until 12:01 a.m. (local time) on their testing period start date. To be clear, transmitting any signal (a test signal or otherwise) on a repacked station's post-auction channel prior to its testing period start date without express authority from the Commission to do so would be a violation of the Commission's regulations concerning the post-auction transition and amount to unauthorized operation. Unless expressly stated in a repacked station's construction permit or necessitated by being part of a linked-station set, Commission consent is not required to commence testing or post-auction operation starting at 12:01 a.m. (local time) on a repacked station's testing period start date. During the testing period stations are permitted to transmit a signal using their post-auction channel in order to: (1) Conduct testing of a station's equipment/signal to ensure proper functionality, see 47 CFR 73.1610; and (2) permanently commence operation on their post-auction channel upon ceasing operation on their pre-auction channel, see 47 CFR 73.1620. The purpose of the testing period is not for stations to simulcast signals to viewers on two channels. Stations must file an application for license to cover (FCC Form 2100, Schedule B (full power) or Schedule F (Class A)) within 10 days following commencement of program test authority, see 47 CFR 73.1620.

5. Some stations are required to receive authority to commence operation under program test authority, notably stations that will be operating on channel 14, see 47 CFR 73.687(e)(4)(ii). Stations should carefully check the terms of their construction permits for any special conditions and any required documentation that must accompany a request for program test authority. In order to avoid going silent, a station that requires advance permission to commence program test authority should request Commission authority to do so in advance of its phase completion date.

6. *Coordination Among Linked-Stations.* Stations that are part of a linked-station set must coordinate both testing and commencement of operation on their post-auction channel with all other stations to which they are directly linked in that linked-station set. Stations in a linked station-set are linked through direct dependencies. An ''upstream'' station in a linked-station set is one that must transition to its post-auction channel prior to another station(s) in the set (the ''downstream'' station) in order to avoid interference. If a ''downstream'' station was to test or operate on its post-auction channel while the ''upstream'' station continued to operate on its pre-auction channel, one or both of the stations would receive interference from the other. In most cases, coordination will require more than notice of a station's individual plans. Coordination should result in an agreed upon designated time and date on which all linked-stations will conduct testing on their post-auction channels and which all such stations will commence operation on their new channels. Failure to closely coordinate will result, in many cases, in substantial interference. An increase of pairwise interference in excess of 2%, unless expressly authorized by the Commission or agreed to among the affected stations, is a violation of Commission rules. As noted above, complete information on linked-station sets and direct dependencies can be found on the Transition Data website, as well as on each repacked station's ''facility page'' in LMS under the ''Transition Data'' tab.

7. *Requests for Additional Flexibility Using Special Temporary Authority.* As we have recognized, in order for some repacked stations to construct their post-auction facility they may need to operate with temporary facilities on either their pre-auction or post-auction channel for a period of time. If a station must operate on its pre-auction or post-auction channel at variance from its authorized parameters, a station must file an application for special temporary authority (STA) and receive a grant of such authority prior to commencing operations. A station could also conduct such operations without an STA if it were commencing operation using a licensed auxiliary facility. There are several additional tools at a repacked station's disposal to remain on the air if it is unable to commence operation on its post-auction channel by its phase completion date. Repacked stations may seek an STA to individually use a temporary channel or engage in temporary joint use of a channel. Authorization of use of an individual temporary channel will be restricted to replicating a station's pre-auction coverage area and population served. While we will consider requests to temporarily operate in the new wireless band, we will require broadcasters to demonstrate that there is no reasonable alternative available and provide

consent from potentially impacted wireless licensee(s). In the case of a request for temporary joint use of a channel, the applicant (joint user) must include with its request a written authorization from the licensee of the host station. Commercial and noncommercial educational (NCE) stations as well as full power and Class A stations may request to engage in temporary joint use of a channel. Stations also may request an STA to continue to operate on their pre-auction channel beyond their phase completion deadlines. We clarify that STA requests to continue operating on a station's pre-auction channel should not be made in lieu of filing for a phase change. *See infra,* para. 14. We envision such requests would be filed when a station discovers at the last-minute that, due to unforeseen circumstances beyond its control, it will be unable to commence operation on its post-auction channel by its phase completion date and is left with no reasonable alternative other than going silent. Authority for a station to continue to operate on its pre-auction channel after its phase completion date may only be possible at reduced power.

8. As we have previously announced, the Bureau will evaluate all STA requests to determine whether grant would delay or disrupt the post-auction transition schedule. We will not grant an STA that would authorize a station to operate on its pre-auction channel beyond the end of the 39-month transition period. While we have provided several tools to provide relief to stations that are unable to satisfy certain transition deadlines, failure to timely initiate a construction project or undertake necessary steps to meet transition deadlines, including due to a pending application, or the amount of any reimbursement allocation, will not be weighed favorably as a factor in considering such grants of relief. *See Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs,* Public Notice, 32 FCC Rcd 7556, 7559–60 (IATF/MB 2017); *Incentive Auction Task Force and Media Bureau Announce a Further Reimbursement Allocation for Eligible Broadcasters and MVPDs,* Public Notice, DA 18–372, 5 (rel. Apr. 16, 2018). All STAs for temporary facilities granted in connection with the post-auction transition will be for a maximum of 180 days. We recommend that repacked stations, if possible, file such STA requests at least 30 days prior to the date they plan to commence STA operations. In addition, the Bureau may modify or cancel an STA at any time, without prior notice or right to hearing, see 47 CFR 73.1635.

9. *Silent Authority.* Commission rules provide that a station may suspend operations for a period of not more than 30 days absent specific authority from the Commission. Stations that remain silent for more than 10 days must notify the Commission not later than the tenth day of their suspended operations by filing a Suspension of Operations Notification in LMS, 47 CFR 73.1740(a)(4). Stations that need to remain silent for more than 30 days must file for a Silent STA. *Id.* We remind stations that the license of any station that remains silent for any consecutive 12-month period expires automatically at the end of that period, by operation of law, except that the Commission can extend or reinstate such a license ''to promote equity and fairness.'' 47 U.S.C. 312(g). In considering requests to extend or reinstate a license, we will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station's control, including facts that relate to the post-auction transition process.

10. In the unlikely circumstance where a station believes it will need to temporarily go silent because it will be unable to commence operation on its post-auction channel by its phase completion date, the station should notify its regional coordinator and send an email to *IATransition@fcc.gov* as soon as that fact is known. An up-to-date list is available at: *https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/transition-schedule,* select the ''Regions'' tab.

11. *Ceasing Pre-Auction Channel Operation.* In order to accommodate a smooth transition and prevent viewer confusion, repacked stations are expected to cease operation on their pre-auction channel upon whichever of the following occurs first: (1) The filing of a license to cover; (2) the commencement of operation on the station's post-auction channel pursuant to a grant of STA to operate at variance from its authorized post-auction parameters; (3) the date a station has informed viewers it will be ceasing pre-auction operations or commencing post-auction operations; or (4) no later than 11:59 p.m. local time on the station's assigned phase completion date. As discussed in greater detail below, a station that cannot complete construction of its post-auction facility by the construction permit expiration date (*i.e.* the station's phase completion date), may seek a single extension of the construction permit expiration date of up to 180 days. However, absent express authority from the Commission to the contrary, a repacked station must cease operation on its pre-auction channel no later than the station's phase completion date.

12. *Extension of Construction Permit Expiration Date.* A station may seek a single extension of the construction permit expiration date of up to 180 days by submitting an extension application using Schedule 2100, FCC Form 337 (Construction Permit Extension). Such application must be filed 90 days before a station's construction permit deadline. See 47 CFR 73.3700(b)(5). The deadline for filing a Construction Permit Extension application, by phase and based on the current transition schedule, are as follows:

Phase	180-day construction permit extension filing deadline
1	09/04/2018
2	01/14/2019
3	03/25/2019
4	05/06/2019
5	06/10/2019
6	07/22/2019
7	10/21/2019
8	12/16/2019
9	02/03/2020
10	04/06/2020

A Construction Permit Extension application must include an exhibit demonstrating that, despite all reasonable efforts, the station is unable to complete construction of its new facility on time due to circumstances that were either unforeseeable or beyond its control. The following circumstances might justify grant of an extension of a station's construction deadline: (1) Weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services. In limited circumstances and with appropriate supporting documentation, stations may rely on ''financial hardship'' as a criterion for seeking an extension of time. Such circumstances may, for example, include a situation in which a station is subject to an active bankruptcy or receivership proceeding. 47 CFR 73.3700(b)(5)(ii) and (iii).

13. Grant of a Construction Permit Extension does not modify the requirement that the station cease operation on its pre-auction channel by 11:59 p.m. (local time) on its phase

completion date. The Bureau has also announced that, prior to grant, it will evaluate all extension applications to determine whether grant will delay or disrupt the post-auction transition schedule. Additional time beyond the initial 180-day extension will be subject to the Commission's stricter ''tolling'' rule. See 47 CFR 73.3700(b)(5)(i) and 73.3598(b).

14. *Request for Waiver and Modification of Assigned Transition Phase.* The Bureau has stated that it will evaluate, on a case-by-case basis, requests for waiver and modification of a station's transition phase under the Commission's general waiver standard, 47 CFR 1.3, and by assessing the impact of the request on the transition schedule, including the impact on other broadcasters and viewers. In order to facilitate a timely and orderly transition, the Bureau determined that it will view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule. We will evaluate factors such as the impact on viewers, the impact on other repacked stations' access to resources, how modification to the transition schedule may disrupt deployment of new 600 MHz broadband services, and if the phase change would inhibit broadcasters' ability to complete the transition within the 39-month post-auction transition period. Requests that the staff determine would be likely to delay or disrupt the transition schedule will be viewed unfavorably. *See Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan, Public Notice,* 32 FCC Rcd 890, 912–14, paras. 49–52 *(MB 2017).* During the 10-phase transition period, the testing period start dates and phase completion dates occur in quick succession, especially as the transition progresses. Therefore, we must undertake a detailed review of each request based on the unique facts and circumstances presented in order to determine whether the benefits of a phase change outweigh the burdens and is in the public interest. In particular, we must do all that is possible to ensure limited resources (for instance structural engineers, tower crews, and equipment manufacturers, among others) are available to repacked stations and must be mindful of the additional burdens on viewers that some phase changes impose when the change would increase the number of rescan periods in an area. That is why we limited the number of rescan periods per DMA to a maximum of two when we established the phased transition schedule. Furthermore, when setting the testing period start date and phase completion date for each phase, we took into account time and resource estimates based on information collected through notice and comment, to estimate how long it would take all the stations in each phase to obtain access to limited resources and complete their transitions. We note that a vast majority of phase changes to date have involved stations receiving authority to transition to their post-auction channel in the period prior to Phase 1. These ''early'' transition cases in particular presented facts and circumstances that may no longer be applicable or have the same benefit after the testing period start date for Phase 1 commences on September 14, 2018.

15. *Required Transition Notifications.* Repacked stations are required to provide notices to viewers and certain third-party entities prior to transitioning to their post-auction channel. Precisely when these notifications are made will be unique to each station's individual transition plans. With regard to viewer notifications, at least 30 days prior to ceasing operation on a station's pre-auction channel all stations must air at least 60-seconds per day of on-air consumer education public service announcements (PSAs) or crawls, see 47 CFR 73.3700(c)(3). If a station's anticipated transition date changes, licensees are expected to promptly provide updated notifications to viewers reflecting the date change. To the extent a station is not able to comply with its consumer education requirements, it must file a request for waiver of 47 CFR 73.3700(c) as a Legal STA in LMS. All waiver requests will be evaluated on a case-by-case basis in accordance with the Commission waiver standard, 47 CFR 1.3, and must include the following information: (1) An explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel; and (3) why grant of the waiver request complies with the Commission's general waiver standard. A station may propose to provide alternative notification to viewers through, for example, local newspaper, radio, other in-market television stations, and/or digital and social media. Depending on the proposal, the Bureau may require a combination of alternative notification efforts. The required substance of a station's viewer notifications are set forth in 47 CFR 73.3700(c)(4) and (5) of the Rules. Within 30 days following completion of a station's transition to its post-auction channel, stations must place in their online local public inspection file a certification of compliance with its viewer notification obligations. 47 CFR 73.3700(c)(6). Stations should upload a copy of this certification into the folder in their online local public inspection file entitled ''Auction Transition Consumer Certification.'' Instructions for accessing and uploading documents to a station's online local public inspection file can be found at: *https://publicfiles.fcc.gov/faq/.*

16. Stations must also provide notice to Multichannel Video Programming Distributors (MVPDs) not less than 90 days prior to the date on which the station will begin operations on its post-auction channel. The requirements of the written notice and where the notice must be sent are provided in 47 CFR 73.3700(d). If a station's anticipated transition date changes, the licensee must send a further notice to the affected MVPD informing them of the new anticipated date. 47 CFR 73.3700(d)(5)(v). We strongly encourage stations also to reach out to their regular contacts with local MVPDs in addition to the points of contact identified in the rule in order to ensure a smooth transition.

17. Notifications must also be provided based on individual conditions placed on stations construction permits. Some of these notifications include providing notice to health care facilities, 47 CFR 15.242(a)(1), such *as* hospitals and nursing homes, and AM radio stations. Stations should review their construction permit for such conditions and make arrangements now to ensure that they are met prior to the filing of a license to cover.

18. *Post-Auction Transition Progress Reports.* Repacked stations are required to file Post-Auction Transition Progress Reports using FCC Form 2100, Schedule 387, electronically in LMS at various times during the transition process. *See* 47 CFR 73.3700(e)(5). Transition Progress Report obligations were established for both reimbursable repacked stations and non-reimbursable repacked stations (*i.e.,* band changers). Reports much be filed quarterly (Quarterly Report) no later than January 10, April 10, July 10, and October 10. Each report reflects information for the preceding quarter: January 10 for the fourth quarter of the previous year (October-December), April 10 for the first quarter (January-March), July 10 for the second quarter (April-June), and October 10 for the third quarter (July-September). Reports must also be filed (1) 10 weeks before the end of their assigned construction deadline (10-

Week Report); (2) 10 days after they complete all work related to construction of their post-auction facilities (Construction Completion Report); and (3) five days after they cease broadcasting on their pre-auction channel (Pre-Auction Termination Report). *See 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,* Public Notice, 32 FCC Rcd 256 (MB 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,* Public Notice, 32 FCC Rcd 4029 (MB 2017). The 10-Week Report filing dates based on the current transition schedule is as follows:

Phase	10-week report filing deadline
1	09/21/2018
2	02/01/2019
3	04/12/2019
4	05/24/2019
5	06/28/2019
6	08/09/2019
7	11/08/2019
8	01/03/2020
9	02/21/2020
10	04/24/2020

The timing of the Construction Completion Report and Pre-Auction Termination Report will be based on each station's unique situation and transition timing. The Construction Completion Report should only be filed when the post-auction facility authorized in a station's construction permit has been completed and the station could file an application for license to cover if it were permitted to commence program test authority on its post-auction channel. The filing of a station's Construction Completion Report does not necessarily require the filing of a license to cover. Such filing is only required once the station commences program test authority, which the station is only able to do on or after its testing period start date, subject to any required coordination if the station is in a linked-station set. A station may file its Construction Completion Report in advance of its testing period start date assuming that construction of its post-auction facility is complete, but making such a filing does not permit a station to commence post-auction operation prior to its testing period start date. If a station will be commencing operation on its post-auction channel under an STA, it must wait to file its Construction Completion Report until after it has filed its Pre-Auction Termination Report and completed construction of the post-auction facility authorized in its construction permit. Each category of Transition Progress Report are individual reports that must be filed separately. A station must continue to file Quarterly Reports until it has filed its 10-Week Report, Pre-Auction Termination Report, and Construction Completion Report.

19. *Channel Sharing Repacked Station.* In the event that a channel sharee station (sharee station) is channel sharing with another station (host station) that is repacked, the sharee station must comply with all notification requirements, including but not limited to consumer and MVPD notice requirements as discussed above. In addition, not less than 60 days prior to the host station's phase construction deadline, the host station must file a minor change application to its current channel sharing license for a construction permit (FCC Form 2100 –Schedule A (full power) and Schedule E (Class A)) specifying the host station's post-auction channel and parameters previously authorized in its post-auction construction permit. Such applications will be considered minor changes and will be subject to filing fees. Please note, these filing instructions differ from those previously provided. Failure to follow the instructions set forth in this Public Notice could result in application processing delays and the need to file additional applications. So long as the sharee station is licensed to operate on the same channel as the host station and a minor change application has been filed by the host station, LMS is designed so that a license application for a post-auction channel filed by the host station will be filed on behalf of all licensed sharee stations. LMS requires that the filer certify that all channel sharing stations consent to the filing of the application. Because sharee stations will be operating from the same post-auction facility as the repacked host station, sharee stations are not required to file Transition Progress Reports. Furthermore, only the host station needs to file a request for waiver and modification of assigned phase change so long as a signed letter of consent from each licensee that is a party to the channel sharing arrangement is included with the request. All other applications and filings discussed in this Public Notice, including but not limited to requests for an engineering STA, STA for silent authority, and a request for Construction Permit Extension, must be individually filed by both the host station and any sharee station.

20. *Informal Request for Transition Dates and Outreach Information.* In order to assist the Commission with answering viewer inquiries and evaluating ways to further support repacked stations' transition efforts, we informally request that a repacked station notify us via email at *IAtransition@fcc.gov* once it knows the specific date that it intends to cease operations on its pre-auction channel and commence operations on its post-auction channel. We would also welcome additional information concerning places the Commission can direct viewers to obtain information about a repacked station's transition plans, such as a viewer email inquiry box, website, or hotline. While this is not an official information collection and you are not required to provide us with this information, voluntarily doing so will help the Commission support repacked stations transition efforts and help facilitate a smooth transition process for viewers.

21. *Contacts.* Additional questions concerning the post-incentive auction transition or this Public Notice may be referred to the contact persons listed in the Public Notice.

22. *Filings.* All applications and reports referenced in this Public Notice must be filed in LMS, including but not limited to Transition Progress Reports, Applications for License to Cover, STAs (technical and legal), and Construction Permit Extensions. LMS filing instructions are provided in Appendix A of the Public Notice. Stations are also asked to send an electronic copy of certain transition-related filings, as indicated in Appendix A, via email to: *IATransitionlicensing@fcc.gov.*

23. *Additional Resources.* Repacked stations and other interested parties may want to visit the Commission's broadcast transition website and/or review the following additional resources listed in the Public Notice and available on the Commission's EDOCS database (*https://www.fcc.gov/edocs*) for guidance concerning the post-incentive auction broadcast television transition.

24. This action is taken by the Chief, Media Bureau, pursuant to authority delegated by 47 CFR 0.61.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2018–20305 Filed 9–18–18; 8:45 am]

BILLING CODE 6712–01–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 October 5, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Max E. Nichols Trust and Max E. Nichols, Great Bend, Kansas, individually, and as Trustee of such trust; the Max E. Nichols Legacy Trust and James Steven Clinkinbeard, Topeka, Kansas as Trustee of such trust; EPC LLC, a Kansas limited liability company; Joe Lynn Nichols, Paradise Valley, Arizona; and Erin P. Nichols, Lakewood, Colorado, (collectively, the Nichols Family Group);* to retain voting shares of American State Bancshares, Inc., Wichita, Kansas and indirectly retain shares of American State Bank and Trust Company, Great Bend, Kansas.

Board of Governors of the Federal Reserve System, September 14, 2018.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–20387 Filed 9–18–18; 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 October 17, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *TEB, MHC and TEB Bancorp, Inc., both of Wauwatosa, Wisconsin;* to become a mutual bank holding company and mid-tier stock bank holding company, respectively, by acquiring 100 percent of the voting shares of The Equitable Bank, S.S.B., Wauwatosa, Wisconsin, in connection with the conversion of The Equitable Bank, S.S.B from mutual to stock form.

In connection with the proposal, TEB Bancorp, Inc., Wauwatosa, Wisconsin, has applied to engage de novo in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 2018.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–20386 Filed 9–18–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076; Docket No. 2018–0003; Sequence No. 13]

Submission for OMB Review; Novation/Change of Name Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Novation/Change of Name Requirements.

DATES: Submit comments on or before October 19, 2018.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC, 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0076, Novation/Change of Name Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0076, Novation/Change of Name Requirements'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0076, Novation/Change of Name Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0076, Novation/Change of Name

Requirements, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or via email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation 42.1203 and 42.1204 provide requirements for contractors to request novation/change of name agreements and supporting documents when a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

Estimates are based on data available in the Federal Procurement Data System for fiscal years 2015 through 2017, which accounts for the decrease from 1,178 estimated respondents to 547 estimated respondents. This has resulted in the public burden hours being reduced to 1,094 from 2,356 for the information collection.

B. Annual Reporting Burden

Respondents: 547.
Responses Per Respondent: 1.
Annual Responses: 547.
Hours Per Response: 2.0.
Total Burden Hours: 1,094.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 83 FR 25457 on June 1, 2018. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: September 13, 2018.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–20298 Filed 9–18–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0189; Docket No. 2018–0003; Sequence No. 17]

Information Collection; Identification of Predecessors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FAR Council invites the public to comment upon a renewal concerning identification of predecessors.

DATES: Submit comments on or before November 19, 2018.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0189, Identification of Predecessors.

Instructions: All items submitted must cite Information Collection 9000–0189, Identification of Predecessors. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, at *http://www.regulations.gov.* Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail). This information collection is pending at the FAR Council. The Council will submit it to OMB within 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Federal Acquisition Policy Division, at 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Overview of Information Collection

Description of the Information Collection

1. *Type of Information Collection:* Revision/Renewal of a currently approved collection.
2. *Title of the Collection*— Identification of Predecessors.
3. *Agency form number, if any:*— None.

Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

B. Purpose

The Federal Acquisition Regulation (FAR) provision 52.204–20, Predecessor

of Offeror, requires each offeror to identify if the offeror is, within the last three years, a successor to another entity that received a Federal Government award and, if so, to provide the Commercial and Government Entity (CAGE) code and legal name of the predecessor. The information on predecessors is used to identify such entities in the Federal Awardee Performance and Integrity Information System (FAPIIS) to allow retrieval of integrity and performance data on the most recent predecessor of an apparent successful offeror to whom award is anticipated. FAR 9.104–6 requires contracting officers to consult FAPIIS before awarding a contract in excess of the simplified acquisition threshold. The information on predecessors is collected on an annual basis for inclusion in the annual representations and certifications in the System for Award Management (SAM) for offerors required to register in SAM. Offerors not required to register in SAM but required to provide the information in the provision at FAR 52.204–20 will do so as specified in the solicitation or instructed by the contracting officer.

C. Annual Reporting Burden

The burden to provide the information required by the FAR provision at 52.204–20 when an offeror is registered in SAM is already covered by OMB Control Number 9000–0159, System for Award Management Registration (SAM). OMB Control Number 9000–0189 now will cover the burden for providing the required information when the offeror is not required to register in SAM in accordance with the exceptions in FAR 4.1102(a). The Federal Procurement Data System (FPDS) for FY 2017 was used to develop the estimated burden hours as shown below:

Respondents: 974.

Responses Per Respondent: 1.

Total Annual Responses: 974.

Hours Per Response: 0.1.

Total Burden Hours: 97.4.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0189, Identification of Predecessors, in all correspondence.

Dated: September 13, 2018.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–20299 Filed 9–18–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10673]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

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 October 19, 2018.

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' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

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:* New Collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration; *Use:* The Centers for Medicare & Medicaid Services (CMS) may test a demonstration, under Section 402 of the Social Security Amendments of 1968 (as amended), entitled the Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration (''the Demonstration''). If it goes forward, the MAQI demonstration could test whether exempting, through the use of waiver authority, clinicians who participate to a sufficient degree in certain payment arrangements with Medicare Advantage Organizations (MAOs) (combined with participation, if any, in Advanced Alternative Payment Models (APMs) with Medicare Fee-for-Service (FFS)) from the Merit-based Incentive Payment System (MIPS) reporting requirements

and payment adjustment will increase or maintain participation in payment arrangements with MAOs similar to Advanced APMs and change the manner in which clinicians deliver care.

Clinicians may currently participate in one of two paths of the Quality Payment Program (QPP): (1) MIPS, which adjusts Medicare payments based on combined performance on measures of quality, cost, improvement activities, and advancing care information, or (2) Advanced Alternative Payment Models with Medicare (Advanced APMs), under which eligible clinicians may earn an incentive payment for sufficient participation in certain payment arrangements with Medicare fee-for-service (FFS) and other payers, and starting in the 2019 performance period, with other payers such as Medicare Advantage, commercial payers, and Medicaid managed care. To participate in the Advanced APM path of QPP for a given year, eligible clinicians must meet the criteria of Qualifying APM Participants (QPs); in addition to earning an APM incentive payment, QPs are excluded from the MIPS reporting requirements and payment adjustment.

An eligible clinician that does not meet the criteria to be a QP for a given year will be subject to MIPS for that year unless the clinician meets certain other MIPS exclusion criteria, such as being newly enrolled in Medicare or meeting the low volume threshold for Medicare FFS patients. The MAQI Demonstration could allow participating clinicians to have the opportunity to be exempt from MIPS reporting and payment consequences for a given year if they participate to a sufficient degree in certain Qualifying Payment Arrangements with MAOs (and Advanced APMs with Medicare FFS) during the performance period for that year, without requiring them to be QPs or otherwise meet the MIPS exclusion criteria of QPP. Under a possible Demonstration, clinicians might not be required to have a minimum amount of participation in an Advanced APM with Medicare FFS in order to be exempt from MIPS reporting requirements and payment adjustments for a year, but if they did have participation in Advanced APMs with Medicare FFS, that participation could also be counted towards the thresholds that trigger the waiver from MIPS reporting and payment consequences. In addition, the Demonstration could permit consideration of participation in ''Qualifying Payment Arrangements'' with Medicare Advantage plans that meet the criteria to be Other Payer Advanced APMs a year before the All-Payer Combination Option is available.

In the Calendar Year 2018 Quality Payment Program Final Rule, CMS noted its intention ''to develop a demonstration project to test the effects of expanding incentives for eligible clinicians to participate in innovative alternative payment arrangements under Medicare Advantage that qualify as Advanced APMs, by allowing credit for participation in such Medicare Advantage arrangements prior to 2019 and incentivizing participation in such arrangements in 2018 through 2024.'' (92 FR 53865).

The first performance period for the Demonstration is tentatively planned for 2018 and the Demonstration would last up to five years. Clinicians who meet the definition of MIPS eligible clinician under QPP as defined under 42 CFR 414.1305 would be eligible to participate in the MAQI Demonstration. Currently, MIPS eligible clinicians include physicians (including doctors of medicine, doctors of osteopathy, osteopathic practitioners, doctors of dental surgery, doctors of dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors), physician assistants, nurse practitioners, clinical nurse specialists, and certified registered nurse anesthetists. If the definition of MIPS eligible clinician changes under future rulemaking, the Demonstration would use the updated definition to define Demonstration eligibility.

Participation could last the duration of the Demonstration, unless participation is voluntarily or involuntarily terminated under the terms and conditions of the Demonstration. Participants would have the opportunity to submit the required documentation and be evaluated for MIPS waivers through the Demonstration each year.

Should this demonstration move forward, and in order to conduct an evaluation and effectively implement the MAQI Demonstration, CMS would need to collect information from Demonstration participants on (a) payment arrangements with MAOs and (b) Medicare Advantage (MA) payments and patient counts. CMS would require a new collection of this information as this information is not already available through other sources and/or has not been previously approved for use under the MAQI Demonstration. The information collected in these forms would allow CMS to evaluate whether the payment arrangement that clinicians have with MAOs meet the Qualifying Payment Arrangement criteria, and determine whether a clinician's MAO and FFS APM patient population or payments meet demonstration thresholds. Both of these areas are also requirements for review and data collection under QPP (*i.e.* the Eligible Clinician-Initiated Other Payer Advanced APM Determination form and All-Payer QP Submission form), and therefore similar to forms have been prepared and reviewed under the QPP.

Given these similarities in forms, burden estimates for the MAQI Demonstration PRA package were derived from burden analyses and formulation done in conjunction with the QPP forms; more specifically the estimated burden associated with the submission of payment arrangement information for Other Payer Advanced APM Determinations: Eligible Clinician-Initiated Process, and the estimated burden associated with the submission of data for All-Payer QP determinations. CMS estimates the total hour burden per respondent for the MAQI demonstration to be 15 hours, to match the hours listed in the equivalent QPP forms. Full detail of how these estimates were derived can be found in the forthcoming Calendar Year 2019 Proposed QPP rule.

If Demonstration participants submitted information, but did not meet these conditions of the Demonstration, their participation in the Demonstration would not be terminated, but they would not receive the waivers from MIPS reporting requirements and payment adjustments. Therefore, unless they become QPs or are excluded from MIPS for other reasons, the participating clinicians would be subject to MIPS and would face the MIPS payment adjustments for the applicable year. We are requesting approval of 2 information collections associated with the MAQI Demonstration: (a) A Qualifying Payment Arrangement Submission Form and (b) a Threshold Data Submission Form. Subsequent to publishing the 60-day **Federal Register** notice (83 FR 31150), there have been minor revisions made to the collection instrument to clarify information. There is no increase in the burden hours. *Form Number:* CMS–10673 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 100,000; *Total Annual Responses:* 100,000; *Total Annual Hours:* 1,500,000. (For policy questions regarding this collection contact John Amoh at *john.amoh@cms.hhs.gov.*)

Dated: September 14, 2018.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–20372 Filed 9–18–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3152]

Postapproval Changes to Drug Substances; Draft Guidance for Industry; Availability; Correction

AGENCY: Food and Drug Administration, HHS

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Postapproval Changes to Drug Substances; Draft Guidance for Industry; Availability'' that appeared in the **Federal Register** of September 11, 2018. The document announced a draft guidance that provides recommendations to holders of approved new drug applications, abbreviated new drug applications, new animal drug applications, abbreviated new animal drug applications, and holders of drug master files and veterinary master files who may want to make a change to the drug substance manufacturing process during the drug product application postapproval period. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy and Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, September 11, 2018 (83 FR 45944), in FR Doc. 2018–19666, on page 45944, the following correction is made:

On page 45944, in the first column, in the header of the document, and also in the third column under *Instructions,* ''Docket No. FDA–2018–D–3151'' is corrected to read ''Docket No. FDA–2018–D–3152''.

Dated: September 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–20317 Filed 9–18–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0029]

Agency Information Collection Activities: Application for Foreign-Trade Zone Admission and/or Status Designation, and Application for Foreign-Trade Zone Activity Permit

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted no later than October 19, 2018 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 23286) on May 18, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Foreign-Trade Zone Admission and/or Status Designation, and Application for Foreign-Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Numbers: 214, 214A, 214B, 214C, and 216.

Type of Review: Extension (without change).

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 214, 214A, 214B, 214C, and 216.

Affected Public: Businesses.

Abstract: Foreign trade zones (FTZs) are geographical enclaves located within the geographical limits of the United States but for tariff purposes are considered to be outside the United States. Imported merchandise may be brought into FTZs for storage, manipulation, manufacture or other processing and subsequent removal for exportation, consumption in the United States, or destruction. A company bringing goods into an FTZ has a choice of zone status (privileged/non-privileged foreign, domestic, or zone-

restricted), which affects the way such goods are treated by Customs and Border Protection (CBP) and treated for tariff purposes upon entry into the customs territory of the U.S.

CBP Forms 214, 214A, 214B, and 214C, which make up the *Application for Foreign-Trade Zone Admission and/or Status Designation,* are used by companies that bring merchandise into an FTZ to register the admission of such merchandise into FTZs and to apply for the appropriate zone status. CBP Form 216, *Foreign-Trade Zone Activity Permit,* is used by companies to request approval to manipulate, manufacture, exhibit, or destroy merchandise in an FTZ.

These FTZ forms are authorized by 19 U.S.C. 81 and provided for by 19 CFR 146.22, 146.32, 146.39, 146.40, 146.41, 146.44, 146.52, 146.53, and 146.66. These forms are accessible at: *http://www.cbp.gov/newsroom/publications/forms.*

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,181.

Form 216, Application for Foreign-Trade Zone Activity Permit

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: September 13, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–20306 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4384–DR; Docket ID FEMA–2018–0001]

Confederated Tribes of the Colville Reservation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Confederated Tribes of the Colville Reservation (FEMA–4384–DR), dated August 17, 2018, and related determinations.

DATES: The declaration was issued August 17, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Confederated Tribes of the Colville Reservation resulting from flooding during the period of May 5 to May 28, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Confederated Tribes of the Colville Reservation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Confederated Tribes of the Colville Reservation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Confederated Tribes of the Colville Reservation for Public Assistance.

The Confederated Tribes of the Colville Reservation are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–20320 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4385–DR; Docket ID FEMA–2018–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4385–DR), dated August 20, 2018, and related determinations.

DATES: The declaration was issued August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 20, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from severe storms, tornadoes, and straight-line winds on May 15, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield and New Haven Counties for Public Assistance.

All areas within the State of Connecticut are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–20371 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4351–DR; Docket ID FEMA–2018–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4351–DR), dated December 20, 2017, and related determinations.

DATES: The declaration was issued December 20, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 20, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm during the period of September 28–30, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The North Slope Borough for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–20321 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3399–EM; Docket ID FEMA–2018–0001]

Hawaii; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Hawaii (FEMA–3399–EM), dated August 22, 2018, and related determinations.

DATES: The declaration was issued August 22, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 22, 2018, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Hawaii resulting from Hurricane Lane beginning on August 22, 2018, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Hawaii.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William Roche, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Hawaii have been designated as adversely affected by this declared emergency:

Hawaii, Maui, and Kauai Counties and the City and County of Honolulu for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–20373 Filed 9–18–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4353–DR; Docket ID FEMA–2018–0001]

California; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4353–DR), dated January 2, 2018, and related determinations.

DATES: This amendment was issued September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 31, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–20319 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0023; OMB No. 1660–0070]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Fire Department Registry

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 19, 2018.

ADDRESSES: Submit written comments on the proposed information collection

to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Gayle Kelch, Statistician, FEMA, United States Fire Administration, National Fire Data Center at (301) 447–1154 or email *gayle.kelch@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on May 22, 2018 at 83 FR 23702 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Fire Department Registry.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0070.

FEMA Forms: FEMA Form 070–0–0–1, National Fire Department Registry.

Abstract: This collection seeks to identify fire departments in the United States to compile a database related to their demographics, capabilities, and activities. The database is used to guide programmatic decisions and provide information to the public and the fire service.

Affected Public: State, local, or Tribal government.

Estimated Number of Respondents: 8,223.

Estimated Number of Responses: 8,223.

Estimated Total Annual Burden Hours: 2,067 hours.

Estimated Total Annual Respondent Cost: $11,558.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $91,847.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Rachel Frier,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–20315 Filed 9–18–18; 8:45 am]

BILLING CODE 9111–76–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2018–N099; FXES11140200000–189–FF02ENEH00]

Incidental Take Permit Application To Participate in American Burying-Beetle Amended Oil and Gas Industry Conservation Plan in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act (ESA), as amended, we, the U.S. Fish and Wildlife Service, invite the public to comment on a Federally-listed American Burying-beetle incidental take permit (ITP) application. The applicant anticipates American Burying-beetle take as a result of impacts to Oklahoma habitat the species uses for breeding, feeding and sheltering. The take would be incidental to the applicant's activities associated with oil and gas well field and pipeline infrastructure (gathering, transmission, and distribution), including geophysical exploration (seismic), construction, maintenance, operation, repair, decommissioning, and reclamation. If approved, the permit would be issued under the approved *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.*

DATES: To ensure consideration, written comments must be received on or before October 19, 2018.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

- *Email: fw2_hcp_permits@fws.gov.*
- *U.S. Mail:* U.S. Fish and Wildlife Service, Endangered Species—HCP Permits, P.O. Box 1306, Room 6093, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6078, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the ESA (16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service, invite the public to comment on an ITP application to take the Federally-listed American Burying-beetle (*Nicrophorus americanus*) during oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

If approved, the permit would be issued to the applicant under the *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.* The original ICP was approved on May 21, 2014, and the ''no significant impact'' finding notice was published in the **Federal Register** on July 25, 2014 (79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on our website at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Application Available for Review and Comment

We invite local, state, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidentally taking the Federally-listed American Burying-beetle. Please refer to the proposed permit number (TE98456C) when requesting application documents and when submitting comments. Documents and other information the applicant submitted are available for review, subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Permit TE98456C

Applicant: Ponderosa Gathering, LLC, Houston, TX.

Applicant requests a permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the ESA, section 10(c) (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. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: July 19, 2018.

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–20351 Filed 9–18–18; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–945]

Certain Network Devices, Related Software and Components Thereof (II) (Modification 2); Grant of Joint Motion To Terminate the Modification Proceeding Based on a Settlement Agreement; Termination of the Modification Proceeding in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined grant a joint motion of complainant Cisco Systems, Inc. of San Jose, California (''Cisco'') and respondent Arista Networks, Inc. of Santa Clara, California (''Arista'') to terminate the above-captioned modification proceeding concerning a limited exclusion order and a cease and desist order issued against Arista in Inv. No. 337–TA–945. The modification proceeding is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2015, based on a Complaint filed by Cisco. 80 FR 4313–14 (Jan. 27, 2015). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), by reason of infringement of certain claims of U.S. Patent Nos. 7,023,853 (''the '853 patent''); 6,377,577 (''the '577 patent''); 7,460,492 (''the '492 patent''); 7,061,875 (''the '875 patent''); 7,224,668 (''the '668 patent''); and 8,051,211 (''the '211 patent''). The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named Arista as the respondent. The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. The Commission terminated the investigation in part as to certain claims of the asserted patents. Notice (Nov. 18, 2015) (see Order No. 38 (Oct. 27, 2015)); Notice (Dec. 1, 2015) (see Order No. 47 (Nov. 9, 2015)).

On June 11, 2016, the Patent Trial and Appeal Board (''PTAB'') of the U.S. Patent and Trademark Office instituted separate *inter partes* review (''IPR'') proceedings concerning the '577 and '668 patents. *Arista Networks, Inc.* v. *Cisco Systems, Inc.,* Case IPR2016–00303 (regarding the '577 patent); *Arista Networks, Inc.* v. *Cisco Systems, Inc.,* Case IPR2016–00309 (regarding the '668 patent).

On May 4, 2017, the Commission found a violation of section 337 with respect to certain of the asserted claims of the '577 and '668 patents. Notice (May 4, 2017); 82 FR 21827–29 (May 10, 2017); *see also* Notice of Correction (May 30, 2017); 82 FR 25811 (June 5, 2017). The Commission issued a limited exclusion order (''LEO'') and a cease and desist order (''CDO'') against Arista. *Id.* The Commission did not find a violation with respect to the '853, '875, '492, and '211 patents. *Id.*

On May 25, 2017, the PTAB issued its final written decision finding certain claims of the '577 patent unpatentable based on prior art not presented in the Commission investigation. On June 1, 2017, the PTAB issued its final written decision finding certain claims of the '668 patent unpatentable based on certain combinations of prior art not presented in the Commission investigation. Both decisions affected the claims upon which the Commission found a violation of section 337.

On June 30, 2017, Cisco filed a notice of appeal with the United States Court of Appeals for the Federal Circuit (''Federal Circuit''), seeking review of the Commission's finding of no violation as to the '853, '875, '492, and '211 patents. *Cisco Sys., Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2289. On July 21, 2017, Arista filed a notice of appeal with the Federal Circuit,

seeking review of the Commission's finding of violation as to the '577 and '668 patents. *Arista Networks, Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2336. On August 3, 2017, the Federal Circuit consolidated the Arista and Cisco appeals. *Cisco Sys., Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2289, Dkt. No. 20.

On August 25, 2017, Arista filed a motion with the Federal Circuit seeking to stay the Commission's remedial orders pending resolution of the appeal on the merits. On September 22, 2017, the Federal Circuit denied this request ''subject to the condition that the product redesign on which Cisco relies to deny irreparable harm must be permitted to enter the country, without being blocked by the Commission order under review in this case, unless and until Commission proceedings are initiated and completed to produce an enforceable determination that such a redesign is barred by the order here under review or by a new or amended order.'' *Cisco Sys, Inc.* v. *ITC; Arista Networks, Inc.* v. *ITC*, Appeal Nos. 2017–2289, –2351, Order at 3 (Fed. Cir. Sept. 22, 2017).

On September 27, 2017, Cisco petitioned for a modification proceeding to determine whether Arista's redesigned switches infringe the patent claims that are the subject of the LEO and CDO issued in this investigation and for modification of the remedial orders to specify the status of these redesigned products.

On November 1, 2017, the Commission instituted the modification proceeding. 82 FR 50678 (Nov. 1, 2017). On November 7, 2018, the Commission issued a notice clarifying that OUII is not named as a party in the modification proceeding. 82 FR 52318 (Nov. 13, 2017).

On February 14, 2018, the Federal Circuit summarily affirmed the PTAB's decision finding the claims of the '668 patent unpatentable. *Cisco Systems, Inc.* v. *Arista Networks, Inc.,* Appeal No. 17–2384, Order (Feb. 14, 2018). The Court issued the mandate on March 23, 2018. *Id.,* Dkt. No. 54.

On March 23, 2018, the ALJ issued a recommended determination in the modification proceeding (''MRD''), finding that Arista's redesigned products infringe the relevant claims of the '668 patent but do not infringe the relevant claims of the '577 patent. MRD (Mar. 23, 2018). Also on March 23, 2018, the ALJ issued an order denying Arista's motion to stay the modification proceedings or to stay the remedial orders with respect to the '668 patent. Order No. 20 (Mar. 23, 2018).

On April 5, 2018, the Commission determined to modify the remedial orders to suspend enforcement of those orders with respect to the '668 patent. Notice (Apr. 5, 2018); Comm'n Order (Apr. 5, 2018).

On June 26, 2018, the Commission accepted the ALJ's recommended determination finding no infringement with respect to the '577 patent and determined to modify the remedial orders to exempt Arista's redesigned products that were the subject of the modification proceeding. The Commission also determined to suspend the modification proceeding as to the '668 patent. The '577 patent expired on June 30, 2018.

On August 27, 2018, the Federal Circuit granted a motion of the parties to voluntarily dismiss the consolidated appeal from the Commission's final determination on violation. *Cisco Sys., Inc.,* Appeal No. 17–2289, Dkt. No. 121 (Aug. 27, 2018).

On August 27, 2018, Cisco and Arista filed a joint motion to terminate the modification proceeding in its entirety pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)) based on a settlement agreement between the parties. The motion indicates that the Agreement fully resolves the disputed issues in the modification proceeding, that there are no other agreements, written or oral, express or implied, between them concerning the subject matter of this proceeding, and that the motion includes a public version of this Motion along with an accompanying public version of the Agreement. The motion also contends that termination of the modification proceeding will not adversely affect the public interest.

The Commission has determined to grant the joint motion and terminate the modification proceeding in its entirety. We note that only the '668 patent remains in the modification proceeding.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 14, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–20363 Filed 9–18–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sharon C. Worosilo, M.D., Decision and Order

On February 7, 2018, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Sharon C. Worosilo, M.D. (Registrant), who is registered in Somerset and East Brunswick, New Jersey. The Show Cause Order proposed to revoke Registrant's two DEA Certificates of Registration, Nos. BW8636219 and BW4026375, pursuant to 21 U.S.C. 824(a)(3), on the ground that she does not have authority to handle controlled substances in New Jersey, the state in which she is registered with the DEA, and to deny any applications for renewal or modification and any applications for any other DEA registrations. GX 2 (Order to Show Cause), at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered with the DEA as a practitioner authorized to handle controlled substances in schedules II through V under two DEA Certificate of Registrations: No. BW4026375 at the registered address of 49 Veronica Avenue, Somerset, New Jersey, and No. BW8636219, at the registered address of 620 Cranbury Road, Suite #115, East Brunswick, New Jersey. *Id.* at 2. The Order stated that both of Registrant's registrations were due to expire on May 31, 2018. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order specifically alleged that the New Jersey State Board of Medical Examiners issued an Order of Temporary Suspension ''suspending [her] New Jersey medical license.'' ''Consequently, the DEA must revoke [her] DEA registrations based on [her] lack of authority to handle controlled substances in the State of New Jersey.'' *Id.* at 2, citing 21 U.S.C. 824(a)(3) and 21 CFR 1301.37(b).

The Show Cause Order then notified Registrant of her right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to elect either option. *Id.* at 2, citing 21 CFR 1301.43. It also notified her of her right to submit a corrective action plan in accordance with 21 U.S.C. 824(c). *Id.* at 2–3.

On February 15, 2018, two DEA Diversion Investigators, accompanied by a Task Force Officer, personally served Registrant with the Order to Show

Cause at her residence at 1000 Avenue at Port Imperial, Number 706, Weehawken, New Jersey. GX 4 (Declaration of Service of Order to Show Cause) at 1–2.

On April 13, 2018, the Government submitted a Request for Final Agency Action (RFAA) and the evidentiary record to my Office. The Government represented that ''Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Order served on her, including the filing of any written statement in lieu of a hearing.'' RFAA, at 1–2.

Based on the Government's representation that more than 30 days have now passed since the date of service of the Show Cause Order and that Registrant has not submitted a request for a hearing or any other reply, I find that Registrant has waived her right to a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Registrant is the holder of two DEA Registrations pursuant to which she is authorized to dispense controlled substances in schedules II–V as a practitioner at the registered address of 49 Veronica Avenue, Somerset, New Jersey (Registration No. BW4026375), and at the registered address of 620 Cranbury Road, Suite #115, East Brunswick, New Jersey (Registration No. BW8636219). GX 1 at 1–2.

On April 12, 2018, the Associate Chief of the DEA Registration and Program Support Section certified that both registrations were due to expire by their terms on May 31, 2018. *Id.* at 1–2. She further stated that ''[Registrant] has no other pending or valid DEA registrations in New Jersey or in any other state.'' *Id.* at 1–2. Pursuant to 5 U.S.C. 556(e), I take official notice of Registrant's registration record with the Agency. *See also* 21 CFR 1316.59(e).[1]

A review of Agency registration records shows that Registrant has not filed any applications for renewal, nor has she filed a new application for a DEA Registration. Accordingly, I find that Registrant's registrations expired on May 31, 2018, and that there is no application to act upon.

Having reviewed the record, I hold that this proceeding is now moot. DEA has long held that ''if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Donald Brooks Reece II, M.D.,* 77 FR 35054 (2012) (quoting *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also Thomas E. Mitchell,* 76 FR 20032, 20033 (2011), *Donald Kenneth Shreves, D.V.M,* 83 FR 22518 (2018). Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon. Accordingly, because Respondent has allowed her registrations to expire and has not filed either a renewal or a new application, this case is now moot and will be dismissed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Sharon C. Worosilo, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: September 12, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–20384 Filed 9–18–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–22]

Brian Thomas Nichol, M.D., Decision and Order

On March 14, 2016, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Brian Thomas Nichol, M.D. (Respondent), which proposed the revocation of his DEA Certificate of Registration No. BN4578057, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 5106 McLanahan Drive, Suite B, North Little Rock, Arkansas. Administrative Law Judge Exhibit (ALJ Ex.) 1, at 1. As grounds for the proposed action, the Show Cause Order alleged that Respondent's ''registration would be inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f), 824(a)(4)). For the same reason, the Order also proposed the denial of any of Registrant's ''pending applications for renewal or modification of such registration, and . . . any applications for any other DEA registrations.'' *Id.*

More specifically, the Show Cause Order set forth six independent reasons why the Government alleges that Respondent's registration should be revoked. *Id.* at 1–3. The Show Cause Order first charged that Respondent's ''pre-signing of prescriptions for controlled substances violated [21] [1] CFR 1306.05(a).'' *Id.* at 2. The Order states that this charge is based on the allegation that in 2006, the Arkansas State Medical Board found that Respondent violated Arkansas and federal laws when (1) he ''pre-signed controlled substance prescriptions, which [his] staff members, who were not authorized by law to issue such prescriptions, then issued to patients'' and (2) he ''[was] not present and [was] not consulted by [his] staff when such prescriptions were issued.'' *Id.* at 1–2. The Order further alleged that in 2006, as a result of these findings, the Arkansas Board suspended Respondent's medical license for six months. *Id.* at 2.

The Show Cause Order also set forth five charges of recordkeeping violations based on DEA's July 4, 2014 ''on-site inspection of [Respondent's] registered location.'' *Id. First,* the Order charged that Respondent ''failed to maintain an initial inventory of all controlled substances in violation of 21 U.S.C. 827(a)(3) & 842(a)(5) and 21 CFR 1304.11(b).'' *Id. Second,* the Order charged that he ''failed to maintain complete and accurate dispensing records in violation of 21 U.S.C. 827(a)(3) & 842(a)(5) and 21 CFR 1304.21(a).'' *Id.* at 2–3. *Third,* the Order charged that, during the on-site inspection, Respondent ''could not provide a DEA–222 order form dated [January 16, 2014], for an order of oxycodone tablets, in violation of 21 U.S.C. [842](a)(5) and 21 CFR 1305.17(a).'' [2] *Id.* at 3. *Fourth,* the Order

[1] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

[1] Although the Order erroneously referenced Title 42 of the Code of Federal Regulations for this violation, Government counsel corrected the error during his Opening Statement at the administrative hearing when he made clear that Title 21 was the title that the Government had intended to allege. *See* Transcript (Tr.) 18. Respondent raised no objection based on the erroneous title reference, and I find that this error was merely a scrivener's error and that Respondent had adequate notice of the charged violation.

[2] Although the Order erroneously referenced an August 28, 2013 DEA 222 form for this charge, the Government corrected the date of the allegedly missing DEA 222 form to January 16, 2014 in its

charged that Respondent ''failed to properly annotate two DEA–222 order forms in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1305.13(b).'' *Id. Fifth,* the Order charged that Respondent ''failed to maintain [his] inventory and dispensing records at [his] registered location and these records were not readily retrievable, in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1304.04.'' *Id.* Related to this last charge, the Order alleged that Respondent's ''inventory and dispensing records were located at Moore Clinical Trials,'' which was not located at his registered address, and that he ''had not asked for permission to store controlled substance records at a central location'' in violation of 21 CFR 1304.04(a)(1). *Id.*

Although the pending Show Cause Order discussed a prior September 27, 2011 Show Cause Order that DEA issued to revoke Respondent's DEA registration, as well as the terms of an April 27, 2012 Memorandum of Agreement (MOA) that was intended to resolve the charges in that prior Order, the pending Order did not expressly charge Respondent with violating the MOA. *See id.* at 2. Instead, the Government charged Respondent with violating the MOA in its May 12, 2016 Prehearing Statement, and further alleged that these violations constituted an independent basis to revoke his registration. *See* ALJ Ex. 7, at 10–11, 11 n.4.[3]

After service of the Show Cause Order, Respondent, through his counsel, made a timely request for hearing. *See* ALJ Ex. 2. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ). On May 19, 2016, the parties participated in a telephonic prehearing conference, which was not transcribed, and the ALJ issued a Prehearing Ruling and Protective Order (ALJ Ex. 9) memorializing 12 accepted stipulations of fact (set forth more fully *infra*) as well as the terms of a protective order. Following other pre-hearing procedures, the ALJ conducted an evidentiary hearing in Little Rock, Arkansas on August 16–17, 2016, at which both parties elicited testimony from witnesses and submitted various exhibits.[4]

The parties submitted briefs of their proposed findings of fact, conclusions of law, and argument on October 3, 2016, and the ALJ issued his Recommended Decision (R.D.) on December 5, 2016. The ALJ found that the Government sustained only two of its charges. *First,* the ALJ found that the Government had sustained its first charge that Respondent pre-signed prescriptions in violation of 21 CFR 1306.05(a). R.D., at 30. However, the ALJ also found that Respondent ''has presented sufficient mitigating evidence'' concerning this charge ''to show that he can be entrusted with a DEA registration.'' *Id.* at 42. As a result, the ALJ did not recommend any sanction as a result of this violation. *See id.* at 41–46.

Second, with respect to the Government's recordkeeping charges, the ALJ only sustained the Government's fourth recordkeeping charge ''that the Respondent failed to properly record the date he returned controlled substances to [his supplier] and the amount he returned.'' *Id.* at 45. The ALJ found that, although this recordkeeping violation also constituted a violation of the MOA, it was not a sufficiently ''significant violation'' of the MOA to warrant revocation. *Id.* at 40 (emphasis omitted). The ALJ also recommended that I find that this failure was ''mitigated by the fact that the Government has presented no evidence that Respondent had been previously cited for this type of recordkeeping failure or that this recordkeeping failure . . . is in any way related to the Respondent's day to day treatment of his normal patients.'' *Id.* at 45. The ALJ concluded that he ''would be exceeding the scope of [his] responsi[bil]ities were [he] to recommend that the Respondent's [registration] be revoked.'' *Id.* The ALJ added that he ''would reach the same conclusion even if the Government had proven all of its allegations in this weak case.'' *Id.* Thus, the ALJ recommended that I not revoke Respondent's registration and that I approve any pending application for renewal. *Id.* The ALJ further recommended that I find that the testimony of the Government's sole witness was not sufficiently credible to support any of the Government's remaining recordkeeping charges. *See, e.g., id.* at 4, 15 n.17, 19 n.25, 21 n.28, 34.

Nonetheless, the ALJ found that this recordkeeping violation ''merits the imposition of a sanction'' and found that ''Respondent's recordkeeping violation to be egregious . . . because it prevented the DEA from being able to use the Respondent's own records to conduct an accurate audit of the

May 12, 2016 Prehearing Statement and during Government counsel's Opening Statement at the administrative hearing. *See* ALJ Ex. 7, at 8; Tr. 15. In addition, although the Order erroneously referenced Section 821 of Title 21 of the United States Code for this charge, the Government corrected the error in its May 12, 2016 Prehearing Statement to Section 842 of Title 21. *See* ALJ Ex. 7, at 8 (''Respondent's failure to provide the DEA–222 form for this shipment was in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1305.17(a).''). I find that these errors were merely scrivener's errors and that Respondent had adequate notice of the charged violation.

[3] ''[P]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.'' *Moore Clinical Trials, L.L.C.,* 79 FR 40145, 40159 n.34 (quoting *Citizens States Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984)) (internal citations and quotations omitted). ''An agency is not required to give every [Respondent] a complete bill of particulars as to every allegation that [he] will confront.'' *Id.* (quoting *Boston Carrier, Inc.* v. *ICC,* 746 F.2d 1555, 1560 (D.C. Cir. 1984)) (internal citations and quotations omitted). ''Thus, the failure of the Government to disclose an allegation in the Order to Show Cause is not dispositive, and an issue can be litigated if the Government otherwise timely notifies a respondent of its intent to litigate the issue.'' *Id.* (quoting *George Mathew, M.D.,* 75 FR 66138, 66146 n.20 (2010)); *see also Darrell Risner, D.M.D.,* 61 FR 728, 730 (1996) (''the parameters of the hearing are determined by the prehearing statements'').

[4] On August 23, 2016, Respondent filed a Motion to Supplement the Record requesting that the ALJ accept new exhibits. ALJ Ex. 14. Specifically, Respondent requested leave to supplement the administrative record with the back pages of certain DEA 222 forms entered into evidence at the hearing to rebut a Government witness's testimony about the instructions contained on those back pages. *Id.* at 1–2. Respondent also attached to his motion the affidavit of Matilda Buchanan, who identified and copied these DEA 222 form back pages for purposes of the motion and who prepared the proposed exhibits. See Exhibits 1–2 to ALJ Ex. 14.

On August 29, 2016, the Government filed its ''Opposition to Respondent's Motion to Supplement the Record and Government's Motion for Leave to File Responding Affidavit.'' ALJ Ex. 16. As a threshold matter, the Government contended that Respondent failed to establish that he had good cause for failing to identify the back pages of the DEA 222 forms as exhibits by July 26, 2016, when supplemental prehearing statements were due—even though Respondent knew that the DEA 222 forms would be introduced and discussed at the hearing. *Id.* at 1–2 (citing 21 CFR 1316.57), 5. The Government argued that Respondent's post-hearing motion was an attempt ''to rectify his perceived oversights made at the hearing'' for failing to introduce these back pages as part of his case, during cross-examination of the Government's witness, or in a rebuttal case. *Id.* at 3. The Government also argued that, in any event, Respondent had failed to establish a proper foundation for these supplemental exhibits, and that the Government can no longer cross-examine Respondent's affiant, whose affidavit was submitted in support of these exhibits. *Id.* at 3–4. Finally, the Government requested leave to file its own affidavit in response to Respondent's affidavit in the event the ALJ granted Respondent's motion. *Id.* at 5.

On the same day, the ALJ issued an order denying Respondent's Motion. ALJ Ex. 17. The ALJ found that Respondent did ''not set forth any reasons in his Motion for failing to submit these additional exhibits by the July 26, 2016 deadline.'' *Id.* at 2. The ALJ also found that ''Respondent had the originals of these exhibits at the hearing and made no attempt to offer the back side of the 222 Forms into evidence at that time. Therefore, the Respondent has not established the requisite good cause for failing to submit these exhibits in a timely manner.'' *Id.* Finally, the ALJ found that admitting ''Respondent's proposed exhibits would be unfairly prejudicial to the Government'' because it ''no longer ha[d] the opportunity to cross-examine Buchanan on the production of the Respondent's additional exhibits, or to introduce additional rebuttal testimony or evidence.'' *Id.* I agree with the ALJ's ruling.

controlled substances for which the Respondent was accountable.'' *Id.* at 45. As a result, the ALJ recommended that I place the following five restrictions on Respondent's registration:

1. That he may not participate in any drug studies in which he is required to order, maintain, store, or dispense controlled substances for a period of four years.

2. That he may not order, maintain, store, or dispense any controlled substances at his registered location for a period of four years.

3. That restrictions one and two, above, will not be lifted, even after four years, until the Respondent has completed a course in controlled substance recordkeeping, a course in controlled substance storage, and a course in the administration of controlled substances, and provides the DEA with evidence of completion of these courses. These courses may not be used to meet any continuing medical education requirement.

4. That prior to renewal of the Respondent's [DEA registration], he sign a document consenting to inspections by DEA personnel of his medical practice without the need for DEA personnel to obtain an administrative inspection warrant prior to conducting an inspection. By the terms contained in the consent form, the consent shall be valid for four years from the date his current renewal application for a [DEA registration] is approved. This consent form is to be delivered to the Respondent's local DEA Field Office.

5. That prior to renewal of the Respondent's [DEA registration], he sign a document consenting to the conditions set forth in Paragraphs one and two above and acknowledging his understanding that his failure to comply with the terms of those conditions will constitute an independent basis for administrative enforcement proceedings by the DEA. This consent and acknowledgement document shall be delivered to the Respondent's local DEA Field Office.

Id. at 46.

On December 19, 2016, Respondent's counsel filed a ''Notice of Respondent's Intent to Comply with Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision'' in which he stated that Respondent ''intends to immediately comply with the Court's Recommended Disposition.'' ALJ Ex. 23, at 1. Respondent also stated that he executed a document attached as Exhibit A to his Notice entitled ''Consent to Conditions and Acknowledgment.'' *See id.*

On December 23, 2016, the Government filed Exceptions to the Recommended Decision. ALJ Ex. 24. In its Exceptions, the Government contended that the ALJ committed error in finding that Respondent was a more credible witness than the Government's witness, a Diversion Group Supervisor (GS). *Id.* at 2. The Government further argued that accepting the credibility of the testimony of the GS over Respondent's testimony would require sustaining the Government's remaining recordkeeping charges because the ALJ's recommendations regarding those charges ''hinge[d] on his evaluation of the credibility of the Government's investigator and the Respondent.'' *Id.* at 2 & n.3. Respondent did not file a response to the Government's Exceptions.

Thereafter, the ALJ forwarded the record to me for final agency action. Having considered the record in its entirety, including the Government's Exceptions, I agree with the ALJ's conclusions that the Government failed to prove its first, second, third, and fifth recordkeeping charges that Respondent failed to maintain an initial inventory, maintain complete and accurate dispensing records, provide the DEA 222 form dated January 16, 2014, and maintain his inventory and dispensing records at the registered location. I also agree with the ALJ that the Government sustained the Show Cause Order's first charge regarding Respondent's pre-signing of prescriptions and the Order's fourth recordkeeping charge regarding Respondent's failure to properly annotate two DEA 222 forms. Furthermore, I agree with the ALJ that the sustained fourth recordkeeping charge also constituted a violation of the MOA. Finally, I also agree that Respondent has accepted responsibility for both of these charges.

Most importantly, while I agree with the ALJ that the sum of Respondent's misconduct does not warrant revocation of Respondent's registration, I disagree with the ALJ's recommendation that the sanction in this case should be limited to the ALJ's recommended restrictions to Respondent's registration. Accordingly, and for reasons I set forth more fully below, I conclude that the relevant factors support suspension of Respondent's registration for a period of one month, in addition to the imposition of the restrictions that the ALJ recommended following termination of the suspension. As the ultimate fact finder, I make the following findings of fact.

Findings of Fact

Respondent is the holder of DEA Certificate of Registration BN4578057, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 5106 McLanahan Drive, Suite B, North Little Rock, Arkansas. *See* Attachment to ALJ Ex. 7; Respondent's Exhibit (hereinafter RX) A, at 1. Respondent's registration was due to expire on October 31, 2016. *See id.* On September 12, 2016, Respondent submitted a renewal application.[5] Government's Proposed Findings of Fact and Conclusions of Law (ALJ Ex. 20), at 1 n.2. Because Respondent has submitted a timely renewal application, I find that Respondent's DEA registration has remained in effect pending the issuance of this Decision and Final Order. *See* 5 U.S.C. 558(c); *Perry County Food & Drug,* 80 FR 70084, 70089 n.17 (2015).

Respondent is an allopathic physician who is licensed to practice medicine in Arkansas. Transcript (Tr.) 137; RX D. His specialty is anesthesiology, and his current medical practice focuses on pain management. Tr. 32, 137–38. During the hearing, Respondent submitted evidence establishing that his Arkansas license to practice medicine was active and due to expire on April 30, 2017. RX D, at 1. I have reviewed the official website of the Arkansas State Medical Board (ASMB), and it shows that his Arkansas medical license is still active and is now due to expire on April 30, 2019. Thus, I take official notice that Respondent currently holds an active license to practice medicine from the ASMB.[6]

The Prior Criminal and Administrative Proceedings

The parties agreed to 12 stipulations, most of which relate to Respondent's prior criminal and administrative proceedings.

Prior State Administrative Proceedings

The parties stipulated that on June 8, 2006, the ASMB issued an Emergency Order of Suspension suspending Respondent's Arkansas medical license. ALJ Ex. 9, at 1. The Order alleged that Respondent violated Ark. Code Ann. §§ 17–95–409(a)(2)(e), 17–95–409(A)(2)(g), and 17–95–704(E)(1), (2) and federal laws ''regulating the possession, distribution, or use of narcotic or controlled drugs'' because ''he prescribed or administered scheduled drugs intended to manage

[5] The parties stipulated that Respondent had previously renewed his DEA registration on December 9, 2010 and on October 21, 2013. ALJ Ex. 9, at 2.

[6] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

pain for a patient who had chemical dependencies on said controlled drugs and who was diverting said medication for his addiction.'' Government Exhibit (GX), at 1. This Order also alleged that

> more specifically, he has pre-signed prescriptions leaving the name of the patient, substance and the instructions for taking the medication blank and permitting his office personnel, who are not licensed physicians, to fill in the prescription. A prescription pad, which had all the prescriptions signed by Brian Thomas Nichol, M.D. with the rest left blank, was found in his office pursuant to a [federal] search warrant . . . on the 19th of April 2006.''

Id. at 1–2. In the same vein, the Order alleged that Respondent permitted such office personnel to dispense and administer scheduled medications to at least three patients, and fraudulently billed one of these patients for $22,600. *Id.* at 2–3. The Order further alleged that Respondent ''performed medical procedures and engaged in the practice of medicine in the State of Arkansas . . . while not having a valid Arkansas license'' to do so. *Id.* at 2. Based on these allegations, the ASMB found that Respondent's acts ''endanger[ed] the public health, safety and welfare'' and suspended his state license on an emergency basis pending a hearing. *Id.* at 3.

The parties further stipulated that on August 17, 2006, the ASMB held an administrative hearing based on the allegations set forth in the ASMB's Emergency Order, and issued its Final Order on the same day. *See* ALJ Ex. 9, at 1; GX 2. The parties also stipulated that ''[t]he ASMB's final order did not include all of the allegations made in the 'Emergency Order.' '' ALJ Ex. 9, at 2. However, the ASMB's Final Order does state findings that Respondent ''admitted in testimony that he has violated the laws of the United States and the State of Arkansas regulating the prescribing of scheduled medication, more specifically, he has pre-signed prescriptions, and not written on the prescription the name of the patient, the substance prescribed, and instructions for taking the medication.'' GX 2, at 1. The ASMB also found that Respondent admitted that he ''permitted his office personnel, . . . who are not licensed as physicians, nor authorized to prescribe medication, to fill in the blanks on the prescription pad and distribute them to patients, even without Dr. Nichol being present.'' *Id.*

The parties stipulated that the ASMB found that this conduct violated Arkansas and federal laws. ALJ Ex. 9, at 1–2; *see* GX 2, at 3. As a result of these findings, it is also undisputed that the ASMB suspended Respondent's Arkansas medical license for six months and that the ASMB lifted this suspension on February 2, 2007. *See* ALJ Ex. 9, at 2; GX 2, at 3. I also find that, in its final order, the ASMB fined Respondent over $10,000 and directed him to complete ''courses in (1) Office Management, (2) The Prescribing of Scheduled Medication and [DEA] Laws and Regulations . . ., and (3) a course on boundaries.'' GX 2, at 4.

During the hearing, Respondent testified that he ''did'' what ''was alleged to have happened'' by the ASMB in 2006. Tr. 162. That is, he admitted that he improperly pre-signed prescriptions for controlled substances and that he ''take[s] responsibility'' for it. *Id.* at 274. Respondent testified, however, that there were no allegations of ''diversions [sic] resulting from that'' conduct. *Id.* at 162. Respondent later testified more broadly that he agreed to the conditions of the MOA ''even though there was [sic] never any allegations of diversion.'' *Id.* at 174. However, the ASMB's earlier Emergency Order alleged that Respondent ''prescribed or administered scheduled drugs intended to manage pain for a patient who had chemical dependencies on said controlled drugs *and who was diverting said medication* for his addiction.'' GX 1, at 1 (emphasis added). More specifically, the ASMB also alleged that Respondent ''prescribed or administered controlled substances when he knew or should have known that his patient was utilizing the drugs for non-therapeutic purposes and was chemically dependent on said drugs.'' *Id.* at 3. Thus, while I accept Respondent's testimony that he admitted to improperly pre-signing prescriptions, I do not accept Respondent's statement that there were never any allegations of diversion against him.

Based on Respondent's representation in his testimony, the ALJ found that Respondent has written every prescription himself since the expiration of the state's suspension. R.D., at 10 (citing Tr. 166). The Government introduced no evidence contradicting Respondent's testimony. Thus, I find that there is no evidence that Respondent resumed pre-signing prescriptions after his suspension by the ASMB.

Prior Federal Criminal Proceedings

The parties stipulated that on January 8, 2008, 11 months after the reinstatement of his state medical license, Respondent pled guilty in the United States District Court for the District of Arkansas to a one-count criminal information charging him with felony health care fraud under 18 U.S.C. 1347. ALJ Ex. 9, at 2; *see also* GXs 3–4. That federal court sentenced Respondent to five years of probation and directed him to pay $15,400.69 in restitution and criminal penalties. ALJ Ex. 9, at 2; GX 4, at 2, 4. It is also undisputed that the court terminated Respondent's probation period early on September 20, 2011. R.D., at 6; Tr. 8.

The parties also stipulated that on October 20, 2008, the U.S. Department of Health and Human Services (HHS) excluded Respondent from participation in the Medicare and Medicaid programs for five years pursuant to 42 U.S.C. 1320a–7(a). ALJ Ex. 9, at 2; *see* GX 5. The parties agree that HHS removed this exclusion on August 11, 2014. R.D., at 7; Tr. 9.

Prior DEA Administrative Proceedings

The Group Supervisor testified that DEA ''first bec[a]me aware of Dr. Nichol'' in 2011 after DEA received an application for a registration as a researcher from Moore Clinical Trials. Tr. 28. ''[I]n the review of that application, we became aware that Dr. Nichol was associated with Moore Clinical Trials . . . we saw that there was a current research study going on[,] and we noticed several violations of [DEA regulations] and the Controlled Substances Act.'' *Id.* More specifically, she testified that DEA conducted an investigation of both Moore Clinical Trials and Respondent and ''looked at the records and found that the receiving records and dispensing records weren't up to the regulations.'' *Id.* at 28–29. As a result, DEA brought separate administrative actions against each of them in 2011—one against Moore Clinical Trials to deny its application for a DEA registration as a researcher, and the other against Respondent to revoke his DEA registration as a practitioner. *See id.* at 28–29; GX 6.

With respect to Moore Clinical Trials, the GS testified that ''subsequently the application for Moore Clinical Trials was denied.'' *Id.* at 29. In fact, the Agency issued and published its final decision and order denying Moore Clinical Trials' application pursuant to an August 8, 2011 Show Cause Order. *Moore Clinical Trials, L.L.C.,* 79 FR 40145, 40145 (2014). In that decision, the then-Administrator found that Moore Clinical Trials ''entered into a contract with Dr. Brian Nichol, an interventional pain management specialist, to perform clinical research for it pursuant to contracts it might obtain from CROs [contract research organizations].'' *Id.* at 40148. The then-Administrator noted the ALJ's finding that '' 'the documents kept by Dr.

Nichol,' who was supervising . . . clinical trials on behalf of [Moore Clinical Trials], 'were deficient' and that the order forms for Schedule II controlled substances (DEA–222) 'were lacking.' '' *Id.* at 40147 (quoting ALJ's Recommended Decision). ''The ALJ also found that 'Dr. Nichol transported controlled substances to [Moore Clinical Trials'] location,' where he was not registered to dispense them.'' *Id.* The then-Administrator also noted that ''the ALJ found that the evidence is clear that Nichol's records did not comply with the Controlled Substances Act or DEA regulations'' and '' 'Nichol[] fail[ed] to meet his responsibilities as a registrant.' '' *Id.*

The then-Administrator made additional specific fact findings in *Moore Clinical Trials* regarding Respondent. Specifically, she found that on March 30, 2011, Moore Clinical Trials and Respondent ''entered into a Clinical Trial Agreement (CTA) with Quintiles, to participate in the NKTR–118 [7] long-term safety study.'' *Id.* at 40149. She further found that, during the investigation of Moore Clinical Trials, the DI in the case ''contacted Mr. Jim Phillips, Dr. Nichol's attorney,'' who ''acknowledged that Nichol was involved in the study and that he was transporting the controlled substances to [Moore Clinical Trials] and dispensing them.'' *Id.* at 40150. ''The DI also requested of Mr. Phillips that Dr. Nichol provide his records, including the dispensing records and the schedule II order forms (DEA Form 222).'' *Id.* The then-Administrator found that the ''evidence also shows that in response to the GS's request (through Dr. Nichol's attorney) for Dr. Nichol's dispensing records, Nichol provided the GS with the records.'' *Id.* at 40156. The then-Administrator accepted the GS's testimony that the original DEA 222 forms related to the NKTR–118 study ''were kept at Dr. Nichol's registered location'' and that ''the forms did not indicate the date the drugs were received and the quantity received.'' *Id.* at 40151 (internal quotations and citations omitted), 40156 (adopting GS's testimony that ''she examined the Schedule II order forms and noted that they had not been completed by indicating the date the drugs were received and the quantity received''). Ultimately, the then-Administrator concluded that ''the record clearly establishes that Dr. Nichol violated both the separate registration provision and DEA recordkeeping requirements.'' *Id.* at 40155.[8]

With respect to the instant charges against Respondent, the parties stipulated that DEA issued a Show Cause Order against Respondent on September 27, 2011 proposing the revocation of his DEA registration on the ground that it is ''based, *inter alia,* on the findings of the ASMB and respondent's exclusion from Medicare and Medicaid.'' ALJ Ex. 9, at 2; *see also* GX 6. More specifically, the 2011 Show Cause Order proposed to revoke his registration as ''inconsistent with the public interest'' based on three allegations. GX 6, at 1 (citing 21 U.S.C. 823(f), 824(a)(4)). First, the 2011 Order alleged that Respondent's pre-signing of controlled substances prescriptions, as found by the ASMB, warranted revocation. *Id.* (citing 21 U.S.C. 824(a)(3), (4)). Second, the 2011 Order alleged that Respondent's registration must be revoked because of his exclusion for five years from participation in a Medicare and Medicaid program under 42 U.S.C. 1320a-7(a). *Id.* at 2 (citing 21 U.S.C. 824(a)(5)). Lastly, the 2011 Order alleged that, ''[o]n or about September 17, 2010, [Respondent] contracted with a controlled substance researcher [Moore Clinical Trials] to administer controlled substances [9] to research subjects. The owner/operator of this research clinic has no experience handling controlled substances, and you [Respondent] and the owner/operator [of Moore Clinical Trials] gave conflicting information about the operation of this research clinic.'' *Id.*

The parties have further stipulated that Respondent entered into an MOA with DEA to resolve the allegations in the 2011 Show Cause Order,[10] and that the MOA became effective on April 27, 2012.[11] ALJ Ex. 9, at 2; GX 7. The GS testified that the MOA was ''an intermediary step trying to get [Respondent] into compliance.'' Tr. 29.[12] Both Respondent and his investigator/assistant, Matilda Buchanan, testified that the MOA was the product of back-and-forth negotiations by the parties. *Id.* at 173–74 (Respondent testifying that ''there was some negotiation back and forth before we settled on the final agreement'' and ''I think it was the third or fourth [version] that we were both able to agree to terms on''), 425–26 (Ms. Buchanan testifying that ''drafts were sent back and forth'' and that ''we went over line by line both what the MOA said and then what does that mean by what it said'').

The MOA imposed the following conditions, in pertinent part, on Respondent:

1. Respondent must ''abide by all Federal, State and local statutes and regulations relating to controlled substances.''

2. Respondent must ''make and keep records of all controlled substances that he

[7] ''NKTR–118'' is the drug Naloxol 6a-methoxyhepta (ethylene glycol) ether. *Id.* at 40148. ''The [full] name of the study was: 'An Open-Label 52-week Study to Assess the Long-Term Safety of NKRT–118 in Opioid-Induced Constipation (OIC) in patients with Non-Cancer-Related Pain.' '' *Id.* at 40148 n.4.

[8] The then-Administrator also found that ''it is undisputed that the dispensing record for each study—which Dr. Nichol provided—was not created until August 27, 2012, well after all of the dispensings were made. The CSA requires, however, that a dispensing record be 'maintain[ed], on a current basis.' 21 U.S.C. 827(a)(3).'' *Id.* at 40156 (internal citations omitted).

[9] The Memorandum of Agreement resolving the 2011 Order, discussed more fully *infra,* specified that the alleged controlled substance referenced in that Order's third allegation was NKRT–118. *See* GX 7, at 1.

[10] This stipulation is also consistent with how the then-Administrator characterized the MOA. *Moore Clinical Trials,* 79 FR at 40151 n.10 (''Notwithstanding these allegations [in the 2011 Show Cause Order], the Agency allowed Dr. Nichol to retain his registration subject to various terms and conditions'' set forth in a Memorandum of Agreement (MOA)); *see also* GX 7.

[11] The Special Agent in Charge for DEA's New Orleans Division approved and signed the MOA on April 17, 2012, Respondent and his counsel signed it on April 20, 2012, and DEA's counsel signed it on April 27, 2012. GX 7, at 4.

[12] The ALJ questioned this testimony based on his finding that that the MOA ''does not address any of the alleged violations contained in the 2011 [Show Cause Order].'' R.D., at 10. The ALJ's assessment is confusing for at least two reasons. *First,* the parties stipulated that the MOA does, in fact, resolve the 2011 Order's allegations against Respondent, ALJ Ex. 9, at 2, and the ALJ accepted the parties' stipulation. R.D. at 7. That the parties repeated the allegations from the 2011 Show Cause Order in the MOA itself, *see* GX 7, at 1–2, makes the fact that the parties intended the MOA to address and to resolve the 2011 Order's allegations irrefutable. Apart from the parties' agreement, the third allegation of the 2011 Order (though unartfully worded) clearly references Respondent's role in the operations of Moore Clinical Trials. As already noted, Moore Clinical Trials received its own Show Cause Order in August 2011, less than two months before the September 2011 Show Cause Order that was issued to Respondent.

From there, Respondent and Moore Clinical Trials took two different procedural paths. Respondent entered into an MOA and retained his DEA registration subject to the MOA's conditions; Moore Clinical Trials went to hearing and the Agency issued a final decision and order denying its application for a DEA registration. As already noted, *Moore Clinical Trials* discussed Respondent's recordkeeping violations (which precede the ones in this case) at length. When comparing that discussion to the MOA, it is obvious that the MOA addresses the allegations against Respondent and reflects the ''intermediary step'' that the GS referenced in her testimony. *See* 79 FR at 40151 n.10 (''Notwithstanding these allegations, the Agency allowed Dr. Nichol to retain his registration subject to various terms and conditions'' set forth in the MOA).

Second, in any event, even if the MOA had failed to address the allegations in the 2011 Show Cause Order, as the ALJ suggested, he failed to explain why that is relevant. What is relevant is the fact that Respondent and the Government agreed that the MOA resolved the 2011 Show Cause Order.

prescribes, dispenses and administers at his DEA registered location. These . . . dispensing records shall include all the information . . . set forth and required by 21 CFR 1306.05(a) and 1304.21 where applicable. These . . . dispensing records shall be available for inspection as set forth in paragraph 4 of this Agreement.''

3. Respondent must ''make and keep a legible log of all Schedule II–V controlled substances that he prescribes for his patients.''

4. Respondent must ''retain the records of the prescribing, administering and dispensing records, as described in paragraph 2, at his DEA registered location and agrees to allow DEA personnel access to his controlled substance records for [these] records as described in paragraph 2 for purposes of verifying his compliance with this Agreement and with all Federal, state and local statutes and regulations relating to controlled substances.''

5. ''During the duration of the Agreement, Dr. Nichol shall notify DEA in writing if he will prescribe, dispense, or administer controlled substances at any other location other than his DEA registered address or Springhill Surgery Center. . . .''

6. Respondent ''shall not order or receive any controlled substances except for controlled substances that he orders and receives at his DEA registered location. . . . As the physician, who is contracted to administer the FDA approved study drug NKTR–118, [Respondent] will administer that drug at either his DEA registered location or at an approved site for the current drug study. . . . [Respondent] agrees that for the duration of this agreement if he is asked to participate in additional drug studies involving controlled substances, he will notify DEA in advance of commencing the study.''

7. Respondent ''understands and agrees that any violations of the Agreement may result in the initiation of proceedings to revoke or immediately suspend and revoke his DEA Certificate of Registration. . . . DEA and [Respondent] agree this is a final agency action on all matters in dispute. DEA will not seek to revoke [Respondent's] DEA registration or deny any renewal applications unless [Respondent] substantially violates this Agreement or unless [Respondent] commits additional acts that constitute grounds under 21 U.S.C. 823(f) and 824(a).''

GX 7, at 2–4. The MOA also stated that these conditions would remain in effect for three years. *Id.* at 4.

The Quintiles Clinical Trial and Study

On July 11, 2012, Respondent, Moore Clinical Trials, and Quintiles, Inc. entered into a ''Clinical Trial Agreement Effective July 6, 2012'' (hereinafter, CTA) to conduct a study related to opiate induced constipation. RX N, at 1, 11; Tr. 35. The CTA prescribed a role for each party. Respondent was the ''principal investigator'' of the study. Moore Clinical Trials, located at 3508 JFK Blvd., Suite #1, North Little Rock, Arkansas, was the ''INVESTIGATIVE SITE'' for the study. RX N, at 1. And Quintiles was an independent contractor acting on behalf of the ''Sponsor'' of the study (Purdue Pharma, L.P.) and would ''arrange and manage'' the clinical trial. *Id.*

This study was designed to be a double blind study in which Respondent would dispense oxycodone, which is a schedule II controlled substance, to study patients. Tr. 35, 182 (the study was a ''double blind, double dummy placebo controlled study''). However, because this was a double blind study, Respondent did not know what other type of medication a study patient received. *Id.* at 35, 184. Respondent first placed an order for controlled substances related to the study on December 3, 2012, and on December 31, 2012, he notified the GS (by letter from his attorney) that he was participating in the study. *Id.* at 93–94, 120–21; *see* RX R, at 1. In the letter, Respondent's attorney, Mr. Phillips, added that ''[t]his trial is to begin in January 2013. . . . [T]his notice is our compliance with paragraph 6 of the MOA. Dr. Nichol will only administer the study drugs at his DEA approved address.'' RX R, at 1.

Although the complete email that the GS sent in response to Mr. Phillips' December 31, 2012 letter is not in the record, the January 17, 2013 letter that Mr. Phillips sent to the GS in response to that email was admitted into evidence. *See id.* at 3. Specifically, the January 17, 2013 letter states that it is in response to two questions posed in a January 11, 2013 email that the GS had sent to Mr. Phillips in response to his earlier letter. *Id.* The response to the first question apparently posed by the GS regarded when the study would begin and how long it would be. *See id.* Mr. Phillips stated that ''the study we referred to should begin January 2013. The study length is approximately 22 weeks for each subject enrolled. . . . Enrollment is ongoing until the clinical trial end points are met. In all likelihood, the study will be about a year in length.'' *See id.* The second response was to the GS's ''other question'' asking ''What is the location and your understanding of the 'approved' DEA address?'' *Id.* Mr. Phillips stated that the address to which he was referring was Respondent's registered location of ''5106 McLanahan, Suite B, North Little Rock, AR 72116,'' and that ''[a]ll study drugs will be administered at this DEA-approved address.'' *Id.*

Mr. Phillips' response to the first question is consistent with Respondent's testimony at the hearing. Specifically, he testified that ''we expected to start enrolling patients in the study . . . to start in Januaryish [sic].'' Tr. 401. Respondent testified that enrollment is when they have ''met all the qualifications for it and are actually starting to see me as a patient. That's enrolled.'' *Id.* There is no evidence in the record contradicting this testimony. Thus, I find that Respondent began enrolling patients for the Quintiles study in January 2013.

Mr. Phillips' response to the second question is consistent with the GS's and Respondent's testimony regarding the study. The GS testified that it was her ''understanding that Dr. Nichol does the physical evaluations and actual dispensing of the controlled substances from his registered location.'' Tr. 36. ''[T]he other types of monitoring and testing is done at Moore Clinical Trials.'' *Id.* The GS further testified that it was her understanding that the study ''concluded in June of 2014.'' *Id.* Respondent testified that he first saw study patients in February 2013. *Id.* at 210–211. Respondent's dispensing log is also consistent with this testimony, showing that the first time he dispensed a controlled substance (here, oxycodone) to a patient as part of the study was February 18, 2013. RX U, at 1.[13] Thus, I find that Respondent first dispensed controlled substances to study patients on February 18, 2013. *Accord* R.D., at 13.

During the term of the CTA, Quintiles and the Sponsor reserved the ''right to audit'' Moore Clinical Trials' ''facilities, records and documentation.'' RX N, at 6. Respondent testified that such audits included Quintiles inspectors visiting Respondent's office as well to review his study documentation. Tr. 189–90. Respondent testified that Quintiles' inspectors or monitors ''would do a complete inventory of all the narcotics.'' *Id.* at 190. Respondent also said that the monitors required him ''to get the inventory down to the serial number of each individual kit, down to the serial number of each individual bottle. Any returns that the patient had, they would count each individual one. They would account for those quantities.'' *Id.* Finally, Respondent stated that he would ask the monitor ''when she was wrapping things up is is [sic] my pill count fine. . . . And every time I had

[13] Respondent testified that he ''had seven or eight'' study patients who ''actually enrolled in the study and only one patient, I think, or two patients that completed this study all the way to the end.'' Tr. 358, 398 (''I had two [patients who] completed it''). Respondent defined ''completed'' as ''when they've gone through the full length of the study to . . . where they actually completed the study at the end.'' *Id.* at 401.

full count of the narcotics. So there wasn't any diversion.'' *Id.* at 191.

Most important, Respondent testified that Quintiles had provided records that allowed for a calculation of every controlled substance pill received and that Quintiles accounted for every pill at the end of the study. *Id.* at 187, 301. To support this claim, Respondent introduced a series of documents prepared by others which the ALJ admitted into the record. For example, Respondent introduced copies of a series of reports or reviews prepared by Quintiles (and obtained from Moore Clinical Trials) of Quintiles monitors' site visits to Respondent's office to ensure he was following the drug study protocol. *See* RX Y; Tr. 262–63, 378–79, 454–56. Respondent also introduced accountability logs kept at Moore Clinical Trials for the drug study. RX Z; Tr. 456–57. Finally, Respondent introduced copies of work records that Quintiles had created during site inspections and while conducting their inventories. RX AA; Tr. 457–58. However, none of these documents, separately or taken together, were sufficient to make an accurate pill count. Moreover, Respondent failed to introduce any other documentary evidence or testimony from a Quintiles employee corroborating Respondent's testimony that Quintiles' records allowed for an accurate ''pill count'' of the pills Respondent had received. *Accord* R.D., at 18 nn. 22–23. At the same time, the Government offered no documentary evidence or testimony from a Quintiles employee to rebut Respondent's testimony. *See id.*

Indeed, it is equally possible for Quintiles to have done a ''complete inventory'' and found that Respondent's pill count was ''fine,'' and at the same time for Respondent to have nonetheless failed to maintain complete and accurate dispensing records pursuant to the CSA and as alleged in the Show Cause Order's second recordkeeping charge. Respondent's recordkeeping is what is at issue in this case, not Quintiles' recordkeeping. Without a showing by a preponderance of the evidence that the recordkeeping requirements of Quintiles and the CSA are coextensive, I find that Respondent's testimony regarding the Quintiles audits and documents in the record rests on too thin a reed for me to accord it meaningful evidentiary weight regarding whether Respondent's recordkeeping complied with the CSA and DEA's regulations.

The July 9, 2014 On-Site Inspection

Inspection of Respondent's Registered Location

The parties stipulated that on ''July 9, 2014, while the MOA was still in effect, DEA conducted an on-site inspection of Respondent's registered location.'' ALJ Ex. 9, at 3. Three DIs participated in the inspection. *See id.;* ALJ Ex. 7, at 4 & n.1; ALJ Ex. 11, at 1 n.1. The DI who had lead responsibility for conducting the inspection was unable to testify at the hearing for medical reasons. ALJ Ex. 11, at 1 n.1. Although a third DI accompanied the GS and the lead DI who conducted the on-site inspection, that third DI also did not testify. Thus, only the GS testified on behalf of the Government at the hearing. *Id.*

The GS testified that the DIs ''went to Dr. Nichol's registered location . . . to ensure that he was in compliance with the MOA.'' Tr. 31. Under the MOA, Respondent had agreed ''to allow DEA personnel access to his controlled substance records for the prescribing, administering, and dispensing records . . . for purposes of verifying his compliance with [the MOA] and with all Federal, state and local statutes and regulations relating to controlled substances.'' GX 7, at 2. Although the inspection was unannounced, Respondent allowed the DIs ''access onto the premises to review records . . . [a]nd he signed an actual Notice of Inspection.'' Tr. 99; *see also id.* at 31–32; July 9, 2014 Notice of Inspection (GX 8). The inspection period was from December 19, 2012 through July 9, 2014. Tr. 38, 62. The inspection took one hour, and the GS testified that Respondent's ''assistant Xeroxed for us the documents we needed.'' *Id.* at 102.

Initially, the DIs asked Respondent where the ''study drugs'' were ''because at that point in time we didn't know the study had been completed.'' Tr. 99. Once it became clear that Respondent no longer had any study drugs and ''that there were no drug destructions during that time period or theft or losses'' (*id.* at 39–40), the GS testified that ''we asked for any incoming documents [sic] receipts. We asked for any inventories. We also asked for any outgoing records which could include dispensing records, returns, theft and loss reports, drug destruction. Anything showing the movement of controlled substances in or out of that registered location.'' *Id.* at 36–37. The GS stated that ''this is typical of any inspection.'' *Id.* at 36. When asked if she could ''be more specific about what inventories and dispensing records you specifically asked for,'' she responded that ''[w]e asked for an initial inventory . . . We asked for receipts. And because these are Schedule II controlled substances, we asked for DEA order form 222s.'' *Id.* at 37–38; *see also id.* at 102 (''We asked for dispensing records, inventories. . . . we ask for any kind of documents showing receipts or dispensations.''). She also testified that ''[h]e did not have an inventory on hand.'' *Id.* at 52.

Respondent testified that he did not ''recall'' whether the GS had asked for his DEA 222 forms or dispensing logs and stated that he ''d[id]n't think'' she had asked for his inventory. Tr. 213. Instead, he stated that the DIs ''wanted my paperwork for the study.'' *Id.* at 212–13, 214 (''When they found out there weren't any drugs there to collect, they wanted the paperwork''). In response, Respondent stated that he made his DEA 222 forms ''available for Agent Barnhill to review,'' and the GS acknowledged that the DIs reviewed at least some of these forms. *Id.* at 39, 214; *see also* RX S. Respondent also stated that he ''kept a green binder with all of the computation charts'' (that Respondent stated included an initial inventory) and ''provided'' them and his dispensing log ''to the agents when they came to see me in my office on July 9th.'' Tr. 224, 226, 236–37; RX U; RX V.[14]

The GS acknowledged that Respondent ''did give us some documents'' and that the DIs reviewed these documents ''in his office.'' Tr. 101, 102 (''he showed us some documents''). The GS recalled that Respondent ''produced five DEA 222 order forms for purchase. And he gave us two DEA order forms for returns back to the supplier.'' *Id.* at 39; *see* GX 9 (DEA 222 forms submitted by the Government). During cross-examination, Respondent's attorney asked the GS:

> Q Did [Respondent] show you documents other than the 222 forms? He did, didn't he?
> A I don't recall that.
> Q You don't recall that?
> A No.

Tr. 102–03. Whatever other documents Respondent may have provided to the GS, she did not recognize them as an initial inventory or as dispensing records. *See id.* at 39 (GS's testimony that Respondent ''was unable to produce the initial inventory that we requested. And he was unable to produce dispensing records'').

The GS testified that she did not recall giving Respondent a ''written list

[14] The ALJ recommended that I find that ''Respondent provided the DEA investigators his 222 Forms, his dispensing logs, and an initial inventory.'' R.D., at 15 (citing Tr. 214). In the testimony cited by the ALJ, however, Respondent only testified that he made the DEA 222 forms ''available for [the GS] to review.'' *See* Tr. 214.

of items'' that the DIs had requested. Tr. 100. She also testified that she did not provide Respondent (1) a list of items that the DIs did in fact receive, (2) a list of items to which she had testified were missing, or (3) a list of items that the DIs photocopied on the date of inspection. *Id.* at 100–01, 112 (''Records can be fabricated. So, no, we don't leave a list. The records must be onsite when we arrive.''). Respondent testified that, had the DIs advised him that he was missing something, he would have provided it to them. *Id.* at 236.

The GS's use of the phrase ''we'' or ''us'' is significant and occurs frequently throughout her testimony regarding the inspection. In these instances, she was either testifying to what she remembered hearing someone else (presumably, the lead DI) ask Respondent, *e.g.,* Tr. 103 (GS testifying that she was ''present when [the lead DI] asked [Respondent] for documents''), or she was testifying to what she would typically request from a registrant during an inspection (or to both). *See id.* (GS's testimony that she did not ''take notes of what was asked for'' but noted that ''[i]t's the same things we ask for every time'').[15] In any event, the GS did not testify that she herself made these requests of Respondent, and she did not ''take notes of what was asked for.'' *Id.* Thus, while the record is clear that the GS did not recall reviewing documents that she recognized as an initial inventory or as dispensing logs at Respondent's office during the inspection (*id.* at 39), the record is unclear whether the other two DIs reviewed and recognized what Respondent submitted were his initial inventory and dispensing logs.[16]

For this reason, I disagree with the ALJ's statement that ''[t]here is a conflict in testimony concerning what the DEA investigators specifically asked for'' during the inspection because both the GS's and Respondent's testimony could be accurate. R.D., at 15 n.6. That is, the GS may be correct that DIs conducting inspections (''we'') typically ask registrants for DEA 222 forms, inventories, and dispensing logs. Tr. 103 (''[i]t's the same things we ask for every time''). Indeed, the GS has conducted over 400 audits in her more than 28 years with the DEA and had been a Group Supervisor for over six of those years, so she should know how DIs typically conduct audits. *See id.* at 25, 59; ALJ Ex. 24, at 4–5. Likewise, Respondent may also be correct in his recollection that, for his particular inspection, the DIs asked more generally for ''paperwork'' related to the Quintiles study. *E.g.,* Tr. 212–13. Moreover, the same could be true for whether Respondent provided an initial inventory and dispensing log. Thus, the fact that the GS herself did not see or recognize these documents does not preclude the possibility that Respondent provided them to one of the other DIs at the inspection.

Rather than reflecting a conflict, this testimony highlights a gap in the Government's evidence. The GS's testimony that DIs conducting inspections typically ask for DEA 222 forms, inventories, and dispensing records is insufficient to establish by a preponderance of the evidence that the lead DI asked for these documents in this particular case. The lead DI who the GS testified had made the requests for this paperwork (and who was most likely to have received the response) during the inspection did not testify at the hearing. Moreover, the Government did not offer as a witness the third DI present during the inspection to corroborate the GS's testimony.[17] For these reasons, the record created by the Government is insufficient to establish by a preponderance of the evidence that Respondent failed to provide the DIs with what Respondent characterized as his initial inventory[18] and dispensing logs during the July 9, 2014 inspection.

And for the same reasons, I need not reach the credibility issue raised by the ALJ and the Government in its Exceptions of whether the GS's testimony was more credible than Respondent's testimony regarding the paperwork that the DIs requested and received from Respondent during the inspection. The ALJ found that the GS's testimony in this context (and others) lacked credibility because the ALJ found the GS's testimony in conflict with Respondent's testimony. R.D., at 3–4, 15 n.17, 17 n.20, 19 n.25, 21 n.28, 34. In its Exceptions, the Government disagreed with the ALJ's credibility findings and stated that, ''[a]ssuming the DEA investigator's testimony is accepted over Respondent's testimony, then it would be established that the initial inventory, dispensing records, and missing DEA–222 form were not provided to the investigators at the time of DEA's on-site visit and therefore DEA's allegations in the Order to Show Cause would be sustained.'' ALJ Ex. 24, at 2 n.3. However, and for the reasons already noted, even assuming *arguendo* that the GS's testimony was credible, it would be insufficient to establish by a preponderance of the evidence that Respondent failed to provide the DIs with an initial inventory or dispensing logs during their July 9, 2014 inspection.

Inspection of Moore Clinical Trials

Later the same say, after conducting their inspection of Respondent's registered location, the DIs went to Moore Clinical Trials. *See* Tr. 56. Although the GS and Respondent provide conflicting testimony regarding why Respondent directed the DIs to Moore Clinical Trials,[19] the Government

[15] In its Exceptions, the Government argues that the GS's ''use of the term 'we' . . . was intended to emphasize that more than one investigator had requested the needed materials from Respondent.'' ALJ Ex. 24, at 4. However, the record fails to reflect this intent.

[16] I agree with the ALJ that it is possible, if not ''likely,'' that the DIs reviewed but ''may not have recognized Respondent's Exhibit V as an initial inventory because it contained far more information than would normally be contained in an initial inventory.'' R.D., at 17 n.20.

[17] The Government stated in its Exceptions that ''[t]he third investigator had been reassigned to another DEA field office.'' ALJ Ex. 24, at 4 n.4. However, nothing in the record explains why this reassignment precluded the third DI from testifying at the hearing.

[18] As discussed more fully *infra,* I also dismiss the Government's first recordkeeping charge regarding Respondent's initial inventory for legal reasons.

[19] The GS testified that Respondent directed the DIs to Moore Clinical Trials because that was where they could find records related to the study. Tr. 478–79. This testimony is consistent with Respondent's testimony that the DIs ''wanted my paperwork for the study.'' *Id.* at 213. After this point, however, the clarity ends. Respondent testified that the question of patient names and addresses came up and that he therefore referred the DIs to Moore Clinical Trials for paperwork more specifically related to patient names and addresses (the Quintiles Study precluded Respondent from knowing the patients' names). *See id.* at 279, 374. On rebuttal, the GS testified that the DIs went to Moore Clinical Trials because Respondent advised that he did not have in his office the records related to the study that they cared about—*i.e.,* an initial inventory and dispensing records—at his registered location because they were at Moore Clinical Trials. *Id.* at 56 (''Upon learning that the dispensing records were at Moore Clinical Trials . . . [and a]fter our onsite inspection completed at Dr. Nichols, we went straight to Moore Clinical Trials . . . that same day . . . [T]he purpose of going to Moore Clinical Trials'' was ''to obtain the documents that Dr. Nichol told us was there, which would be inventory and the dispensing records''); *see also id.* at 478. The GS also rejected the notion that the DIs had any interest in the patients' names and addresses because the inspection was focused on drugs, not people. *Id.* at 478.

The ALJ rejected the GS's explanation and found Respondent's ''more credible'' because (1) the stated purpose of the inspection was to ensure compliance with the MOA; (2) the inspection pursuant to the MOA focused on recordkeeping, not drugs; (3) Respondent had advised DEA by letter (to which DEA did not respond) in August 2012 that he could not provide patient names for a double blind study; and (4) the ALJ accepted that Respondent provided the DIs with Respondent's Exhibit U, which Respondent represented to be his dispensing log. R.D., at 15 n.16.

Assuming that the purpose of the inspection was to determine whether Respondent's recordkeeping was in compliance with the MOA, the CSA, and DEA regulations, that purpose is consistent with the

Continued

offered the GS's testimony regarding the DIs visit there to establish the Show Cause Order's allegation that Respondent had improperly maintained his inventory or dispensing records at a location other than his registered location. Upon arriving at Moore Clinical Trials, the DIs spoke with Kianna Marshall, who was an assistant to Moore Clinical Trials owner Greta Moore. *Id.* at 56–57. The GS testified that the DIs asked Ms. Marshall for the inventory and dispensing log for the study so DEA ''could complete an accountability audit. And Kianna gave us a folder that had the dispensing records in it. However, she did not have any inventory.'' *Id.* at 57; *see* GX 11.

Respondent denied that he failed to maintain his inventory and dispensing records in his office because he represented that he kept them in his office and presented them to the DIs during the inspection. *See* Tr. 278–79; RX U; RX V. As already noted, the GS did not recall seeing (or saw but failed to recognize) the documents in Respondent's office as his inventory or dispensing records (RX U and RX V), and it is unclear what the other DIs understood because they did not testify. Importantly, the fact that Ms. Marshall provided the DIs with documents that she believed were responsive to the DIs' requests does not mean that those documents were, in fact, Respondent's dispensing records nor that Respondent intended to maintain his dispensing records at Moore Clinical Trials. *Accord* R.D., at 19 n.25 (''there is no credible evidence before me that [what Ms. Marshall provided to the DIs] is in fact, the Respondent's dispensing records'').

Likewise, the fact that the GS believed that these documents could qualify as Respondent's dispensing records, or that Ms. Marshall may have advised the DIs that they were Respondent's dispensing records, is not dispositive of whether they were, in fact, what Respondent maintained as his dispensing records under the CSA and DEA's regulations. *Accord id.* Instead, I agree with the ALJ that the records provided by Ms. Marshall were more likely worksheets used as part of the Quintiles study to reconcile differences between what the study patients entered into their electronic monitors and the actual pill count. *Id.* at 20. Although the worksheets include all of the data in Respondent's dispensing log maintained in his office, the worksheets contain additional information not included in Respondent's dispensing log. *Compare* GX 11 *with* RX U.[20]

Neither the Government nor Respondent called Ms. Marshall as a witness to establish what Respondent may have told her about maintaining his dispensing records at Moore Clinical Trials or what she believed she had provided to the DIs. Thus, I find that the Government has provided insufficient evidence for me to find by a preponderance of the evidence that Respondent, in fact, failed to maintain inventory and dispensing records at his registered location.

Respondent's DEA 222 Forms

The GS testified that DEA 222 forms are three-part forms that DEA registrants use to order controlled substances. *See* Tr. 38, 42. Registrants request a book of DEA 222 forms in advance of ordering controlled substances, and then DEA sends back a book of DEA 222 forms—each one preprinted with the registrant's name, DEA registration number, the date he or she ordered the forms, and the schedules for which he or she is authorized to prescribe. *See id.* at 43–44. These forms have carbon paper in between each copy so three parties can each get a copy. *Id.* at 38, 42. ''One is the purchaser's copy, one is the supplier's copy, and the third copy goes to DEA once the order is completed.'' *Id.* at 44–45. The GS testified that ''[Respondent] or his representatives fills out the supplier name, the date, and the requested drugs. And he tears off that first copy, the purchaser's copy. He holds onto that. And then the second two copies, the DEA copy and the supplier copy, get sent to the supplier.'' *Id.* at 45.

When Respondent is placing an order, he retains the copy that states ''PURCHASER'S Copy 3.'' *Id.; e.g.,* GX 9; RX S, at 5, 9–12, 16. For example, the DEA 222 forms that Respondent provided to the DIs during their inspection show that Fisher Clinical Services (FCS) was the supplier of the drugs Respondent used in the study. *Id.* When Respondent ''is shipping drugs back to his supplier, Fisher [Clinical] Services,'' then his name would appear on the DEA 222 form as the supplier, FCS would be the registrant, and Respondent would retain ''SUPPLIER'S Copy 1.'' Tr. 48–50; GX 10; RX S, at 13–14. When filling out a supplier's copy, the supplier must fill out several fields on the form, including the number of packages, the size of the packages, the packages shipped, and the date when they were shipped. Tr. 50; GX 10; RX S, at 13–14.

Respondent's Annotation of DEA 222 Forms

In this case, Respondent provided DEA with two DEA 222 forms in which he was the ''supplier'' and FCS was the registrant because he was returning unused drugs from the clinical trial back to FCS. Tr. 48–50, 253–54; *see also* GX 10; RX S, at 13–14. FCS had provided Respondent with a packing list that included instructions on how to fill out the DEA 222 forms as the supplier, including instructions that he should enter the number of kits shipped and the date shipped. RX S, at 15; Tr. 376–77. However, Respondent left the ''Packages Shipped'' and ''Date Shipped'' boxes next to the identified kits blank in both DEA 222 forms in which Respondent was the supplier. RX S, at 15; Tr. 50. As a result, the GS testified that when these boxes are left blank, DEA ''do[es] not know if th[e kits are] indeed what Dr. Nichol shipped back.'' Tr. 50. This negatively impacts DEA's ability to conduct an audit of a registrant, according to the GS, ''because the DEA 222 order form is a primary record . . . as far as auditing purposes, these are the only documents we are supposed to look at.'' *Id.* at 51.

In his testimony, Respondent admitted that he failed to properly annotate the ''Packages Shipped'' and Date Shipped'' boxes:

> Q . . . Now, as you're sitting here today, do you realize that you completed this [first 222] form that you left off a date and the packets that were shipped back?
>
> A Yes sir, I did. . . .
>
> Q . . . So at least what [the GS] said about the return of this 222 form, that was correct, what she said; is that right?

GS's explanation that the DIs' focus was on drugs and not patient names. The relevant recordkeeping requirements focus on tracking the movement of controlled substances (inventory, dispensing logs, DEA 222 forms), not the identity of patients. Moreover, as already noted, the more recent January 11, 2013 correspondence from DEA to Respondent prior to the inspection asked when the Quintiles study would commence and where the study drugs would be located (both of which relate to MOA requirements) and not the identity or addresses of Respondent's study patients. *See* RX R, at 3.

Most importantly, I need not reach the question of whether the GS's explanation of why the DIs visited Moore Clinical Trials was more or less credible than Respondent's because, as discussed more fully *infra,* I reject the Government's charge that Respondent failed to maintain his inventory and dispensing records at his registered location.

[20] For this reason, the Government's claim that it could not complete an accountability audit at Respondent's registered address is unavailing. The worksheets obtained from Moore Clinical Trials included everything contained in the dispensing logs maintained in Respondent's office, which was sufficient to complete the audit. *See* Tr. 484. The GS testified that the DIs had difficulty using the worksheets because ''[t]here are numerous cross-outs and circles and initials and changing of dates . . . it's very hard to determine what's coming in and what's going out.'' Tr. 59. However, the GS conceded that having cross-outs or even confusing records does not violate DEA regulations, and they ultimately did not preclude the DIs from completing their audit. *Id.* at 69–70.

A Yes. . . . I did not fill out the date and I did not fill out the package quantity.

Tr. 256–57; *see also id.* at 258 (''Q Okay. And again you made the same clerical error on that [second 222] form? A I did.''). Accordingly, I find that Respondent failed to properly annotate two DEA 222 supplier's copy forms set forth in Government's Exhibit 10 because he failed to complete the ''Packaged Shipped'' and Date Shipped'' entries. GX 10; RX S, at 13–14.[21]

Respondent's Allegedly Missing DEA 222 Form

In its Show Cause Order, the Government alleged that Respondent failed during the onsite inspection to provide a January 16, 2014 DEA 222 form.[22] ALJ Ex. 1, at 3. On the first day of the hearing, the GS testified that Respondent ''produced for . . . inspection'' ''five DEA 222 order forms for purchase'' and ''two DEA order forms for returns back to the supplier,'' and that Government Exhibits 9 and 10 included copies of these seven forms. *See* Tr. 39, 40–41, 52, 56 (''the only thing we received were a grand total of seven completed DEA form 222s''); GXs 9–10. These exhibits did not include Respondent's purchaser's copy of the January 16, 2014 DEA 222 form. In addition, the GS testified that they did not ask Respondent why there were only five purchaser DEA 222 forms and not six such forms—even though the DIs knew that Respondent had made six orders of controlled substances when they arrived for the onsite inspection. Tr. 76, 505–06. Respondent testified that, had the DIs advised him that he was missing any records, he would have endeavored to find and to provide them to the DIs. *Id.* at 236.

Although her testimony was not always clear on this subject, the GS ultimately testified on rebuttal that Respondent (or someone in his office) ''presented'' to the DIs ''a folder with all of the 222s.'' Tr. 507; *see also id.* at 290–91 (Respondent testified that ''[t]he DEA 222s were kept in a hanging file folder in a safe next to my office—or in my office in a safe next to my desk. . . . [Respondent] provide[d] that folder to the DEA investigators on the date of the onsite inspection.''). Also during rebuttal, the GS acknowledged that Respondent had provided a folder to the DIs that not only included completed DEA 222 forms reflected in Government Exhibits 9 and 10 but also included ''voided and unused DEA 222s.'' *Id.* at 475. The GS stated that she was uninterested in the ''voided out and unused DEA 222s'' and therefore only obtained ''copies of the [completed] 222 order forms that were within our audit'' period. *Id.*

Respondent introduced Respondent's Exhibit S, which the ALJ accepted into evidence as the contents of the entire folder of DEA 222 forms (22 pages) that Respondent provided to the DIs during the onsite inspection. *See* Tr. 214–15; RX S. The exhibit included unused, voided, and completed DEA 222 forms (both Purchaser's Copies and Supplier's Copies) as well as a completed DEA 222 form from a previous drug study. Tr. 261, 475; RX S. Most significantly, Respondent's exhibit included a copy of the allegedly missing DEA 222 form related to the January 16, 2014 controlled substances shipment to Respondent. RX S, at 16. The GS did not recall seeing that form, and Respondent did not recall to which DI he gave the folder. Tr. 291 (''Q Do you [Respondent] remember which agent you gave these to? A ''I do not.''); *id.* at 475.

After the pending Show Cause Order was served on Respondent, Respondent telephoned Mathilda Buchanan, an Arkansas-licensed private investigator with whom Respondent had worked since 2006. Tr. 262, 417. Respondent provided the same folder of DEA 222 forms (Respondent's Exhibit S) to Ms. Buchanan that he had provided to the DIs. *See id.* at 262. When Ms. Buchanan examined the contents of the folder, she testified that she discovered that the allegedly missing purchaser's copy of January 2014 DEA 222 form was in fact within the folder but stuck between unused DEA 222 forms. *Id.* at 452–53, 462; RX S, at 16. Moreover, the DEA 222 form that Ms. Buchanan found was a purchaser's copy for an order of controlled substances dated January 13, 2014, which corresponded to the January 16, 2014 shipment of controlled substances to Respondent reflected on the supplier's copy submitted into evidence by the Government. *See* Tr. 260; GX 13, at 1; RX S, at 16.

The ALJ recommended that I make the fact finding that the January 16, 2014 DEA 222 form ''was available to the DEA investigators during the inspection'' and that ''[i]t is highly probable that the alleged missing 222 Form was caught up in the carbon copies of the other 222 Forms contained in the folder where the Respondent kept his records.'' R.D., at 22, 34. In other words, the ALJ believed that the DIs simply overlooked the January 16, 2014 DEA 222 form during the onsite inspection. *Id.* at 34. I agree, and I find that it is more likely than not that the purchaser's copy of the January 2014 DEA 222 form was indeed in Respondent's folder of DEA 222 forms on the date of the onsite inspection.[23]

The December 2014 Meeting

In December 2014, the lead DI contacted Respondent to set up a meeting with him. Tr. 237. This was the first time the DIs had contacted Respondent since the July 9, 2014 onsite inspection. *See id.* On December 16, 2014, two DIs—the GS and the lead DI—met with Respondent and Ms. Buchanan ''to report on the July 9, 2014 inspection.'' ALJ Ex. 9, at 3; Tr. 481. During the meeting, the DIs advised Respondent that his ''inventory was off.'' Tr. 237. Respondent stated that he offered to compare his inventory with DEA's inventory, but the DIs refused. *Id.* at 238, 437, 507–08. The DIs also discussed the accuracy of Respondent's dispensing records and that Respondent had failed to provide the DIs with sufficient information to complete a proper audit, which in turn required the DIs to go to Moore Clinical Trials to supplement the information. *Id.* at 439, 461. The DIs did not ask Respondent for any records during the meeting. *Id.* at 500.

On December 19, 2014, Respondent's attorney wrote a letter to the lead DI and to the GS on behalf of Respondent in response to the December 16, 2014

[21] During the hearing, the GS also testified to recordkeeping errors made by Respondent in filling out the purchaser's copies of the DEA 222 forms. *See, e.g.,* Tr. 47–48 (Respondent improperly used three lines to order one drug when ''[t]he regulations state that when you are ordering a drug, it's one drug per line''). She stated that Respondent's failure to accurately complete the initial DEA 222 forms caused accountability errors in the audit. *Id.* at 488. The Government did not, however, allege these errors in its Show Cause Order or Prehearing Statements. Thus, I agree with the ALJ's recommendation not to consider this evidence in determining the sanction in this case. R.D., at 3 n.2.

[22] As noted *supra* in footnote 2, the Show Cause Order erroneously referenced an August 28, 2013 DEA 222 form. The Government corrected the date of the allegedly missing DEA 222 form to January 16, 2014 in its May 12, 2016 Prehearing Statement and during Government counsel's Opening Statement at the administrative hearing. *See* ALJ Ex. 7, at 8; Tr. 15. I further note that January 16, 2014 represents the shipping date, not the January 13, 2014 date on which Respondent actually ordered the controlled substances. *See* GX 13, at 1; RX S, at 16.

[23] For the same reason, I again need not reach the question of the GS's credibility regarding the allegedly missing DEA 222 form raised by the ALJ in his Recommended Decision and the Government in its Exceptions. R.D., at 34; ALJ Ex. 24, at 2 n.3, 5. Specifically, because I find (as did the ALJ) that the DIs overlooked the DEA 222 form in question, the GS could credibly testify that she did not see the form during the onsite inspection. Likewise, Ms. Buchanan could credibly testify that her (apparently more thorough) review of the folder of DEA 222 forms did uncover the allegedly missing form. Accordingly, I find that there is no credibility issue regarding the allegedly missing DEA 222 form because it is more likely than not that the testimony of both witnesses is accurate.

meeting. RX X. The letter memorialized Respondent's understanding that DEA's ''audit was not available to us'' and asked for ''written documentation of specific points you think are lacking so we can do better.'' *Id.* The letter also stated that records related to the identification of patients ''must be kept at Moore Clinical Trials and are separate from the records at Dr. Nichol's office which only contain the patients' identifying numbers.'' *Id.* Respondent never received a reply to his attorney's letter, and the Government filed its Show Cause Order on March 14, 2016. Tr. 443; ALJ Ex. 1.

Discussion

Under the Controlled Substances Act (''CSA''), ''[a] registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In the case of a physician, who is deemed to be a practitioner, *see id.* § 802(21), Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether'' an application for registration should be denied. *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482.[24]

Under the Agency's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. [§]824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, I have considered all of the factors and concluded that the Government's evidence with respect to Factors Two and Four support the conclusion that Respondent has committed acts which render his ''registration inconsistent with the public interest.'' 21 U.S.C. 823(f), 824(a)(4). While I agree with the ALJ's conclusion that a sanction is appropriate, I find that the record supports a stronger sanction than what the ALJ recommended.

Factor One—The Recommendation of the State Licensing Authority

The Government sought to revoke Respondent's DEA registration based on Factors Two, Four, and Five. However, the ALJ considered Factor One as well in his Recommendation. R.D., at 27. I agree with the ALJ's finding that the ASMB has not made a recommendation to the Agency regarding whether Respondent's DEA registration should be suspended or revoked in this case. *See id.* The record only shows that the ASMB suspended Respondent's state medical license for six months based on his pre-signing of controlled substance prescriptions, which his staff (who were not licensed to prescribe controlled substances) issued to patients outside Respondent's presence and without consulting him. The ALJ noted that the ASMB reinstated Respondent's medical license after six months and stated that ''[t]he reinstatement of the Respondent's medical license can be interpreted as a recommendation of the ASMB'' under Factor One. R.D., at 27 (citing *Tyson D. Quy, M.D.,* 78 FR 47412, 47417 (2013); *Vincent J. Scolaro, D.O.,* 67 FR 42060, 42064–65 (2002)). As a result, the ALJ recommended that I find that ''the ASMB's reinstatement of the Respondent's medical license only weighs slightly in favor of not revoking the Respondent's registration.'' R.D., at 28.

To be sure, the Agency's case law contains some older decisions which can be read as giving more than nominal weight in the public interest determination to a State Board's decision (not involving a recommendation to DEA) either restoring or maintaining a practitioner's state authority to dispense controlled substances. *See, e.g., Gregory D. Owens,* 67 FR 50461, 50463 (2002) (expressing agreement with ALJ's conclusion that the Board's placing dentist on probation instead of suspending or limiting his controlled substance authority ''reflects favorably upon [his] retaining his . . . [r]egistration, and upon DEA's granting of [his] pending renewal application''); *Scolaro,* 67 FR at 42065 (concurring with ALJ's ''conclusion that'' state board's reinstatement of medical license ''with restrictions'' established that ''[b]oard implicitly agrees that the [r]espondent is ready to maintain a DEA registration upon the terms set forth in'' its order). However, these cases cannot be squared with the Agency's longstanding holding that ''[t]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Garrett Howard Smith, M.D.,* 83 FR 18882, 18904 n.30 (2018) (quoting *Mortimer Levin,* 57 FR 8680, 8681 (1992)); *Lon F. Alexander, M.D.,* 82 FR 49704, 49724 n.42 (2017) (same). Indeed, neither *Owens* nor *Scolaro* even acknowledged the existence of *Levin,* let alone attempted to reconcile the weight it gave the state board's action with *Levin. Smith,* 83 FR at 18904 n.30; *Alexander,* 82 FR at 49724 n.42.

While in other cases, the Agency has given some weight to a Board's action in allowing a practitioner to retain his state authority even in the absence of an express recommendation, *see Quy,* 78 FR at 47417, the Agency has repeatedly held that a practitioner's retention of his or her state authority is not dispositive of the public interest inquiry. *See, e.g., Smith,* 83 FR at 18904 n.30; *Alexander,* 82 FR at 49724 n.42; *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)). Accordingly, I find that the ASMB's reinstatement of Respondent's state license is not dispositive of the public

[24] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's or applicant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, findings under a single factor can support the revocation or suspension of a registration. *MacKay,* 664 F.3d at 821.

interest inquiry in this case, and I give it no weight.[25]

Factors Two and Four—The Respondent's Experience in Dispensing Controlled Substances, or Conducting Research With Respect to Controlled Substances, and Compliance With Applicable Laws Related to Controlled Substances

Pre-Signed Prescriptions Allegation

The Show Cause Order's first charge alleged that Respondent's pre-signing of prescriptions for controlled substances violated 21 CFR 1306.05(a). Under the CSA, it is ''unlawful for any person [to] knowingly or intentionally . . . manufacture, distribute, or dispense,[26] or possess with intent to manufacture, distribute, or dispense, a controlled substance'' ''[e]xcept as authorized by'' the Act. 21 U.S.C. 841(a)(1). According to the CSA's implementing regulations, ''[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.'' 21 CFR 1306.05(a).

The Agency has long held that pre-signing prescriptions violates the CSA and 21 CFR 1306.05(a). *Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016); *Alvin Darby, M.D.,* 75 FR 26993, 26999 (2010) (''DEA has long interpreted the CSA as prohibiting the pre-signing of prescriptions.''); *Jayam Krishna-Iyer, M.D.,* 71 FR 52148, 52158, 52159 n.9 (2006) (''Respondent further violated federal law and DEA regulations by giving [his nurse] pre-signed prescriptions and allowing him to issue them to a patient [Respondent] had not attended to. . . . [T]his conduct of Respondent violated 21 CFR 1306.05(a)''), *vacated on other grounds,* 249 Fed. Appx. 159 (11th Cir. 2007); *Leslie,* 68 FR at 15230–31; *James Beale,* 53 FR 15149, 15150 (1988) (''It is a violation of 21 CFR 1306.05(a) to pre-sign prescriptions for controlled substances.''). Most importantly, the Agency has held that pre-signing prescriptions ''would be inconsistent with the public interest'' under the CSA because such conduct ''create[s] a substantial risk that the drugs would be diverted and abused.'' *Singh,* 81 FR at 8248, 8249.

As noted earlier, it is undisputed that on August 17, 2016, the ASMB issued a final order suspending Respondent's medical license for six months because he pre-signed prescriptions for controlled substances. During the ASMB hearing leading up to its final order, Respondent admitted in testimony that he pre-signed prescriptions in which he failed to write the name of the patient on the prescription, the substance prescribed, and instructions for taking the medication. In addition, Respondent admitted during the ASMB hearing that he permitted his office personnel, who were not licensed as physicians nor authorized to prescribe medications under Arkansas law, to fill in the blanks on the prescription pad and distribute them to patients without Respondent being present.

Thus, I agree with the ALJ's recommendation that I find (and I do so find) that Respondent's pre-signing of prescriptions violated 21 CFR 1306.05(a). I also find that this conduct constituted a serious violation of the CSA and created a substantial risk that the drugs would be diverted and abused. *Krishna-Iyer,* 71 FR at 52159; *Singh,* 81 FR at 8249. I further find that Respondent violated federal law by giving the pre-signed prescription forms to office personnel who lacked the authority to lawfully prescribe controlled substances under federal or state law. *See* 21 CFR 1306.03(a); *see also Krishna-Iyer,* 71 FR at 52159. Accordingly, the Government's first charge of pre-signing prescriptions is sustained and supports a finding that Respondent's continued registration would be inconsistent with the public interest.

Recordkeeping Allegations

The Show Cause Order sets forth five recordkeeping charges based on DEA's July 4, 2014 on-site inspection of Respondent's registered location. ''Recordkeeping is one of the CSA's central features; a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'' *Paul H. Volkman,* 73 FR 30630, 30644 (2008). As the Agency recently held:

> [T]he CSA and DEA regulations require that a registrant take an actual physical count of the controlled substances on hand, and an accurate actual count, as memorialized in either an initial or biennial inventory[. This] is essential in conducting an accurate audit. Likewise, an accurate audit is essential in determining whether a registrant is maintaining complete and accurate records of both the controlled substances he receives and those he ''deliver[s] or otherwise dispose[s] of.'' 21 U.S.C. 827(a)(3). . . . [G]enerally, it is diversion that results in recordkeeping irregularities and not the other way around.

Peter F. Kelly, D.P.M., 82 FR 28676, 28692 n.41 (2017), *pet. for rev. denied, Kelly* v. *DEA,* No. 17–1175, 2018 WL 3198774 (D.C. Cir. May 18, 2018).

The Show Cause Order's first recordkeeping charge alleged that Respondent failed to maintain an initial inventory of all controlled substances ''in violation of 21 U.S.C. 827(a)(3) & 842(a)(5) and 21 CFR 1304.11(b).'' ALJ Ex. 1, at 2. As a threshold matter, the ALJ correctly noted ''that it appears that the Government made an error because § 827(a)(3) requires a registrant to maintain a dispensing record'' and not an initial inventory as § 827(a)(1) requires. *See* R.D., at 31 n.34. The ALJ also noted accurately that the ''Government, however, also correctly cites to 21 CFR 1304.11(b).'' *Id.* Section 1304.11(b) states that ''[e]very person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances.'' Thus, I agree with the ALJ that the Government intended to charge Respondent with failing to maintain an initial inventory, despite its reference to § 827(a)(3) instead of § 827(a)(1), and I further find that Respondent had adequate notice of this charge.

Most importantly, the CSA and DEA's regulations only require a practitioner like Respondent to maintain an initial inventory when he ''first engages in . . . dispensing controlled substances.'' 21 CFR 1304.11(b); 21 U.S.C. 827(a)(1). ''After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years''—that is, a ''biennial inventory.'' 21 CFR 1304.11(c); *accord* 21 U.S.C. 827(a)(1). Thus, the CSA and DEA's regulations only required Respondent to maintain an initial inventory when Respondent *first* engaged in dispensing controlled substances after obtaining his DEA registration, even if the initial inventory was zero when Respondent ''commence[d] business.'' 21 CFR 1304.11(b). After that, the CSA and DEA regulations required Respondent to

[25] As to Factor Three, there is no evidence that Respondent has been convicted of an offense under either federal or Arkansas law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d at 822. The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

[26] ''The term 'dispense' means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing . . . of a controlled substance.'' 21 U.S.C. 802(10).

maintain a biennial inventory. 21 U.S.C. 827(a)(1); 21 CFR 1304.11(c).

Here, the Government's first recordkeeping charge cannot be sustained as a matter of law because Respondent was not legally required to maintain an initial inventory as of the date of the alleged violation—*i.e.,* at the time of the July 9, 2014 inspection. It is undisputed that Respondent was dispensing controlled substances at least as far back as 2006 under his current DEA registration, and that Respondent has maintained, and timely renewed, his DEA registration ever since.

Although the CSA and DEA regulations required Respondent to maintain an initial inventory when he first commenced the business of dispensing controlled substances under his current DEA registration for two years, he was only required to maintain a biennial inventory thereafter. Yet the Government's first recordkeeping charge centers on whether Respondent maintained an initial inventory when he ordered controlled substances in December 2012, not on when Respondent first ''commence[d the] business'' of dispensing controlled substances under his current DEA registration. Thus, even if Respondent began dispensing controlled substances for the first time as late as 2006—the earliest dispensing activity under Respondent's current DEA registration reflected in the record—he had no legal obligation to maintain an initial inventory beyond 2008. Instead, as already noted, he was legally obligated to maintain a biennial inventory thereafter. However, the Government did not charge Respondent with failing to maintain an accurate biennial inventory in December 2012 or at the time of the July 2014 inspection. Accordingly, I do not sustain the Government's first recordkeeping charge.[27]

The Government's second recordkeeping charge alleged that Respondent failed to provide dispensing records to the DIs during the July 9, 2014 inspection. Both the CSA and DEA regulations require registrants to ''maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold . . . or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3); 21 CFR 1304.21(a). As found above, *supra,* the Government failed to establish by a preponderance of the evidence that Respondent failed to provide the DIs with the relevant dispensing logs during the inspection. Furthermore, I agree with the ALJ's recommended finding (and I so find) that the dispensing log that Respondent testified that he provided to the DIs (RX U) was sufficient to rebut the Government's allegation that he failed to maintain complete and accurate dispensing records in violation of 21 U.S.C. 827(a)(3), 842(a)(5) and 21 CFR 1304.21(a). *See* R.D., at 32–33. Thus, I do not sustain the Government's second recordkeeping charge.

For related reasons, I cannot sustain the Government's fifth recordkeeping charge that Respondent failed to maintain his inventory and dispensing records at his registered location and maintained them instead at Moore Clinical Trials. The CSA requires that registrants maintain ''[a] separate registration . . . at each principal place of business or professional practice where the applicant . . . dispenses controlled substances.'' 21 U.S.C. 822(e). ''In short, the requirements that a practitioner be registered at each principal place of professional practice where he dispenses controlled substances . . . [is one] of the fundamental features of the closed regulatory system created by the CSA.'' *Moore Clinical Trials,* 79 FR at 40155.

However, as found above, the Government has provided insufficient evidence for me to find by a preponderance of the evidence that Respondent, in fact, (1) maintained his dispensing records at Moore Clinical Trials and (2) failed to maintain inventory and dispensing records at his registered location.[28] *See supra.* Thus, I agree with the ALJ's recommendation that I find (and I do so find) that the Government failed to sustain the fifth recordkeeping charge. *See* R.D., at 36.

The Government's third recordkeeping charge alleged that Respondent failed to provide a January 2014 DEA 222 form during the inspection. DEA regulation 21 CFR 1305.17(a) requires the purchaser of controlled substances to ''retain Copy 3 of each executed DEA Form 222 and all copies of unaccepted or defective forms with each statement attached.'' *See also* 21 CFR 1304.04(a) (requiring registrants to keep dispensing records and every inventory for at least two years). However, here too, I have already found that the Government's evidence is insufficient to support this charge. Specifically, I found *supra* that it is more likely than not that the purchaser's copy of the allegedly missing January 2014 DEA 222 form was, in fact, within Respondent's folder of DEA 222 forms that he presented to the DIs on the date of the onsite inspection. Thus, I do not sustain the Government's third recordkeeping charge.

The Government's remaining (fourth) recordkeeping charge alleged that Respondent failed to properly annotate two DEA–222 order forms (dated August 15, 2013 and June 24, 2014) in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1305.13(b). The DEA 222 forms at issue in the fourth recordkeeping charge were suppliers' copies, and DEA regulations require suppliers to ''record on Copies 1 and 2 [of the DEA 222 form] the number of commercial or bulk containers furnished on each item and the date on which the containers are shipped to the purchaser.'' 21 CFR 1305.13(b). Here, as already noted, Respondent admitted that he failed to properly annotate on both forms (1) the date when he shipped controlled substances back to FCS and (2) the amount shipped. Accordingly, I find that the Government sustained its fourth recordkeeping charge that Respondent failed to properly annotate two DEA 222 supplier's copy forms pursuant to 21 U.S.C. 842(a)(5) and 21 CFR 1305.13(b). These violations support a finding that Respondent's continued registration would be inconsistent with the public interest under Factors Two and Four.

Factor Five—Other Conduct Which May Threaten the Public Health and Safety

The Government argues that Respondent engaged in ''other conduct'' actionable under Factor Five because he violated the MOA.[29] Under the fifth

[27] In any event, as noted *supra,* I found that the Government failed to establish by a preponderance of the evidence that Respondent failed to provide the DIs with an inventory consistent with the CSA and DEA's regulations during the July 9, 2014 onsite inspection.

[28] The Government also alleged in its fifth recordkeeping charge that Respondent's inventory and dispensing records were not ''readily retrievable'' pursuant to 21 CFR 1304.04. Section 1304.04(g) requires registered individual practitioners like Respondent to keep ''records of controlled substances in the manner prescribed in paragraph (f) of this section.'' Section 1304.04(f), in turn, requires that ''records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.'' Here, the controlled substance used during the Quintiles study was oxycodone, a Schedule II controlled substance. 21 CFR 1308.12(b)(1)(xiii).

[29] The Government also argued that Respondent's alleged violations of the MOA should be considered under Factor 2. ALJ Ex. 20, at 19. In addition, the Agency has held that ''where an MOA term imposes the same requirements as a law or regulation, a violation of that term falls under Factor Four because it is also a violation of a duly enacted law or regulation.'' *Roberto Zayas, M.D.,* 82 FR 21410, 21422 n.26 (2017). To the extent that I have already addressed Respondent's alleged recordkeeping violations under Factors Two and Four, I will not consider them again under Factor Five because they would not then constitute ''other conduct'' under

public interest factor, the Agency considers ''[s]uch other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(f)(5). The Agency has clarified that Congress' use of the word ''may'' in Factor Five means that it intended the Agency to consider conduct which creates a probable or possible (and not necessarily an actual) threat to public health and safety. *Mark P. Koch, D.O.,* 79 FR 18714, 18735 (2014) (collecting cases); *ChipRX, L.L.C., d/b/a City Center Pharmacy,* 82 FR 51433, 51438 n.10 (2017) (''Factor Five does not require that the Government prove an actual threat to public health or safety''). Thus, the Government is not required to establish that a specific violation of the MOA by Respondent created an actual threat to the health and safety of the public under Factor Five.

DEA has long held that a registrant's failure to comply with the terms of an MOA can constitute acts which render his registration inconsistent with the public interest. *Erwin E. Feldman, D.O.,* 76 FR 16835, 16838 (2011) (revoking practitioner's registration under Factors Two and Five for violating MOA) (internal citation omitted); *cf. Fredal Pharmacy,* 55 FR 53592, 53593 (1990) (revoking pharmacy's registration for violations of its MOA ''which threatens the public health and safety''). This is so even if the violation of the MOA does not establish a violation of the CSA or its implementing regulations. *Feldman,* 76 FR at 16838. In its Proposed Findings of Fact and Conclusions of Law, the Government argued that this case is similar to *OTC Distribution Company,* where the Agency revoked the registration of a distributor for ''its inability or unwillingness to fully comply with its recordkeeping and report obligations under the MOA.'' ALJ Ex. 20 at 20–21 (quoting *OTC Distribution Company,* 68 FR 70538, 70542 (2003)). The Government further argued that, ''[a]s in *OTC,* the Respondent here has demonstrated, over a period of years, an unwillingness or inability to follow DEA's recordkeeping requirements even after being placed under an MOA with strict monitoring requirements.'' ALJ Ex. 20 at 21.[30]

Indeed, the history of Respondent's recordkeeping violations (and other violations) directly led to the MOA that attempted to resolve them. As I already noted *supra,* the GS testified that DEA first became aware of Respondent as part of its 2011 investigation of his recordkeeping (and other) violations regarding the earlier NKRT–118 study he conducted with Moore Clinical Trials. Tr. 28–29. This 2011 investigation not only led to the 2011 Show Cause Order against Respondent; it also led to a separate 2011 Show Cause Order against Moore Clinical Trials. However, unlike Respondent, who resolved the Show Cause Order against him by entering into an MOA, the Order against Moore Clinical Trials resulted in a final published order. *Moore Clinical Trials, L.L.C.,* 79 FR 40145 (2014).

Most importantly, in *Moore Clinical Trials,* the Agency found that Respondent committed recordkeeping and other violations related to the NKRT–118 study that correspond to the terms of the MOA. For example, the Agency noted the ALJ's findings that Respondent's ''documents'' ''were deficient and that the order forms for Schedule II controlled substances (DEA–222) were lacking'' in connection with the NKRT–118 study. *Id.* at 40147 (internal quotations omitted). The Agency also noted the ALJ's finding that Respondent had improperly transported controlled substances to Moore Clinical Trials' location where he was not registered to dispense them in connection with that study. *Id.* The then-Administrator also found that Respondent's DEA 222 forms related to the NKRT–118 study did not properly indicate the date the drugs were received and the quantity received. *Id.* at 40151, 40156. The then-Administrator concluded that ''the record clearly establishes that Dr. Nichol violated both the separate registration provision and DEA recordkeeping requirements.'' *Id.* at 40155. The DEA therefore entered into the MOA (which expressly referenced the NKRT–118 study) with Respondent as an intermediary step to get Respondent into compliance and to address Respondent's recordkeeping and separate registration violations related to the NKRT–118 study described and found by the Agency in *Moore Clinical Trials.*[31]

Respondent agreed to meet the following seven conditions set forth in the MOA:

(1) Abide by all Federal, State and local statutes and regulations relating to controlled substances.

(2) Make and keep (and make available for inspection) records of all controlled substances that he prescribes, dispenses, and administers at his registered location pursuant to 21 CFR 1306.05(a) and 1304.21.

(3) Make and keep a legible log of all Schedule II–V controlled substances that he prescribed and provide that to DEA on a quarterly basis for three years.

(4) Retain his prescribing, administering and dispensing records at his registered location.

(5) Notify DEA if he will prescribe, dispense, or administer controlled substances at any location other than his registered location or the Springhill Surgery Center where he routinely administers drugs during a scheduled medical procedure.

(6) Order, receive, administer, and dispense controlled substances only at his registered location.

(7) Notify DEA in advance of commencing any drug study involving controlled substances additional to the NKTR–118 study.

GX 7, at 2–4. It is undisputed that Respondent did not violate the MOA's third and fifth conditions. *See* Tr. 92, 93, 117–19.

The Government argued that the same five alleged recordkeeping violations also violated the MOA's first, second, fourth, and sixth conditions.[32] *See* R.D.,

Factor Five. *See id.* at 21427 n.40. However, I will consider whether the proved recordkeeping violations already discussed are sufficient evidence to establish a violation of the MOA under Factor Five.

[30] In his Recommendation, the ALJ disagreed with the Government's characterization of Respondent's past recordkeeping conduct because ''the Respondent does not have a history of failing to keep the required records.'' R.D., at 39. However, as discussed more fully *infra,* Respondent's history of recordkeeping violations is already documented in published Agency precedent. *See, e.g., Moore Clinical Trials,* 79 FR at 40151, 40155.

[31] *See supra* footnote 12.

[32] During the hearing, the Government alleged that Respondent violated the MOA's seventh condition for failing to notify DEA in advance of commencing the Quintiles Study set forth in the CTA. *See* Tr. 93–94, 119–21, 181–82; GX 7, at 3 (''if [Respondent] is asked to participate in additional drug studies involving controlled substances, he will notify DEA in advance of commencing the study''). Although the ALJ questioned whether the Government had provided sufficient notice to Respondent that the Government would rely on a violation of this MOA condition, the ALJ proceeded to analyze the issue and recommended that I find that Respondent did not violate this MOA condition. *See* R.D., at 10 n.11.

I agree (and I do so find) that Respondent did not violate this MOA condition for the following reasons. Although the GS testified that ''[i]n DEA's mind'' the study commenced when Respondent placed his first order for controlled substances related to the study on December 3, 2012 (Tr. 93–94, 121), the Government has identified no provision of the CSA, DEA's regulations or Agency precedent supporting this statement. Moreover, the MOA did not define what constituted ''commencing the study.'' Absent additional evidence of the parties' intent when entering into the MOA, I find that the Quintiles Study commenced when Respondent first dispensed controlled substances. If, hypothetically, Respondent had ordered and received controlled substances for the Quintiles Study, enrolled study patients for it, but never ultimately dispensed the controlled substances to the enrolled study patients, then the study still would not have commenced.

Here, on December 31, 2012, Respondent notified the GS (by letter from his attorney) that he was participating in the study. As noted *supra,* I found that Respondent began enrolling patients for the Quintiles study in January 2013, and that he first dispensed controlled substances to study patients

Continued

at 40; Tr. 91–93, 178–79. I discussed all of the recordkeeping allegations in my analysis of Factors Two and Four, wherein I concluded that the Government proved only one recordkeeping violation by a preponderance of the evidence—Respondent's failure to properly annotate two supplier DEA 222 forms. With respect to Factor Five, I also find that these two recordkeeping failures violated the MOA's first condition that Respondent abide by all Federal regulations because (as already noted) failing to properly annotate a supplier's DEA 222 form violates 21 CFR 1305.13(b). Thus, I agree with the ALJ's recommendation that I find (and I do find) that Respondent violated the MOA based on his failure to properly annotate two supplier DEA 222 forms. R.D., at 40.

I also agree with the ALJ's recommendation that the analysis of whether the MOA violation was sufficient to establish a violation of Factor Five does not stop here. Under the MOA, Respondent agreed that ''any violations of the Agreement may result in the initiation of proceedings to revoke or immediately suspend and revoke his DEA Certificate of Registration.'' GX 7, at 3. However, DEA agreed that it would ''not seek to revoke Dr. Nichol's DEA registration . . . unless Dr. Nichol *substantially violates* this Agreement or unless [he] commits additional acts that constitute grounds under 21 U.S.C. 823(f) and 824(a).'' *Id.* at 3–4 (emphasis added). In other words, DEA agreed not to seek to revoke Respondent's DEA registration unless he ''substantially violates'' the MOA. Here, I agree with the ALJ's recommendation that I find (and I do find) that Respondent's failure to properly complete two supplier DEA 222 forms alone is insufficient to establish that Respondent ''substantially violate[d]'' the MOA. R.D., at 40 (''I find that the violation of the 2012 MOA, of improperly completing the two supplier 222 Forms, standing along is not a *significant* violation of the 2012 MOA itself.'') (emphasis in original). Accordingly, I find that Respondent's non-substantial violation of the MOA nominally supports a finding that Respondent's continued registration would be inconsistent with the public interest under Factor Five.

Having considered all the factors above, I hold that the Government has established its *prima facie* case showing that Respondent's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must '' 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' ''thnsp;'' *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[ ]'' in the public interest determination).

An applicant's acceptance of responsibility must be unequivocal. *See Alexander,* 82 FR at 49728 (collecting cases). Also, an applicant's candor during both an investigation and the hearing itself is an important factor to be considered in determining both whether he has accepted responsibility as well as the appropriate sanction. *Michael S. Moore,* 76 FR 45867, 45868 (2011); *Robert F. Hunt, D.O.,* 75 FR 49995, 50004 (2010); *see also Jeri Hassman,* 75 FR 8194, 8236 (2010) (quoting *Hoxie,* 419 F.3d at 483 (6th Cir. 2005) (''Candor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a physician's registration is consistent with the public interest[.]'')), *pet. for rev. denied,* 515 Fed. Appx. 667 (9th Cir. 2013).

While a registrant must accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct in order to establish that his registration would be consistent with the public interest, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate disposition of the matter. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Volkman,* 73 FR at 30644; *see also Battershell,* 76 FR at 44369 (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009).

So too, the Agency can consider the need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

After considering (1) Respondent's unlawful pre-signing of prescriptions that his unlicensed staff members then issued to patients without further consulting Respondent and (2) Respondent's failure to properly annotate two supplier DEA 222 forms, the ALJ recommended a sanction of imposing restrictions on Respondent's DEA registration based solely on the sustained recordkeeping violation. R.D., at 41–46. He did not recommend that I impose a sanction of either suspension or revocation. *See id.* As set forth more fully below, I disagree with the ALJ's recommended sanction.

Pre-Signing Prescription Misconduct

With respect to Respondent's pre-signing of prescriptions, the ALJ recommended that I do not rely on this misconduct as a basis for any sanction whatsoever. *Id.* at 42–43 (recommending against relying upon ''Respondent's pre-signing of prescriptions as a basis for revocation or sanction''). The ALJ identified five mitigating actions or factors related to Respondent's unlawful pre-signing of prescriptions to support his Recommendation: (1) Respondent ''obtained high quality prescription pads that make reproduction difficult, and he writes all of his prescriptions by hand'' ''[t]o prevent forgery of his prescriptions;'' (2) ''his prescription pads produce a duplicate copy, which

on February 18, 2013. Thus, I find that Respondent did not violate the MOA's seventh condition because he notified DEA that he was asked to participate in the Quintiles Study on December 31, 2012, in advance of commencing the study on February 18, 2013.

the Respondent keeps in the medical file'' ''[t]o increase the likelihood that he can identify his prescriptions;'' (3) he ''began providing the DEA with copies of his prescriptions, as required by the MOA;'' (4) ''the DEA has renewed his registration multiple times since his medical license was restored;'' and (5) he ''had not been cited for any prescription violations in the past ten years'' and ''the amount of time that has passed since.'' *Id.* Based on these five factors and the fact that Respondent had accepted responsibility for unlawfully pre-signing prescriptions, the ALJ found that Respondent had taken sufficient ''mitigating actions'' and ''efforts at remediation'' that this unlawful conduct should not be the basis for any sanction whatsoever. *Id.* at 42–43.

Although I agree with the ALJ that Respondent accepted responsibility for unlawfully pre-signing prescriptions, I disagree that there exists sufficient mitigating evidence to warrant no sanction at all for Respondent's pre-signing of prescriptions. For example, Respondent's decision to handwrite his prescriptions on ''high quality prescription pads'' that ''produce a duplicate copy'' is an admirable effort to prevent prescription forgery. However, the ALJ failed to explain how these actions intended to prevent forgery of Respondent's signature on a prescription (the ALJ's first two factors) would remediate or prevent Respondent from again pre-signing prescriptions with his authentic signature in the future. It is manifest that a practitioner, whether he or she pre-signs a ''high quality'' or a ''low-quality'' prescription pad, is still the one signing the prescription in a case like this one involving unlawful pre-signing of prescriptions.

Here, there is no allegation that anyone forged Respondent's signature on prescriptions. It is Respondent's pre-signing of his own signature on prescriptions, not forgery, that is the basis for Respondent's unlawful prescription conduct at issue in this case. Thus, I find Respondent's efforts to prevent forgery would not and do not mitigate Respondent's unlawful pre-signing of prescriptions.

The ALJ's reliance on Respondent providing DEA with copies of his prescriptions as mitigating evidence (the ALJ's third mitigating factor) is similarly unavailing. As the ALJ concedes, Respondent only provided copies of his prescriptions to DEA because the MOA required him to do so. *See* R.D., at 42. I find that the fact that Respondent complied with this MOA requirement does not constitute sufficient mitigating evidence regarding his unlawful pre-signing of prescriptions to warrant no sanction for his unlawful conduct.

In addition, the ALJ's reliance on DEA's renewals of Respondent's registration in 2010 and 2013 after the ASMB restored Respondent's state license in 2007 as a mitigating factor is misplaced because it overlooks the chronology of DEA's investigation of Respondent. The GS testified that DEA first became aware of Respondent as part of its 2011 investigation of his violations regarding the NKRT–118 study he conducted with Moore Clinical Trials. DEA's 2011 investigation led to the 2011 Show Cause Order against Respondent. The 2011 Order included DEA's allegation that Respondent unlawfully pre-signed prescriptions and that the ASMB suspended him in 2006 for this conduct. Prior to 2011, there is no evidence in the record that DEA was aware of Respondent's misconduct—thereby making any renewals of Respondent's DEA registration prior to 2011 (including the 2010 renewal) irrelevant.

Moreover, Respondent and DEA attempted to resolve the 2011 Show Cause Order's allegations by entering into the 2012 MOA. Once Respondent's DEA registration came up for renewal in 2013, DEA renewed it because at that time DEA believed Respondent was complying with the CSA, DEA regulations, and the 2012 MOA. DEA did not learn that Respondent had violated the 2012 MOA until after DEA's July 2014 onsite inspection of Respondent's registered address. As a result of Respondent's violation of the MOA, DEA was entitled to issue a new Show Cause Order against Respondent, which it issued on March 14, 2016, that included the allegations set forth in the earlier 2011 Show Cause Order. Thus, I find that the fact that DEA renewed Respondent's registration in 2010 and 2013 does not constitute evidence mitigating Respondent's unlawful pre-signing of prescriptions.

However, I do agree with the ALJ that the final factor he identified constitutes mitigating evidence. Specifically, I find that the amount of time that has passed since Respondent unlawfully pre-signed prescriptions is mitigating evidence because he has not repeated this particular misconduct since 2006. *Koch,* 79 FR at 18736 (''time is certainly an appropriate factor to be considered'' where '' 'during that time [the] Respondent has learned from his past mistakes' '') (quoting *Leonardo V. Lopez, M.D.,* 54 FR 36915, 36915 (1989)). And it is this mitigating evidence, along with the fact that Respondent accepting responsibility, that I consider in imposing a sanction.

The Agency has long held that pre-signing prescriptions ''would be inconsistent with the public interest'' under the CSA because such conduct ''create[s] a substantial risk that the drugs would be diverted and abused.'' *E.g., Singh,* 81 FR at 8248, 8249. And as I noted earlier, Respondent's pre-signing of prescriptions constituted a serious violation of the CSA—not only because it created a substantial risk that the drugs would be diverted and abused but also because Respondent gave the pre-signed prescription forms to office personnel who lacked the authority to lawfully prescribe controlled substances under federal or state law. *See* 21 CFR 1306.03(a); *see also Krishna-Iyer,* 71 FR at 52159.

Unlike the ALJ, I find that the Agency's interest in deterring this misconduct in the future both on the part of Respondent as well as the community of registrants supports a sanction. The ASMB imposed a six-month suspension of Respondent's state license for unlawfully pre-signing prescriptions. Although there is precedent in the context of pre-signing prescriptions for imposing a sanction to match the ASMB's sanction, *cf. Walter S. Gresham, M.D.,* 57 FR 44213, 44214–15 (1992) (imposing same sanction against respondent who unlawfully pre-signed prescriptions as Georgia imposed), I believe Respondent's acceptance of responsibility for unlawfully pre-signing prescriptions, and the lack of any evidence that Respondent has engaged in this same misconduct since 2006, warrants a lesser sanction than that imposed by the ASMB. Accordingly, I find that suspending Respondent's DEA registration for one month is what is necessary to protect the public interest.

As for the issue of specific deterrence, a suspension of Respondent's registration for one month is not a bar on his practice, much less a permanent bar. And regarding general deterrence, those members of the regulated community who contemplate unlawfully pre-signing prescriptions need to know that the Agency takes such misconduct—and the grave risk of diversion that it creates—seriously and that there will be concomitantly serious consequences if they choose to engage in such misconduct. This interest would be compelling even if it was not the case that the nation faces an epidemic of opioid abuse.

Recordkeeping Misconduct

With respect to the recordkeeping violations, the ALJ stated that this ''violation [of DEA's regulations] is significant because without knowing the

quantity of controlled substances shipped back to Fisher, it is impossible to conduct an accurate audit of the Respondent's controlled substances using his records, and it is his records that are the subject of these proceedings.'' R.D., at 43. The ALJ recommended that I find that ''Respondent's recordkeeping violation to be egregious. It was egregious because it prevented the DEA from being able to use the Respondent's own records to conduct an accurate audit of the controlled substances for which the Respondent was accountable while he served as the principal investigator in the controlled drug study.'' *Id.* at 45.

Nevertheless, the ALJ found that Respondent can be entrusted with a DEA registration and recommended that I only place restrictions upon Respondent's registration, rather than revoking or suspending his registration. *Id.* at 42–43, 45–46. Although the ALJ acknowledged that Respondent ''has not taken any specific remedial steps to address his improper completion of supplier 222 forms,'' the ALJ reasoned that Respondent ''now knows how to properly complete a 222 form when he is a supplier, and he has stated that in the future he will fill out the form correctly.'' *Id.* at 43 (citing Tr. 257). In short, the ALJ believed that Respondent's ''egregious'' and ''significant'' recordkeeping violations nonetheless warranted only the imposition of restrictions on (and not suspension or revocation of) Respondent's DEA registration because it was the first time Respondent had committed recordkeeping violations.

In contrast, the Government argued in its Proposed Findings that Respondent ''has demonstrated, over a period of years, an unwillingness or inability to follow DEA's recordkeeping requirements.'' ALJ Ex. 20, at 21. The Government further argued that Respondent's ''recordkeeping violations that prompted DEA's 2011 Order to Show Cause, which was settled with the 2012 MOA, and his continued violations of these same recordkeeping requirements,'' ''warranted'' ''revocation.'' *Id.* at 19.

In his Recommendation, the ALJ disagreed because he believed that ''the Respondent does not have a history of failing to keep the required records.'' R.D., at 39. The ALJ reached this conclusion because ''Respondent entered into an MOA with the DEA'' ''[t]o resolve the September 2011 [Show Cause Order],'' and ''[n]owhere in the 2011 [Show Cause Order] are recordkeeping violations.'' *Id.* Elsewhere, the ALJ contested the Government's characterization of Respondent's history of recordkeeping violations:

> The Government's arguments are puzzling in this regard because the Respondent was not cited for any recordkeeping violations in the 2011 [Show Cause Order], and in its post-hearing brief, the Government does not cite to any recordkeeping violations that occurred prior to the current allegations. . . .
>
> Respondent does not have a *history* of failing to keep the required records. The Government's attempt to paint Respondent's current violations as a continuation of the DEA's concerns that prompted the issuance of the 2011 OSC is disingenuous at best! . . .
>
> Here, . . . there is no evidence that the Respondent has a *history* of improperly completing 222 Forms, either as a purchaser or as a supplier.

Id. at 44 (emphasis in original).

It is unclear why the ALJ was unaware of Respondent's history of recordkeeping violations, including a history of improperly completing DEA 222 Forms, in light of *Moore Clinical Trials.* As I noted earlier, Respondent's history of recordkeeping (and other) violations was referenced in the record. In its Proposed Findings filed post-hearing, the Government referenced the GS's testimony that she first became aware of Respondent after receiving an application for a DEA registration from Moore Clinical Trials, and that this application led to a DEA investigation of both Moore Clinical Trials and Respondent in 2011 that found recordkeeping violations. *See* ALJ Ex. 20, at 4.

The Government also referenced the GS's testimony that Moore Clinical Trial's DEA application was denied. *Id.* The ALJ even acknowledged this denial in his Recommendation. R.D., at 3. Although the Government could have better assisted the ALJ by directing him to a case citation to the Agency's decision, it does not change the fact that *Moore Clinical Trials*—like all other final agency actions issued by my office—was an Agency decision published in the **Federal Register**. As such, *Moore Clinical Trials* compels a finding that Respondent has a history of recordkeeping violations.

As already noted, the Agency found in *Moore Clinical Trials* that Respondent committed both separate registration and recordkeeping violations in connection with the NKRT–118 study Respondent conducted with Moore Clinical Trials that, not coincidentally, correspond to the terms of the MOA. *Moore Clinical Trials* even documented Respondent's history of recordkeeping violations in connection with DEA 222 forms. For example, the Agency noted the ALJ's findings that Respondent's ''documents'' ''were deficient and that the order forms for Schedule II controlled substances (DEA–222) were lacking'' in connection with the NKRT–118 study. *Moore Clinical Trials,* 79 FR at 40147 (internal quotations omitted). The then-Administrator also found that Respondent's DEA 222 forms related to the NKRT–118 study did not properly indicate the date the drugs were received and the quantity received. *Id.* at 40151, 40156. Most significantly, this type of recordkeeping violation involving DEA 222 forms—failure to properly record the date and quantity of controlled substances—is the same type of recordkeeping violation that Respondent committed in this case. Thus, contrary to the ALJ's conclusion, Respondent in fact ''has a *history* of improperly completing 222 Forms.'' *See* R.D., at 44.

The then-Administrator concluded in *Moore Clinical Trials* that ''the record clearly establishes that Dr. Nichol violated both the separate registration provision and DEA recordkeeping requirements.'' 79 FR at 40155. The DEA therefore entered into the MOA (which expressly referenced the NKRT–118 study) with Respondent as an intermediary step to get Respondent into compliance and to address Respondent's recordkeeping and separate registration violations related to the NKRT–118 study described and found by the Agency in *Moore Clinical Trials.*

The ALJ's finding that Respondent's recordkeeping violation in this case is not ''a minor oversight'' but an ''egregious'' and ''significant'' violation, combined with Respondent's history of recordkeeping violations, requires a stronger sanction than what the ALJ recommended. In that vein, I find that the Agency's interest in deterring this misconduct in the future both on the part of Respondent as well as the community of registrants supports imposing a two-part sanction. Although the ALJ's recommended restrictions on Respondent's registration could be a sufficient deterrent for a registrant who lacked a history of recordkeeping violations, that is not this case. Here, the Agency already attempted to address Respondent's prior recordkeeping violations by imposing the restrictions (rather than suspending or revoking his DEA registration) set forth in the MOA. To simply impose more restrictions after Respondent again committed recordkeeping violations would be no sanction at all in this case. *See Mark De La Lama, P.A.,* 76 FR 20011, 20020 (2011) (''granting Respondent's application subject to the restrictions proposed by the ALJ, which do no more than replicate the conditions imposed

by the MOA, amounts to no sanction at all. In short, adopting the ALJ's proposed sanction would send the wrong message to both Respondent . . . as well as other applicants/registrants''). For this reason, I find that suspending Respondent's DEA registration for one month (concurrently with the sanction I imposed for Respondent's unlawful pre-signing of prescriptions) is necessary to protect the public interest. In addition, I impose the same restrictions to Respondent's registration as proposed by the ALJ, and I direct that these restrictions—set forth *infra*—are set to begin at the conclusion of Respondent's one-month suspension.

The Agency's interests in both specific and general deterrence support this two-part sanction. As for the Agency's interest in specific deterrence, and as already noted, the one-month suspension of his DEA registration is not a bar on his practice, much less a permanent bar. In addition, the restrictions that I impose in this Decision and Order will hopefully deter Respondent from engaging in future misconduct. As for the Agency's interest in general deterrence, not only does the Agency have an obvious and manifest interest in deterring violations of the CSA and DEA's regulations by members of the regulated community, the Agency also has a manifest interest in ensuring that those members to whom it extends the forbearance of an MOA will comply with the terms of those agreements. *Roberto Zayas, M.D.,* 82 FR 21410, 21430 (2017).

I therefore conclude that the suspension of Respondent's DEA registration for one month, in addition to the imposition of the ALJ's recommended restrictions at the conclusion of Respondent's one-month suspension, are necessary to protect the public interest.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BN4578057, issued to Brian Thomas Nichol, M.D., be, and it hereby is, suspended for one month. At the conclusion of this one-month suspension, I impose the following restrictions on Brian Thomas Nichol's DEA Certificate of Registration No. BN4578057:

1. That he may not participate in any drug studies in which he is required to order, maintain, store, or dispense controlled substances for a period of four years.

2. That he may not order, maintain, store, or dispense any controlled substances at his registered location for a period of four years.

3. That restrictions one and two, above, will not be lifted, even after four years, until the Respondent has completed a course in controlled substance recordkeeping, a course in controlled substance storage, and a course in the administration of controlled substances, and provides the DEA with evidence of completion of these courses. These courses may not be used to meet any continuing medical education requirement.

4. That prior to renewal of the Respondent's DEA registration, he sign a document consenting to inspections by DEA personnel of his medical practice without the need for DEA personnel to obtain an administrative inspection warrant prior to conducting an inspection. By the terms contained in the consent form, the consent shall be valid for four years from the date his current renewal application for a DEA registration is approved. This consent form is to be delivered to the Respondent's local DEA Field Office.

5. That prior to renewal of the Respondent's DEA registration, he sign a document consenting to the conditions set forth in Paragraphs one and two above and acknowledging his understanding that his failure to comply with the terms of those conditions will constitute an independent basis for administrative enforcement proceedings by the DEA. This consent and acknowledgement document shall be delivered to the Respondent's local DEA Field Office.

This Order is effective October 19, 2018.

Dated: September 5, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–20383 Filed 9–18–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0065]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: National Corrections Reporting Program

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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.

DATES: Comments are encouraged and will be accepted for 30 days until October 19, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Elizabeth Ann Carson, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *elizabeth.carson@usdoj.gov*; telephone: 202/616.3496).

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 Bureau of Justice Statistics, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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) *The Title of the Form/Collection:* National Corrections Reporting Program. The collection includes the following parts: Prisoner Admission Report, Prisoner Release Report, Prisoners in Custody at Year-end Report, Post-Custody Community Supervision Entry Report, Post-Custody Community Supervision Exit Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1D, NCRP–1E, NCRP–1F. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: 50 state departments of corrections (DOCs) and 7 parole supervising agencies (in six states and the District of Columbia). The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for state prisoners at five points in the incarceration process: Prison admission, prison release, annual year-end prison custody census, entry to post-custody community corrections supervision, and exits from post-custody community corrections supervision. BJS, the U.S. Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through state correctional systems, as well as to examine long-term trends in time served in prison, demographic and offense characteristics of inmates, sentencing practices in the states that submit data, transitions between incarceration and community corrections, and recidivism. Providers of the data are personnel in the states' Departments of Corrections and Parole, and all data are submitted on a voluntary basis. The NCRP collects the following administrative data on each inmate in participating states' custody:

- County of sentencing
- State and federal inmate identification numbers
- Dates of: Birth, prison admission, prison release, projected prison release, mandatory prison release, eligibility hearing for post-custody community corrections supervision, post-custody community corrections supervision entry, post-custody community corrections supervision exit
- First, middle, and last names
- Demographic information: Sex, race, Hispanic origin, education level, prior military service, date and type of last discharge from military
- Offense type and number of counts per inmate for a maximum of three convicted offenses per inmate
- Total sentence length imposed
- Type of facility where inmate is serving sentence (for year-end custody census records only, the name of the facility is also requested)
- Type of prison admission
- Type of prison release
- Location of post-custody community supervision exit or post-custody community supervision office (post-custody community supervision records only)
- Social security number
- Address of last residence prior to incarceration
- Prison security level at which the inmate is held

For consideration, BJS is proposing to add the following items to the NCRP collection, all of which are likely available from the same databases as existing data elements and should likely pose minimal additional burden to the respondents, while enhancing BJS' ability to characterize the corrections systems and populations it serves:

- Status of current U.S. citizenship
- Country of current citizenship
- Country of birth

Finally, BJS is proposing to remove the following 7 items from the NCRP collection, based on a combination of low response rates (less than 50% of states) and/or high levels of missing data (30% or higher missing) among states that do respond:

- Prior prison time served by the offender
- Additional offenses since admission date
- Additional sentence time since admission date
- Whether the offender was on AWOL or escape while serving sentences
- Whether the offender was serving time concurrently on community release prior to prison release
- The number of days on community release prior to prison release served by the offender
- Offender's supervision status prior to release from post-custody community supervision

BJS uses the information gathered in NCRP in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS website.

BJS received 3 comments to its 60-day **Federal Register** Notice (*https://www.federalregister.gov/documents/2018/07/09/2018-14599/agency-information-collection-activities-proposed-ecollection-ecomments-requested-extension-of-a*). Responses to these comments will be included in the final clearance package submitted to OMB and available at the NCRP page on *www.reginfo.gov* (*https://www.reginfo.gov/public/do/PRAOMBHistory?omb ControlNumber=1121-0065*).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: BJS anticipates 57 respondents to NCRP by 2021: 50 state DOC respondents and seven separate parole supervising agencies (in six states and the District of Columbia). Burden hours for the three collection years (2019–2021) differ based on whether a state has previously submitted NCRP prison and PCCS data in recent years. All 50 DOCs have recently submitted NCRP prison data, but currently, only 32 DOCs have submitted PCCS data in the last four years.

Burden Hours for Prison Records (NCRP–1A, NCRP–1B, NCRP–1D)

All 50 DOCs have recently submitted NCRP prison data, so the average time needed to continue providing prison data is expected to be 8 hours per respondent for both prisoner admissions and releases (NCRP–1A and NCRP–1B) and 8 hours for data on persons in prison at year-end (NCRP–1D). For 2019, the total burden estimate of 16 hours per DOC for these three record types is increased by 45 minutes from the previous NCRP OMB submission, to account for the addition and removal of variables from states' extract programs (a 30 minute increase to add citizenship questions to NCRP–1A and NCRP–1D, and a 15 minute increase to remove the 7 variables). The total amount of time estimated for 50 DOCs to submit NCRP–A, –B, and –D records in 2019 is 837.5 hours (16.75 hours * 50 = 837.5 hours).

In 2020 and 2021, BJS expects to have all 50 DOCs providing NCRP prison data. The burden for provision of the NCRP prison data will decrease to 14 hours per respondent due to the removal of the 7 items (7 hours for the prison admission and release records combined, and 7 hours for the year-end custody records), for a total of 700 hours annually for the 50 DOCs in 2020 and 2021 (14 hours * 50 = 700 hours).

Burden Hours for PCCS Records (NCRP–1E, NCRP–1F)

There are currently 37 jurisdictions submitting PCCS data (32 DOCs and 5 parole boards), and BJS estimates that extraction and submission of both the PCCS entries and exits takes an average of 8 hours per jurisdiction. In 2019, BJS anticipates that 8 additional DOCs and one parole supervising agency (likely the District of Columbia) will submit data, with the burden for each new jurisdiction being 24 hours to set up extraction programs and make the submission. Thus, the burden for PCCS records is 296 hours for those already submitting (8 hours * 37 = 296 hours), and 216 hours for new submissions (24 hours * 9 = 216). The total amount of time for all PCCS submissions in 2019 is 512 hours.

In 2020, BJS hope to recruit an additional 2 DOCs and the remaining parole supervising agency to submit NCRP PCCS data. The total estimate for submission of PCCS for new jurisdictions in 2020 is 72 hours (24

hours * 3 = 72 hours). For those 40 DOCs and 6 parole boards currently responding, provision of the PCCS data in 2020 will total 368 hours (8 hours * 46 = 368 hours). The total amount of time for all PCCS submissions in 2020 is 440 hours.

Similarly, BJS hopes that the remaining 2 DOCs will submit PCCS data for the first time in 2021. The remaining non-reporting DOCs would need a total of 48 hours to create data extraction programs and begin data submission (24 hours * 2 = 48 hours). Those jurisdictions (42 DOCs and 7 parole supervising agencies) who provided NCRP PCCS data in 2020 will require 392 hours total to do the same in 2021 (8 hours * 49 = 392 hours). The total amount of time for all PCCS submissions in 2021 is 440 hours.

Burden Hours for Data Review/Follow-Up Consultations

Follow-up consultations with respondents are usually necessary while processing the data to obtain further information regarding the definition, completeness and accuracy of their report. The duration of these follow-up consultations will vary based on the number of record types submitted, so BJS has estimated an average of 3 hours per jurisdiction to cover all of the records (prison and/or PCCS) submitted. In 2019, BJS anticipates that one of the two parole supervising agencies not currently submitting PCCS data will begin to submit, so the number of jurisdictions requiring follow-up consultations is 51 (50 DOCs submitting at least the prison data, and one parole supervising agency submitting only PCCS data). This yields a total of 153 hours of follow-up consultation after submission (3 hours * 51 = 153 hours).

This total estimate of 153 hours for data review/follow-up consultations remains the same for 2020 and 2021.

Total Burden Hours for Submitting NCRP Data

BJS anticipates that the total burden for provision and data follow-up of all NCRP data across the participating jurisdictions in 2019 is 1,502.5 hours (837.5 hours for prison records, 512 hours for PCCS records, and 153 hours for follow-up consultation). This is equivalent to roughly 29 hours per respondent. The total annual burden for provision and follow-up of NCRP data in 2020 and 2021 is anticipated to be 1,293 hours (700 hours for prison records, 440 hours for PCCS records, and 153 hours for follow-up consultation).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,502.5 total burden hours associated with this collection in 2019, and 1,293 hours in both 2020 and 2021.

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.405B, Washington, DC 20530.

Dated: September 14, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–20354 Filed 9–18–18; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request a new, one time data collection. The primary purpose of this data collection is to provide critical evidence for the Evaluation of the Centers for Chemical Innovation (CCI) Program. The National Science Foundation (NSF) has submitted this information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** at 83 FR 23301, and no comments were received. NSF is forwarding the proposed new information collection submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Evaluation of the Centers for Chemical Innovation (CCI) Program Surveys and Interviews.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval for a new information collection.

Proposed Project: The National Science Foundation established the Centers for Chemical Innovation (CCI) Program (formerly known as Chemical Bonding Centers) in 2004 to support research centers focused on major, long-term fundamental chemical research challenges. The goals that NSF set forth for the CCI Program include that Centers will (a) produce transformative research, leading to innovation, and attract broad scientific and public interest; (b) be agile structures that can respond rapidly to emerging opportunities through enhanced collaborations; and (c) integrate research, innovation, education, broaden participation, and informal science communication.

The NSF Division of Chemistry has undertaken a comprehensive assessment of the Centers for Chemical Innovation

(CCI) program—with specific focus on its investment in Phase II Centers—toward achieving its stated goals. As this is the first assessment of the CCI program, new data collection is necessary to provide critical evidence for this assessment.

The new data collection consists of the following four new data collection activities:

1. CCI Principal Investigator (PI) and Co-Investigator (Co-I) Survey. Administration of a survey to CCI Phase I and Phase II PIs and Co-Investigators is necessary to understand the role of the Center in research, collaboration, and broader impacts; to assess grantee satisfaction with the center structure, management, and a two-phase funding model; to document outcomes; and to describe the challenges encountered.

2. CCI Phase II Principal Investigator (PI) and Co-Investigator (Co-I) Interview. Interviews with CCI Phase II PIs and a sample of Phase II Co-Investigators are necessary to further explore the data that emerge from the survey of CCI Phase II Center PIs and Co-Investigators.

3. CCI Graduate Student and Postdoctoral Researcher Survey. Administration of a survey to CCI Phase I and Phase II graduate students and postdoctoral researchers are needed to understand the role of CCI in education, training, and career development.

4. CCI Center Industry Partners Interview. Interviews with CCI Center industry partners are necessary to explore innovation-related knowledge exchange with Centers, perspectives on CCI contributions to industry and other benefits and challenges of partnership.

Use of the Information: The NSF Division of Chemistry will use the collection of information to assess the CCI Program's progress in achieving its goals, to communicate the outcomes of the program, and to inform improvements in CCI Program and Center-level design and operation. Across the NSF, the evaluation will also inform planning decisions about the center concept and funding mechanisms. Additionally, the evaluation findings will be used to communicate the outcomes of the CCI program to the wider chemistry community.

Burden on the Public: It has been estimated that respondents will expend an average of 20 minutes to complete the CCI Principal Investigators (PI) and Co-Investigator (Co-I) Survey; 60 minutes on average to complete the CCI Phase II Center PIs and Co-Investigators Interview; 15 minutes on average to complete the CCI Graduate Student and Postdoctoral Researcher Survey; and 20 minutes to complete the CCI Center Industry Partners Interview. The Foundation has based its reporting burden on the review of actual times required for each information collection during pilot tests under Fast Track Clearance 3145–0215.

The total burden for new data collection for this ICR should not exceed 317 hours. A sample of 211 individuals will complete the 20-minute CCI Principal Investigators (PI) and Co-Investigator (Co-I) Survey (70 hours). A sample of 27 individuals will complete the 60-minute CCI Phase II Center PIs and Co-Investigators Interview (27 hours). A sample of 859 individuals will complete the 15-minute CCI Graduate Student and Postdoctoral Researcher Survey (215 hours). A sample of 15 individuals will complete the 20-minute CCI Center Industry Partners Interview (5 hours). Only 27 CCI Phase II Center PIs and Co-Investigators will receive requests to complete both a survey and an interview.

Dated: September 13, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–20300 Filed 9–18–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; notice of opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (collectively, SNC), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Comments must be filed by October 19, 2018. A request for a hearing must be filed by November 19, 2018.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment is dated August 30, 2018, is available in ADAMS under Accession No. ML18242A039.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to facility Combined License Nos. NPF–91 and NPF–92, issued to SNC for operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the Combined Licenses to revise the description and scope of the Initial Test Program (ITP) to remove component testing as a separately identified program or phase of the ITP, *i.e.,* the Component Test Program. The requested amendment requires changes to the VEGP Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific Design Control Document (DCD) Tier 2 information and involves changes to related plant-specific Tier 1 information with corresponding changes to the associated Combined License information. Because, this proposed changes require a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with section 52.63(b)(1) of title 10 of the *Code of Federal Regulations* (10 CFR).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment is related to the conduct of the ITP. The proposed changes are made in compliance with the applicable regulatory guides, are only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. No changes are made to any design aspect of the plant. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is related to the conduct of the ITP. The proposed changes are made in compliance with the applicable regulatory guides, are only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. These changes do not affect the design or analyzed operation of any system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is related to the conduct of the ITP. The proposed changes are made in compliance with the applicable regulatory guides, are only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity

the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 19, 2018. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the website, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated August 30, 2018.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 14th day of September 2018.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–20322 Filed 9–18–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (collectively, SNC), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Comments must be filed by October 19, 2018. A request for a hearing must be filed by November 19, 2018.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment is dated August 10, 2018, is available in ADAMS under Accession No. ML18222A599.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to facility Combined License Nos. NPF–91 and NPF–92, issued to SNC for operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the Combined Licenses to relocate the power operated relief valve (PORV) branch lines upstream of the main steam safety valves in Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Figure 2.2.4–1 (Sheets 1 of 2) of the COL Appendix C. In addition to the relocation of the PORV branch lines, the PORV block valves would be changed from gate valves to globe valves in the VEGP Updated Final Safety Analysis Report (UFSAR). The requested amendment proposes changes to the UFSAR in the form of departures from the incorporated plant-specific Design Control Document (DCD) Tier 2 information in the UFSAR and involves changes to COL Appendix C, and corresponding changes to plant-specific Tier 1 information. Because, these proposed changes require a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with section 52.63(b)(1) of title 10 of the *Code of Federal Regulations* (10 CFR).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operation or reliability of any system, structure or component (SSC) required to maintain a normal power operating condition or to mitigate anticipated transients without safety-related systems.

With the proposed changes, the PORV block valves are still able to perform the safety-related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed in allows the PORV block valves to be closer to the containment penetration and maintain compliance with General Design Criterion (GDC) 57 for locating containment isolation valves as close to the containment as practical.

There is no impact to Chapter 15 evaluations. Changes to the PORV block valve and line size do not impact the mass releases to the atmosphere during a Steam Generator Tube Rupture accident. The mass release is limited by the PORV which is more restrictive than the PORV block valve and line size.

There is no impact to any assumed leakage through the PORV line. The existing 12-inch PORV has a design function to limit leakage through the PORV line. Increasing the PORV block valve to 12 inches will increase the leakage through the PORV block valve however it will be that same leakage rate as the 12-inch PORV. Therefore, the leakage rate through the PORV line does not increase and there is no impact to radiation doses.

There is no impact to the assumptions or analysis in the completed safety analysis for radiation doses as a result of the change.

There is no impact to the conclusions of the Pipe Rupture Hazard Analysis (PRHA) because the PORV line is Break Exclusion Zone (BEZ) piping. The proposed changes do not result in any new postulated break locations. Updated analyses confirm that the integrity of the wall adjacent to the [main control room] MCR is unaffected by a postulated main steam line break that causes the PORV line to impact the wall.

There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc and UPS System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of systems or equipment that could initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. With the proposed changes, the PORV block valves are still able to perform the safety related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed in allows the PORV block valves to be closer to the

containment penetration and maintain compliance with General Design Criterion (GDC) 57 for locating containment isolation valves as close to the containment as practical.

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There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc and UPS System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect existing safety margins. With the proposed changes, the PORV block valves are still able to perform the safety-related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed in allows the PORV block valves to be closer to the containment penetration and maintain compliance with General Design Criterion (GDC) 57 for locating containment isolation valves as close to the containment as practical.

There is no impact to Chapter 15 evaluations. Changes to the PORV block valve and line size do not impact the mass releases to the atmosphere during a Steam Generator Tube Rupture accident. The mass release is limited by the PORV which is more restrictive than the PORV block valve and line size.

There is no impact to any assumed leakage through the PORV line. The existing 12-inch PORV has a design function to limit leakage through the PORV line. Increasing the PORV block valve to 12 inches will increase the leakage through the PORV block valve however it will be that same leakage rate as the 12-inch PORV. Therefore, the leakage rate through the PORV line does not increase and there is no impact to radiation doses.

There is no impact to the assumptions or analysis in the completed safety analysis for radiation doses as a result of the change.

There is no impact to the conclusions of the Pipe Rupture Hazard Analysis (PRHA) because the PORV line is Break Exclusion Zone (BEZ) piping. The proposed changes do not result in any new postulated break locations. Updated analyses confirm that the integrity of the wall adjacent to the MCR is unaffected by a postulated main steam line break that causes the PORV line to impact the wall.

There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc and UPS System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on

which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 19, 2018. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

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All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the website, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those

participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated August 10, 2018.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 14th day of September 2018.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–20324 Filed 9–18–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 17, 24, October 1, 8, 15, 22, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of September 17, 2018

There are no meetings scheduled for the week of September 17, 2018.

Week of September 24, 2018—Tentative

Thursday, September 27, 2018

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public) (Contact: Trent Wertz: 301–415–1568)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 1, 2018—Tentative

There are no meetings scheduled for the week of October 1, 2018.

Week of October 8, 2018—Tentative

Thursday, October 11, 2018

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public) (Contact: Matthew Meyer: 301–415–6198)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 15, 2018—Tentative

There are no meetings scheduled for the week of October 15, 2018.

Week of October 22, 2018—Tentative

Thursday, October 25, 2018

9:00 a.m. Briefing on Digital Instrumentation and Control (Public) (Contact: Jason Paige: 301–415–1474)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of September 2018.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–20439 Filed 9–17–18; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

October 24, 2018—*The U.S. Nuclear Waste Technical Review Board will meet in Albuquerque, New Mexico, to review information on DOE research and development activities related to managing and disposing of commercial spent nuclear fuel.*

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold a public meeting in Albuquerque, New Mexico, on Wednesday, October 24, 2018, to review information on U.S. Department of Energy (DOE) research and development (R&D) activities related to managing and disposing of commercial spent nuclear fuel (SNF). The Board is an independent federal agency established by Congress to conduct an ongoing technical and scientific evaluation of activities undertaken by DOE to manage and dispose of SNF and high-level radioactive waste (HLW).

The Board meeting will be held at the Albuquerque Marriott, 2101 Louisiana Boulevard NE, Albuquerque, NM 87110. The hotel telephone number is (505) 881–6800.

The meeting will begin at 8:00 a.m. and is scheduled to adjourn at 5:00 p.m. Speakers from the DOE Office of Nuclear Energy (DOE–NE) and national laboratories will report on R&D projects related to extended storage and transportation of high-burnup SNF, including recent progress in the High-Burnup Dry Storage Cask Research Project and the results of a test that transported an SNF cask containing surrogate SNF assemblies on a 14,500 mile journey by truck, barge, cargo ship, and train. The Board also will hear presentations on DOE–NE R&D activities related to direct disposal of SNF in dual-purpose canisters. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and again at the end of the meeting. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. Depending on the number of people who sign up to speak, it may be necessary to set a time limit on individual remarks. However, written comments of any length may be submitted, and all comments received in writing will be included in the record of the meeting, which will be posted on the Board's website after the meeting. The meeting will be webcast, and the link to the webcast will be available on the Board's website (*www.nwtrb.gov*) a few days before the meeting. An archived version of the webcast will be available on the Board's website following the meeting. The transcript of the meeting will be available on the Board's website no later than December 29, 2018.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Roberto Pabalan: *pabalan@nwtrb.gov* or Karyn Severson: *severson@nwtrb.gov.* For information on logistics, or to request copies of the meeting agenda or transcript, contact Davonya Barnes: *barnes@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: September 13, 2018.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2018–20361 Filed 9–18–18; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–251; CP2017–255; CP2018–302; CP2018–303; CP2018–304; MC2018–219 and CP2018–305; MC2018–220 and CP2018–306]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 21, 2018 and September 24, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The September 21, 2018 comment due date applies to Docket Nos. CP2017–251; CP2017–255; CP2018–302; CP2018–303; and CP2018–304.

The September 24, 2018 comment due date applies to Docket Nos. MC2018–219 and CP2018–305; MC2018–220 and CP2018–306.

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–251; *Filing Title:* Notice of the United States Postal Service of Filing Modification Three to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2018.

2. *Docket No(s).:* CP2017–255; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2018.

3. *Docket No(s).:* CP2018–302; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 8 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* September 12, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr*; Comments Due:* September 21, 2018.

4. *Docket No(s).:* CP2018–303; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 21, 2018.

5. *Docket No(s).:* CP2018–304; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 8 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr*; Comments Due:* September 21, 2018.

6. *Docket No(s).:* MC2018–219 and CP2018–305; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 89 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 24, 2018.

7. *Docket No(s).:* MC2018–220 and CP2018–306; *Filing Title:* USPS Request to Add Priority Mail Contract 465 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 13, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 24, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–20366 Filed 9–18–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 465 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–220, CP2018–306.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–20314 Filed 9–18–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 89 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–219, CP2018–305.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–20313 Filed 9–18–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84114; File No. SR–BX–2018–043]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees at Rule 7018(a)

September 13, 2018

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 September 4, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''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 amend its transaction fees at Rule 7018(a) to: (i) Increase the level of total Consolidated Volume require to qualify for a $0.0017 per share executed credit; and (ii) adopt a new $0.0016 per share executed credit.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Increase the level of total Consolidated Volume require to qualify for a $0.0017 per share executed credit; and (ii) adopt a new $0.0016 per share executed credit.

First Change

Under Rule 7018, the Exchange assesses charges and credits for the use of the order execution and routing services of the Nasdaq BX Equities System by members for all securities priced at $1 or more per share that it trades. The Exchange operates on the ''taker-maker'' model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange offers several different credits for orders that access liquidity on the Exchange. Among these credits, the Exchange pays a credit of $0.0017 per share executed for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.10% of total Consolidated Volume [3] during a month. The Exchange is proposing to increase the level of total Consolidated Volume required to qualify for the credit from 0.10% to 0.12%.

Second Change

The Exchange is proposing to adopt a new $0.0016 per share executed credit available for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price). To receive the credit a member must (i) add liquidity equal to or exceeding 0.60% of total Consolidated Volume during a month; and (ii) access liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[7] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[8] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [9]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [10]

First Change

The Exchange believes that the $0.0017 per share executed credit is reasonable because it remains unchanged. Consequently, the rationale supporting the credit's reasonableness when it was adopted remains valid. The Exchange believes that it is reasonable to increase the total Consolidated Volume requirement because it is a modest increase in the standard, which will ensure members are providing adequate market participation in return for the credit.

The Exchange believes that increase to the total Consolidated Volume requirement is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. The proposed change is a moderate increase to the Consolidated Volume requirement that any member may choose to achieve if it wishes to receive the credit. Moreover, the

[3] Rule 7018(a) defines Consolidated Volume as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[7] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[8] *See NetCoalition,* at 534–535.

[9] *Id.* at 537.

[10] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Exchange has similar credits with lower Consolidated Volume requirements that a member may receive. For example, the Exchange provides a credit of $0.0015 per share executed for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.065% of total Consolidated Volume during month. In sum, members have other opportunities to receive credits under Rule 7018(a) should a member be unable to satisfy the amended qualification criteria required to receive the credit. Consequently, the Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory.

Second Change

The Exchange believes that the $0.0016 per share executed credit is reasonable because it is similar to other credits available under Rule 7018(a). For example, the Exchange offers the $0.0017 per share executed credit, which is the subject of the first proposed change. As noted above, the $0.0017 per share executed credit, like the proposed new credit, is provided for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price). Like the $0.0017 per share executed credit, the proposed $0.0016 per share executed credit is provided if a member provides a certain levels of market-improving behavior. As a consequence, the Exchange believes that the proposed new credit is reasonable.

The Exchange believes that the $0.0016 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. The Exchange believes that the proposed criteria a member is required to satisfy to receive the credit is an equitable allocation and is not unfairly discriminatory because the Exchange has similar credits with lower Consolidated Volume requirements that a member may receive. For example, the Exchange provides a credit of $0.0015 per share executed for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.065% of total Consolidated Volume during month. The Exchange also provides a credit of $0.0017 per share executed for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.10% [11] of total Consolidated Volume during a month. The new credit will require a liquidity provided threshold that ensures members achieving this credit will meaningfully support trading on the exchange by providing liquidity that supports the displayed market and, therefore, market quality. The Exchange believes the proposed credit together with the other existing credits under Rule 7018(a) provide members with choice and flexibility. In sum, members have other opportunities to receive credits under Rule 7018(a) should a member be unable to satisfy the qualification criteria required to receive the proposed credit. Consequently, the Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the credits available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed credit represents a modest increase in the criteria required to qualify for the credit. Members may choose to increase their level of Consolidated Volume to qualify for the credit or alternatively provide less Consolidated Volume and receive a lower credit. The Exchange is also proposing to provide a new opportunity for members to receive a credit. Such a change is procompetitive and reflective of the Exchange's efforts to make it an attractive venue to market participants. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[11] The Exchange is proposing herein to increase this percentage of total Consolidated Volume to .12%.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2018–043 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–BX–2018–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–043 and should be submitted on or before October 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20308 Filed 9–18–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84117; File No. SR–C2–2018–019]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Expand the Types of Messages That Users May Submit Into Bulk Order Ports

September 13, 2018

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 September 5, 2018, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to expand the types of messages that Users may submit into bulk order ports. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Cboe C2 Exchange, Inc.

Rules

* * * * *

Rule 1.1. Definitions

* * * * *

Port

The term ''port'' includes the following types of ports:

(a)–(b) No change.

(c) A ''bulk order port'' is a dedicated logical port that provides Users with the ability to submit single and bulk order messages to enter, modify, or cancel *auction responses or* orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change expands the types of messages that Users may submit into bulk order ports. A bulk order port is a dedicated logical port that provides Users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders [5] with a Time-in-Force of DAY [6] or GTD [7] with an expiration time on that trading day. Post Only Orders with a Time-in-Force of Day or GTD are orders that will be posted to and displayed by the Exchange, rather than removing liquidity or routing to another options exchange. The Exchange currently limits the use of bulk order ports to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A ''Post Only'' order is an order the System ranks and executes pursuant to Rule 6.12, subjects to the Price Adjust process pursuant to Rule 6.12, or cancels or rejects (including if it is not subject to the Price Adjust process and locks or cross a Protected Quotation of another exchange), as applicable (in accordance with User instructions), except the order may not remove liquidity from the Book or route away to another exchange. *See* Rule 1.1 (paragraph (h) of definition of Order Instruction).

[6] An order designated as ''Day'' means an order that, if not executed, expires at market close. *See* Rule 1.1 (definition of Time-in-Force).

[7] An order designated as ''GTD'' means an order that, if after entry into the System, is not fully executed, remains available for potential display or execution until a date and time specified by the entering User unless cancelled by the entering User. *See* Rule 1.1 (definition of Time-in-Force).

these orders to limit the use of these ports to liquidity provision. The primary purpose of bulk order ports is to encourage Users, and Market-Makers in particular, to quote on the Exchange. As a general matter, however, the overall purpose of bulk order ports is to allow Users to bundle multiple instructions in a single message and provide all Users (not just Market-Makers) with an efficient way to provide liquidity on the Exchange.

The proposed rule change permits Users to submit auction responses into bulk order ports, in addition to Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. The Exchange currently offers one auction mechanism, the Complex Order Auction (''COA''), which provides Users with additional execution opportunities and potential price improvement for their complex orders.[8] When the Exchange initiates a COA, it disseminates a message that contains the relevant information about the auction order.[9] The purpose of this message is to encourage Users to provide liquidity against which the auctioned order may trade. Users submit this liquidity in the form of auction responses. Like Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on the applicable trading day, auction responses will not remove liquidity from the Exchange order book or route to another options exchange. Auction responses are similarly available for execution for a limited time period. Unexecuted auction responses are cancelled at the end of the auction, and thus do not last beyond the auction to which they were submitted.[10] Because the purpose of auction responses is to provide liquidity, which is the purpose of bulk order ports, the Exchange believes it is appropriate to permit Users to submit auction responses into bulk order ports.

Orders submitted to the Exchange through all ports are subject to various parameters, such as price reasonability checks and volume restrictions.[11] These parameters may be configured either by the Exchange or the Member. Orders are also subject to other validation checks and processes before execution, entry into the book, or cancellation. Examples of such validation checks include validating an order's Capacity, Time-in-Force, Order Instructions, and routing options. While orders submitted through bulk order ports pass through these same validation checks and processes, they are not subject to parameters such as routing options and are restricted to one order instruction and two Time-in-Force options. As a result, the System can perform these validation checks with respect to orders submitted through bulk order ports in a more efficient manner.

Pursuant to Exchange technical specifications[12] and Fees Schedule,[13] the order messages per second that a User may submit through a non-bulk order port is smaller than the order messages per second that a User may submit through a bulk order port. The Exchange understands from certain Trading Permit Holders that they may restrict the number of auction response messages they submit to avoid having to obtain additional ports. The Exchange believes permitting Users to submit auction responses through bulk order ports will encourage Users to provide increased liquidity to auction mechanisms in a more cost-efficient manner. While bulk order ports have a higher monthly cost, the higher order message/second rate may ultimately be more cost-efficient than a User having to obtain multiple additional non-bulk ports to accommodate the submission of auction responses. Additionally, Users that have both bulk and non-bulk order ports would be able to increase their submission of auction responses without additional monthly fees.[14]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change protects investors and the public interest because it provides all Users with an efficient process to enter and update auction responses. Like quoting, auction responses are a critical form of liquidity on the Exchange. Auction mechanisms and the execution and price improvement opportunities they provide are dependent on auction responses submitted during the auctions. Permitting Users to submit auction responses into bulk order ports is consistent with the purpose of these ports and have a similar purpose as the orders that Users are currently permitted to enter into bulk order ports. The Exchange believes the proposed rule change may encourage the provision of additional liquidity in auctions, which will provide additional execution and price improvement opportunities to auctioned orders, which ultimately benefit investors.

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 does not believe the proposed rule change will impose any burden on intramarket competition, as the use of bulk order ports and the proposed functionality is voluntary and available to all Users of the Exchange. Bulk order entry functionality is available to all Users of the Exchange, as is the proposed functionality to submit auction responses into bulk order ports. Users may already submit auction responses to the Exchange using other types of ports—the proposed rule change merely provides Users of the Exchange with an additional method to submit auction responses to the Exchange. The Exchange does not believe the proposed rule change will have any direct impact on intermarket competition, as the proposed rule change relates solely to the manner in

[8] *See* Rule 6.13(d). COA auctions eligible complex orders for execution and potential price improvement.

[9] *See* Rule 6.13(d)(1) (the Exchange initiates the COA process by sending a COA auction message).

[10] *See* Rule 6.13(d)(2)(C) and (4)(D).

[11] *See, e.g.,* Rule 6.14 and technical specifications available at *http://markets.cboe.com/us/options/support/technical/.*

[12] These technical specifications are available at *http://markets.cboe.com/us/options/support/technical/.*

[13] *See* C2 Fees Schedule, Logical Connectivity Fees, available at *http://markets.cboe.com/us/options/membership/fee_schedule/ctwo/.*

[14] The Exchange notes certain Market-Makers currently only have bulk order ports, and thus are unable to provide liquidity to auction mechanisms without obtaining additional non-bulk order ports.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

which Users may submit auction responses into auctions occurring on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2018–019 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–C2–2018–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2018–019 and should be submitted on or before October 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20307 Filed 9–18–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84113; File No. SR–MRX–2018–27]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees

September 13, 2018

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 August 31, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) relocate the MRX Schedule of Fees and current Rule 209 to the Exchange's rulebook's (''Rulebook'') shell structure,[3] and (b) make conforming cross-reference changes throughout the Rulebook.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC; Nasdaq BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; and Nasdaq ISE, LLC (''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82172 (November 29, 2017), 82 FR 57495 (December 5, 2017) (SR–MRX–2017–26).

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to relocate the entire MRX Schedule of Fees and Rule 209 to the Exchange's shell structure; specifically, the Exchange will relocate the aforementioned rules to the Options 7 (''Pricing Schedule'') section of the shell. In addition, the Exchange will make conforming cross-reference changes throughout the Rulebook.

(a) Relocation of Rules

As indicated, the Exchange, as part of its continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges, and the goal of harmonizing and uniformizing its rules, proposes to relocate the Schedule of Fees and MRX Rule 209 to Options 7, Pricing Schedule, of the shell structure.

To improve the readability of the relocated Pricing Schedule rules, the Exchange will update their current ''Preface'' section and rename it ''Section 1. General Provisions.'' Next, the Exchange will move current MRX Rule 209, described in the paragraph below, and rename it ''Section 2'' but keeping its current title, ''Collection of Exchange Fees and Other Claims.''

MRX Rule 209 was added to the Rulebook to permit the Exchange the collection of undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to Rules 205 and 206.[4] The Exchange believes that, unlike other rules in Chapter 2 (''Administration'') of the Rulebook, which generally refer to the powers of the Board of Directors and the authority it delegates to Senior Management of the Exchange, the direct debit process established in Rule 209 will be better situated among the relocated rules of the Pricing Schedule.

The Exchange is also proposing to move all the remaining sections, I through VI, in the current Schedule of Fees, renumber them as provided in the table below, and add the word ''Section'' to each of their titles. Relatedly, the Exchange will update all references to the ''Schedule of Fees'' in the proposed rule text and replace them with the term ''Pricing Schedule.''

Finally, the Exchange will update all references to ''NASDAQ'' in proposed Section 8, E., of the Pricing Schedule with the word ''Nasdaq,'' to keep the proposed rule text consistent with changes to the names of the Affiliated Exchanges.[5]

Options 7—Pricing schedule (Proposed)	Schedule of fees (Current)
Section 1. General Provisions.	PREFACE.
Section 2. Collection of Exchange Fees and Other Claims.	Rule 209. Collection of Exchange Fees and Other Claims.
Section 3. Regular Order Fees and Rebates.	I. Regular Order Fees and Rebates.
Section 4. Other Options Fees and Rebates.	II. Other Options Fees and Rebates.
Section 5. Legal & Regulatory.	III. Legal & Regulatory.
Section 6. Ports and Other Services.	IV. Ports and Other Services.
Section 7. Market Data.	V. Market Data.
Section 8. Connectivity Fees.	VI. Connectivity Fees.

The relocation of the Pricing Schedule rules will facilitate the use of the Rulebook by Members[6] of the Exchange, including those who are members of other Affiliated Exchanges, and other market participants. Moreover, the proposed changes are of a non-substantive nature and will not amend the relocated rules, other than make the updates previously explained.

(b) Cross-Reference Updates

In connection with the changes described above, the Exchange proposes to update all cross-references in the Rulebook that direct the reader to the current location of the Pricing Schedule rules and/or any of their subsections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting efficiency and structural conformity of the Exchange's processes with those of the Affiliated Exchanges and to make the Exchange's Rulebook easier to read and more accessible to its Members and market participants. The Exchange believes that the relocation of the Pricing Schedule rules, updating the name ''NASDAQ'' to ''Nasdaq,'' and related cross-reference updates are of a non-substantive nature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not impose a burden on competition because, as previously stated, they (i) are of a non-substantive nature, (ii) are intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) are intended to organize the Rulebook in a way that it will ease the Members' and market participants' navigation and reading of the rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

[4] *See* Securities Exchange Act Release No. 79012 (September 30, 2016), 81 FR 69565 (October 6, 2016) (SR–ISEMercury–2016–18).

[5] *See* Securities Exchange Act Releases No. 81917 (October 23, 2017), 82 FR 49879 (October 27, 2017) (SR–NASDAQ–2017–111) and No. 81948 (October 25, 2017), 82 FR 50468 (October 31, 2017) (SR–BX–2017–046).

[6] Exchange Rule 100(a)(32).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to promptly relocate the Pricing Schedule rules and continue to reorganize its Rulebook to promote efficiency and structural consistency between the Exchange's rules and those of the Affiliated Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2018–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2018–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–27 and should be submitted on or before October 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20309 Filed 9–18–18; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15438 and #15439; CALIFORNIA Disaster Number CA–00282]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4353–DR), dated 01/15/2018.

Incident: Wildfires, Flooding, Mudflows, and Debris Flows directly related to the Wildfires.

Incident Period: 12/04/2017 through 01/31/2018.

DATES: Issued on 09/07/2018.

Physical Loan Application Deadline Date: 03/16/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 10/15/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 01/15/2018, is hereby amended to establish the incident period for this disaster as beginning 12/04/2017 through 01/31/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–20382 Filed 9–18–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15694 and #15695; IOWA Disaster Number IA–00084]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4392–DR), dated 09/12/2018.

Incident: Severe Storm and Tornadoes.

Incident Period: 07/19/2018.

DATES: Issued on 09/12/2018.

Physical Loan Application Deadline Date: 11/13/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/12/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 09/12/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lee, Marion, Marshall, Van Buren

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15694C and for economic injury is 156950.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–20381 Filed 9–18–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15682 and #15683; MICHIGAN Disaster Number MI–00065]

Administrative Declaration of a Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 09/07/2018.

Incident: Severe Storms and Flooding.

Incident Period: 06/16/2018 through 06/17/2018.

DATES: Issued on 09/07/2018.

Physical Loan Application Deadline Date: 11/06/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Houghton

Contiguous Counties:

Michigan: Baraga, Iron, Keweenaw, Ontonagon.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15682 6 and for economic injury is 15683 0.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 7, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–20362 Filed 9–18–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15425 and #15426; CALIFORNIA Disaster Number CA–00283]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4353–DR), dated 01/02/2018.

Incident: Wildfires, Flooding, Mudflows, and Debris Flows directly related to the Wildfires.

Incident Period: 12/04/2017 through 01/31/2018.

DATES: Issued on 09/07/2018.

Physical Loan Application Deadline Date: 03/05/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 10/02/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 01/02/2018, is hereby amended to establish the incident period for this disaster as beginning 12/04/2017 through 01/31/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–20385 Filed 9–18–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 10524]

60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 19, 2018.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2018–0038'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: kosarcm@state.gov.*
- *Regular Mail:* Send written comments to: Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520.

You must include the information collection title and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520, who may be reached on 703–516–1685, or at *kosarcm@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR).
- *OMB Control Number:* 1405–0050.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Office of the Procurement Executive, A/OPE.
- *Form Number:* No form.
- *Respondents:* Entities seeking to do business with, or contractors of, the Department of State.
- *Estimated Number of Respondents:* 261.
- *Estimated Number of Responses:* 831.
- *Average Time per Response:* Approximately 4 hours.
- *Total Estimated Burden Time:* 3,370 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to the contract; dealing with unsatisfactory performance; and closing out the contract upon its completion. This program collects information pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302), the Omnibus Diplomatic Security and Antiterrorism Act (22 U.S.C. 4852), and the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864).

Methodology

Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or email), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and relate to the occurrence of specific circumstances.

Cathy J. Read,

Director, Office of Procurement Executive, Department of State.

[FR Doc. 2018–20377 Filed 9–18–18; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 10551]

Determinations Regarding Use of Chemical Weapons by Russia Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991; Correction

ACTION: Notice.

SUMMARY: The Department of State published a document in the **Federal Register** of August 27, 2018, concerning sanctions and waivers under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. The waiver section of the document contained incomplete language.

FOR FURTHER INFORMATION CONTACT: Pamela K. Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 27, 2018 in FR Doc. 2018–18503 on page 43724, in the first column, correct the ''Wholly-Owned U.S. Subsidiaries'' paragraph to read:

''WHOLLY-OWNED U.S. AND OTHER FOREIGN SUBSIDIARIES: Exports and reexports of goods or technology pursuant to new licenses for exports and reexports to wholly-owned U.S. and other foreign subsidiaries in Russia, provided that such licenses shall be issued on a case-by-case basis, consistent with export licensing policy for Russia prior to enactment of these sanctions.''

Dated: September 12, 2018.

Choo S Kang,

Acting Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2018–20343 Filed 9–18–18; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 10544]

60-Day Notice of Proposed Information Collection: Annual Brokering Report

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 19, 2018.

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

• *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0042'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: DDTCPublicComments@state.gov.*

• *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Attn: Andrea Battista, 2401 E St. NW, Suite H–1205, Washington, DC 20522–0112.

You must include the subject (PRA 60 Day Comment), information collection title (Annual Brokering Report), and OMB control number (1405–0141) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding this collection to Andrea Battista, who may be reached at *BattistaAL@state.gov* or 202–663–3136.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Annual Brokering Report.

• *OMB Control Number:* 1405–0141.

• *Type of Request:* Extension.

• *Originating Office:* Directorate of Defense Trade Controls (DDTC).

• *Form Number:* No form.

• *Respondents:* Respondents are any person/s who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles.

• *Estimated Number of Respondents:* 1,200.

• *Estimated Number of Responses:* 1,200.

• *Average Time per Response:* 2 hour.

• *Total Estimated Burden Time:* 2,400 hours.

• *Frequency:* Annually.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In accordance with part 129 of the ITAR, U.S. and foreign persons required to register as a broker shall provide annually a report to DDTC enumerating and describing brokering activities by quantity, type, U.S. dollar value, purchaser/recipient, and license number for approved activities and any exemptions utilized for other covered activities. This information is currently used in the review of munitions export and brokering license applications and to ensure compliance with defense trade statutes and regulations. As appropriate, such information may be shared with other U.S. Government entities.

Methodology

Brokering Reports are submitted annually with Statement of Registration renewals.

Anthony M. Dearth,

Chief of Staff, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2018–20341 Filed 9–18–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 10552]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Drawing in Tintoretto's Venice'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Drawing in Tintoretto's Venice,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Morgan Library & Museum, New York, New York, from on or about October 12, 2018, until on or about January 6, 2019, and at the National Gallery of Art, Washington, District of Columbia, from on or about March 3, 2019, until on or about May 26, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–14 of September 10, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–20345 Filed 9–18–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10550]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Berthe Morisot: Woman Impressionist'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Berthe Morisot: Woman Impressionist,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Barnes Foundation, Philadelphia, Pennsylvania, from on or about October 21, 2018, until on or about January 14, 2019, and the Dallas Museum of Art, Dallas, Texas, from on or about February 24, 2019, until on or about May 26, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/

PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–14 of September 10, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–20336 Filed 9–18–18; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 11)]

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 a small shipper representative. The Board seeks suggestions for candidates to fill this vacancy.

DATES: Nominations are due on October 17, 2018.

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 website, 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. 11), 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 website under Docket No. EP 526 (Sub-No. 11).

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), the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07), as well as railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

The ICC Termination Act of 1995 (ICCTA), enacted on December 29, 1995, established RSTAC 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 instructs RSTAC to endeavor to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The members of RSTAC also prepare an annual report concerning RSTAC's activities. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC's 15 appointed members consist of representatives of small and large shippers, and small and large railroads. In addition, members of the Board and the Secretary of Transportation serve as ex officio members. Of the 15 appointed members, nine 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 may participate in RSTAC deliberations.

Meetings of RSTAC are required by statute to be held 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 meetings are held in other locations.

The members of RSTAC 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. Currently, RSTAC members 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., & Comm'ns.,* 79 FR 47,482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

Each RSTAC member is appointed for a term of three-years. A member may serve after the expiration of his or her term until a successor has taken office. No member will be eligible to serve in excess of two consecutive terms.

Due to a recent departure of a small shipper representative, a vacancy exists on RSTAC. Upon appointment by the Board Chairman, the new small shipper representative will serve for the remainder of the three-year term of the original appointment, which began on January 29, 2018, and may be eligible to serve a second three-year term following the end of the first term.

Suggestions for candidates to fill the vacancy should be submitted in letter form, identifying the name of the candidate, providing a summary of why the candidate is qualified to serve on RSTAC, and containing a representation that the candidate is willing to serve as an RSTAC member effective immediately upon appointment. RSTAC candidate suggestions should be filed with the Board by October 17, 2018. Members selected to serve on RSTAC are chosen at the discretion of the Board Chairman. Please note that submissions will be posted on the Board's website under Docket No. EP 526 (Sub-No. 11) and can also be obtained by contacting the Office of Public Assistance,

Governmental Affairs, and Compliance at *RCPA@stb.gov* or (202) 245–0238.

Authority: 49 U.S.C. 1325.

Decided: September 14, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–20392 Filed 9–18–18; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2018–0001]

Exclusion of Particular Products From the Solar Products Safeguard Measure

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority provided by the President, the U.S. Trade Representative (Trade Representative) has determined that particular products should be excluded from the safeguard measure applied to certain solar products and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the Annex of this notice to implement these exclusions.

DATES: The modifications to the HTS set forth in the Annex are applicable with respect to articles entered, or withdrawn from a warehouse for consumption, on or after 12:01 a.m. EST, on September 19, 2018.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at *vmroczka@ustr.eop.gov* or (202) 395–9450, or Dax Terrill, Office of General Counsel, at *Dax.Terrill@ustr.eop.gov* or (202) 395–4739.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2017, the U.S. International Trade Commission (ITC) submitted a report to the President under section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251), finding that crystalline silicon photovoltaic (CSPV) cells and other CSPV products containing these cells are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article that is like or directly competitive with the imported products. The scope of this investigation did not cover:

- Thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).
- CSPV cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose primary function is other than power generation and that consumes the electricity generated by the integrated CSPV cell. Where more than one CSPV cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion is the total combined surface area of all CSPV cells that are integrated into the consumer good.
- CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.

The President, taking into consideration the separate recommendations of the ITC Commissioners on remedy and the recommendation of the Trade Policy Staff Committee, determined to take action and issued Proclamation 9693 on January 23, 2018, to impose a safeguard measure with respect to the imported CSPV products. The President determined to implement the safeguard measure as: (1) A tariff-rate quota on imports of CSPV cells not partially or fully assembled into other products, imposed for a period of 4 years, with unchanging within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second, third, and fourth years, as provided in Annex I to the proclamation; and (2) an increase in duties on imports of CSPV products containing these cells, imposed for a period of 4 years, with annual reductions in the rates of duty in the second, third, and fourth years, as provided in Annex I to the proclamation.

The proclamation also excluded certain products from application of the safeguard measure. Specifically, the proclamation excluded the following:

- 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) Length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm^2 or more but not over 3,061 cm^2, provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry.
- 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm.
- 2 watt solar panels incorporated into daylight dimmers that may use rechargeable batteries, such panels with the following dimensions: 75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm.
- Off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics: (a) A total power output of 100 watts or less per panel; (b) a maximum surface area of 8,000 cm^2 per panel; (c) does not include a built-in inverter; and where the panels have glass covers, such panels must be in individual retail packaging (in this context, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport).
- 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm^2 or less, with one black wire and one red wire (each of type 22 AWG or 24 AWG) not more than 206 mm in length when measured from panel edge, provided that no such panel shall contain an internal battery or external computer peripheral ports.
- 27.1 watt or less solar panels, each with surface area less than 3,000 cm^2 and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such unit which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED) by coated wires that include a connector to permit the incorporation of an extension cable.

In addition to these exclusions, the proclamation directed the Trade Representative to publish a notice establishing procedures for interested persons to request the exclusion of particular products from the safeguard measure. The proclamation provided that if the Trade Representative, in consultation with the Secretaries of Commerce and Energy, determines that a particular product should be excluded, the Trade Representative can modify the HTS provisions created in Annex I of the proclamation to exclude the particular product from the safeguard measure through publication of the determination in the **Federal Register**.

On February 14, 2018, the Office of the United States Trade Representative (USTR) published a notice establishing procedures to consider requests for exclusion of particular products from the safeguard measure. The notice

provided that requests for exclusion should identify the particular product in terms of the physical characteristics (*e.g.,* dimensions, wattage, material composition, or other distinguishing characteristics) that distinguish it from other products that are subject to the safeguard measures. USTR noted that it would not consider requests that identify the product at issue in terms of the identity of the producer, importer, or ultimate consumer; the country of origin; or trademarks or tradenames. Furthermore, USTR confirmed that it only would grant those exclusions that do not undermine the objectives of the safeguard measure.

Pursuant to that notice, USTR received 48 product exclusion requests and 213 subsequent comments responding to various requests. The types of products for which USTR received an exclusion request generally fall into seven categories: (1) Products that consist of attachments or other parts that can be mounted to solar products; (2) products that constitute 72-cell or greater panels; (3) products with particular configurations for additional performance; (4) products with specialized functions; (5) consumer and specialty products; (6) bifacial panels and bifacial solar cells; and (7) solar cells without busbars or gridlines and panels containing these solar cells.

II. Exclusions From the Safeguard Measure

USTR has considered certain requests for exclusion of particular products and determined that exclusion of the CSPV products described in subdivisions (c)(iii)(7) through (c)(iii)(14) of U.S. note 18 to subchapter III of chapter 99 of the HTS, as amended in the Annex to this notice, from the safeguard measure established in Proclamation 9693 would not undermine the objectives of the safeguard measure. Therefore, USTR finds that these CSPV products should be excluded from the safeguard measure. Accordingly, under the authority vested in the Trade Representative by Proclamation 9693, the Trade Representative modifies the HTS provisions created by the Annex to Proclamation 9693 as set forth in the Annex to this notice.

III. Past Requests Not Addressed in This Notice

The Trade Representative has not at this time made a determination with respect to the requests for exclusion, received as of March 16, 2018, that are not addressed in the Annex to this notice. USTR will continue to evaluate those requests and the Trade Representative will make the appropriate determination in due course.

IV. Future Requests

At this time, USTR is not considering additional requests for exclusion beyond those received as of March 16, 2018. USTR will monitor developments in the U.S. market for CSPV products and, if warranted, provide an opportunity to submit additional requests for exclusion at a future date.

V. Annex

The following provisions supersede those currently in the HTS and are effective with respect to articles entered, or withdrawn from a warehouse for consumption, on or after 12:01 a.m., EST, on September 19, 2018. The HTS is modified as follows:

(1) U.S. note 18 to subchapter III of chapter 99 of the HTS is modified:

(a) By inserting the following new subdivisions in numerical sequence at the end of subdivision (c)(iii):

''(7) off-grid, 45 watt or less solar panels, each with length not exceeding 950 mm and width of 100 mm or more but not over 255 mm, with a surface area of 2,500 cm^2 or less, with a pressure-laminated tempered glass cover at the time of entry but not a frame, electrical cables or connectors, or an internal battery;

(8) 4 watt or less solar panels, each with a length or diameter of 70 mm or more but not over 235 mm, with a surface area not exceeding 539 cm^2, and not exceeding 16 volts, provided that no such panel with these characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;

(9) solar panels with a maximum rated power of equal to or less than 60 watts, having the following characteristics, provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry: (A) Length of not more than 482 mm and width of not more than 635 mm or (B) a total surface area not exceeding 3,061 cm^2;

(10) flexible and semi-flexible off-grid solar panels designed for use with motor vehicles and boats, where the panels range in rated wattage from 10 to 120 watts, inclusive;

(11) frameless solar panels in a color other than black or blue with a total power output of 90 watts or less where the panels have a uniform surface without visible solar cells or busbars;

(12) solar cells with a maximum rated power between 3.4 and 6.7 watts, inclusive, having the following characteristics: (A) A cell surface area between 154 cm^2 and 260 cm^2, inclusive, (B) no visible busbars or gridlines on the front of the cell, and (C) more than 100 interdigitated fingers of tin-coated solid copper adhered to the back of the cell, with the copper portion of the metal fingers having a thickness of greater than 0.01 mm;

(13) solar panels with a maximum rated power between 320 and 500 watts, inclusive, having the following characteristics: (A) Length between 1,556 mm and 2,070 mm inclusive, and width between 1,014 mm and 1,075 mm, inclusive, (B) where the solar cells comprising the panel have no visible busbars or gridlines on the front of the cells, and (C) the solar cells comprising the panel have more than 100 interdigitated fingers of tin-coated solid copper adhered to the back of the cells, with the copper portion of the metal fingers having thickness greater than 0.01 mm;

(14) modules (as defined in note 18(g) to this subchapter) incorporating only CSPV cells that are products of the United States and not incorporating any CSPV cells that are the product of any other country.''

Jeffrey Gerrish,

Deputy U.S. Trade Representative.

[FR Doc. 2018–20342 Filed 9–18–18; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–11]

Petition for Exemption; Summary of Petition Received; ExpressJet Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 9, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0092 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 12, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0092.

Petitioner: ExpressJet Airlines, Inc.

Section of 14 CFR Affected: 121.137(b).

Description of Relief Sought: ExpressJet Airlines Inc. requests an exemption from § 121.137(b) to the extent necessary to dispatch a flight, or series of flights, with one inoperable electronic flight bag (EFB) back to a location with an operable EFB replacement. Dispatch of flights under this exemption would be contingent on weather conditions not requiring the use of Category II/monitored approach procedures. In addition, the flight or series of flights will not dispatch from special airports with all flight management systems (FMS) inoperable, without prior authorization from the director of flight operations or their designee.

[FR Doc. 2018–20401 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Air Tour Operator Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The commercial air tour operational data provided to the FAA and the National Park Service will be used by the agencies as background information useful in the development of air tour management plans and voluntary agreements for purposes of meeting the mandate of the National Parks Air Tour Management Act (NPATMA) of 2000.

DATES: Written comments should be submitted by November 19, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0750.

Title: Commercial Air Tour Operator Reports.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The FAA Modernization and Reform Act of 2012 included amendments to the National Parks Air Tour Management Act (NPATMA) of 2000. One of these amendments required commercial air tour operators conducting tours over national park units to report on the number of operations they conduct and any such other information prescribed by the FAA Administrator and the Director of the National Park Service (NPS).

Respondents: Approximately 75 air tour operators.

Frequency: Information is collected quarterly, or annually for park units with 50 or fewer tours per year.

Estimated Average Burden per Response: 11.66 hours.

Estimated Total Annual Burden: 3,200 hours.

Issued in Washington, DC, on September 13, 2018.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–20397 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Fractional Aircraft Ownership Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 23, 2018. Each fractional ownership program manager and each fractional

owner must comply with regulations. Information is used to determine if these entities are operating in accordance with the minimum safety standards of these regulations. The FAA will use the information it reviews and collects to evaluate the effectiveness of the program and make improvements as needed, and ensure compliance and adherence to regulations.

DATES: Written comments should be submitted by October 19, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0684.

Title: Fractional Aircraft Ownership Programs.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: This is a renewal of an existing information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 23, 2018 (83 FR 34910). Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a ''pool'' of other shared aircraft and to lease their aircraft to another owner in that pool. Each fractional ownership program manager and each fractional owner must comply with the requirements of 14 CFR part 91, subpart K. Information is used to determine if these entities are operating in accordance with the minimum safety standards of these regulations. The FAA will use the information it reviews and collects to evaluate the effectiveness of the program and make improvements as needed, and ensure compliance and adherence to regulations.

Respondents: 8 fractional aircraft program managers/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour, 20 minutes.

Estimated Total Annual Burden: 13,736 hours, or 1,717 hours per respondent.

Issued in Washington, DC, on September 8, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–20293 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee (ARAC); Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of renewal.

SUMMARY: The FAA announces the charter renewal of the Aviation Rulemaking Advisory Committee (ARAC), a Federal Advisory Committee that works with industry and the public to improve the development of the FAA's regulations.

DATES: This charter renewal will take effect on September 14, 2018, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Thuy H. Cooper, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4715; fax (202) 267–5075; email *9-awa-arac@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 14 (a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), the FAA is giving notice of the charter renewal for the ARAC. The ARAC was established to provide advice and recommendations to FAA on regulatory matters. The ARAC is composed of representatives from member organizations and associations that represent the various aviation industry segments. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the ARAC website for details on pending tasks at *http://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

Issued in Washington, DC, on September 14, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

[FR Doc. 2018–20402 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Engineers and Flight Navigators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves FAA Form 8400.3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses that are submitted to FAA for evaluation. The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators.

DATES: Written comments should be submitted by October 19, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0007.

Title: Flight Engineers and Flight Navigators.

Form Numbers: 8400–3.

Type of Review: This is a renewal of an information collection.

Background: The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators. FAA Form 8400.3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses are available online and are submitted to FAA for evaluation. The information is reviewed to determine applicant eligibility and compliance with prescribed provisions of Title 14 CFR part 63, Certification: Flight Crewmembers Other Than Pilots. Form 8400–3 is multiple-use form also used for control tower operators and aircraft dispatchers.

Respondents: 143 certain airmen applicants and training schools.

Frequency: On occasion.

Estimated Average Burden per Response: 1.8 hours.

Estimated Total Annual Burden: 268.1 hours.

Issued in Washington, DC, on September 8, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–20292 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Report of Inspections Required by Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Airworthiness Directives are regulations issued to require corrective action to resolve an unsafe condition in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

DATES: Written comments should be submitted by November 19, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0056.

Title: Report of Inspections Required by Airworthiness Directives.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Title 14 CFR part 39, Airworthiness Directives (AD), authorized by §§ 40113(a), 44701, and 44702 of Title 49 United States Code, prescribes how the FAA issues ADs. The FAA issues ADs when an unsafe condition is discovered on a specific aircraft type. Specific information may be required from aircraft owners/operators if an unsafe condition requires more information to develop corrective action. If it is necessary for the aircraft manufacturer or airworthiness authority to evaluate the information, owners/operators will be instructed to send the information to them.

Respondents: Approximately 1,120 aircraft owners/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 28,000 hours.

Issued in Washington, DC, on September 13, 2018.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–20395 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Surplus Property and Grant Assurance Obligations at Francis S. Gabreski Airport (FOK), Westhampton Beach, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the application for a release of approximately 25.8 acres of federally obligated airport property at Francis S. Gabreski Airport, Westhampton Beach, NY, from the National Emergency Use Provision contained in the Quitclaim Deed, dated July 17, 1972, and from conditions, reservations, and restrictions contained in Airport Improvement Program grants that would restrict the use of said land to aeronautical purposes, This acreage is a portion of land that was transferred from the United States of America to the county of Suffolk under the provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944. The release will allow the airport to generate revenue through a land lease for a solar farm. The proposed use of land after the

release will be compatible with the airport and will not interfere with the airport or its operation.

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

FOR FURTHER INFORMATION CONTACT: Comments on this application may be mailed or delivered to the FAA at the following address: Sukhbir Gill, Acting Manager, Federal Aviation Administration, New York Airports District Office, Federal Register Comment, I Aviation Plaza, Jamaica, NY 11434. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Anthony Ceglio, Airport Manager, Suffolk County, Department of Economic Development and Planning—Aviation Division, Administration Building #1, Westhampton Beach, NY 11978.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements. The following is a brief overview of the request.

The county of Suffolk requested a release from grant assurance obligations to allow a land-use change in use for other than aeronautical purposes of approximately 25.8 acres of airport property at Francis S. Gabreski Airport. In 1969, the Suffolk County Air Force Base was deactivated. The land was transferred to Suffolk County in 1972 via a Quitclaim Deed under the provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944. The Quitclaim Deed contained a National Emergency Use Provision (NEUP) allowing the United States of America the right to make use of the land during any national emergency as declared by the President or Congress. FAA approval of this request is contingent on the Department of Defense's concurrence that the 25.8 acres of airport property is no longer required for aeronautical purposes. Since 1943, the land in question has not been required for aviation, or other government use, and is currently vacant.

Suffolk County entered into a long-term lease agreement, contingent upon FAA final approval, with a solar power company after a competitive bidding process. The solar installation would consist of an 18. I-acre site on the north side of the airport and a 7.7-acre site on the south side of the airport. The FAA has studied both sites and determined the installations will not impact the utility of the airport.

The airport will retain ownership of the 25.8 acres and will receive fair market value rent for the length of the agreement. The rental income will be devoted to airport operations and capital projects. The proposed use of the property will not interfere with the airport or its operation; and will thereby, serve the interests of civil aviation.

Issued in Jamaica, New York, on September 13, 2018.

Sukhbir Gill,

Acting Manager, New York Airports District Office.

[FR Doc. 2018–20404 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Request for Comments; Clearance of Renewed Approval of Information Collection: Training and Qualification Requirements for Check Airmen and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is used to allow some experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions.

DATES: Written comments should be submitted by November 19, 2018.

ADDRESSES:

Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0600.

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors.

Form Numbers: There are no forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: Under the authority of Title 49 CFR, Section 44701, Title 14 CFR prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation. Federal Aviation Regulations (FAR) parts 121.411(d), 121.412(d), 135.337(d), and 135.338(d) require the collection of this data. This collection is necessary to insure that instructors and check airmen have completed necessary training and checking required to perform instructor and check airmen functions.

Respondents: There are approximately 3,100 check airmen and flight instructors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 seconds.

Estimated Total Annual Burden: 12.5 hours.

Issued in Washington, DC, on September 13, 2018.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–20399 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operating Requirements: Domestic, Flag, and Supplemental Operations—Part 121

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA

invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Regulations prescribe the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards and the applicants' eligibility for air operations certification.

DATES: Written comments should be submitted by November 19, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov*; phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0008.

Title: Operating Requirements: Domestic, Flag, and Supplemental Operations—Part 121.

Form Numbers: There are no forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: Under the authority of Title 49 CFR, Section 44701, Title 14 CFR prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation. Title 14 CFR part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards and the applicants' eligibility for air operations certification. Each operator which seeks to obtain, or is in possession of an air carrier operating certificate, must comply with the requirements of part 121 which include maintaining data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

Respondents: There are approximately 70 air carriers/applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour and 16 minutes.

Estimated Total Annual Burden: 1,555,534.5 hours.

Issued in Washington, DC, on September 13, 2018.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–20393 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

TIME AND DATE: The meeting will be held on September 27, 2018, from 12:00 noon to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board. An agenda for this meeting will be available no later than 5:00 p.m. Eastern Daylight Time, September 17, 2018, at *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: September 7, 2018.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–20515 Filed 9–17–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2018–0205]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 57 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

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

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0205 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0205), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA 2018–0205, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA 2018–0205, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 57 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. FMCSA published two notices in the **Federal Register** outlining the current protocol for allowing such drivers to operate CMVs in interstate commerce (Sep. 3, 2003, 68 FR 52441 and Nov. 8, 2005, 70 FR 67777). All of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005, remain in effect.

III. Qualifications of Applicants

Joseph J. Arena, Jr

Mr. Arena, 63, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Arena understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arena meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Daniel C. Avants

Mr. Avants, 55, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Avants understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Avants meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Danny Bailey

Mr. Bailey, 60, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bailey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bailey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Ryan P. Bankert

Mr. Bankert, 41, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bankert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bankert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jordan D. Braun

Mr. Braun, 26, has had ITDM since 2003. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Braun understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Braun meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

David W. Buckley

Mr. Buckley, 57, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Buckley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Buckley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Travis R. Capesius

Mr. Capesius, 21, has had ITDM since 2005. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Capesius understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Capesius meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Delquan S. Carter

Mr. Carter, 28, has had ITDM since 2011. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Carter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

Christopher J. Epplin

Mr. Epplin, 33, has had ITDM since 1999. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Epplin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Epplin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Eugenio Esparza, Jr

Mr. Esparza, 52, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Esparza understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Esparza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

Brian L. Fairchild

Mr. Fairchild, 52, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fairchild understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fairchild meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Stephen A. Fleming

Mr. Fleming, 49, has had ITDM since 1979. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fleming understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Fleming meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Luigi Forcellati

Mr. Forcellati, 76, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Forcellati understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Forcellati meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New Jersey.

Daniel J. Garcia

Mr. Garcia, 21, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Garcia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garcia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Derek A. Garibay

Mr. Garibay, 52, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Garibay understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garibay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Caleb K. George

Mr. George, 53, has had ITDM since 1996. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. George understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. George meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Rhode Island.

Dylan M. Graham

Mr. Graham, 25, has had ITDM since 1997. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Graham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Graham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Donald D. Gueiss

Mr. Gueiss, 51, has had ITDM since 2009. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gueiss understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gueiss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Michael W. Hammarsten

Mr. Hammarsten, 65, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hammarsten understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hammarsten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Robert L. Howell

Mr. Howell, 67, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Howell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Howell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a class A CDL from Illinois.

Mitchell M. Huston

Mr. Huston, 58, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Huston understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

Daniel J. Hutt

Mr. Hutt, 48, has had ITDM since 2002. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hutt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hutt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Curtis C. Jacobs

Mr. Jacobs, 56, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Jacobs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jacobs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Steven M. Johnson

Mr. Johnson, 48, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Dwyanne E. Johnson

Mr. Johnson, 36, has had ITDM since 2012. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

Christopher L. Johnston

Mr. Johnston, 50, has had ITDM since 2016. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Johnston understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Gregory E. Jondle

Mr. Jondle, 30, has had ITDM since 2010. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Jondle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jondle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Steven Kinkead

Mr. Kinkead, 57, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kinkead understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kinkead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Alexander P. Laatz

Mr. Laatz, 24, has had ITDM since 1998. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Laatz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Laatz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that

he does not have diabetic retinopathy. He holds an operator's license from Virginia.

David L. Lennie

Mr. Lennie, 71, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lennie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lennie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Philip J. Linn

Mr. Linn, 65, has had ITDM since 2010. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Linn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Linn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Raul Martinez

Mr. Martinez, 60, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Martinez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martinez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Lance E. May

Mr. May, 46, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. May understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. May meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Terry A. McCoy

Mr. McCoy, 60, has had ITDM since 2016. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McCoy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCoy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Brian K. McGowan

Mr. McGowan, 54, has had ITDM since 2013. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McGowan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McGowan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Michael D. Mervenne

Mr. Mervenne, 56, has had ITDM since 2008. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Mervenne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mervenne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Kendrick D. Miller

Mr. Miller, 41, has had ITDM since 2013. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

William D. Murphy

Mr. Murphy, 48, has had ITDM since 2016. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist

certifies that Mr. Murphy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murphy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from West Virginia.

Babykutty Oommen

Mr. Oommen, 59, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Oommen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oommen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Miguel A. Orozco

Mr. Orozco, 61, has had ITDM since 2006. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Orozco understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Orozco meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Arthur W. Pahmeier

Mr. Pahmeier, 61, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Pahmeier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pahmeier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Dale W. Paul

Mr. Paul, 23, has had ITDM since 2006. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Paul understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Paul meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Jason J. Phillips

Mr. Phillips, 35, has had ITDM since 2007. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Phillips understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phillips meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

Robert E. Piernik

Mr. Piernik, 63, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Piernik understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Piernik meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Luc R. Poirier

Mr. Poirier, 53, has had ITDM since 1967. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Poirier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Poirier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Michigan.

Rick M. Provo

Mr. Provo, 64, has had ITDM since 2010. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Provo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Provo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

David W. Pywell

Mr. Pywell, 58, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Pywell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pywell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Idaho.

Nicholas A. Quairoli

Mr. Quairoli, 34, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Quairoli understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quairoli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Robert A. Raymond

Mr. Raymond, 64, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Raymond understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Raymond meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Robert A. Rock, Jr.

Mr. Rock, 51, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Rhode Island.

Hector R. Rodriguez

Mr. Rodriguez, 54, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rodriguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Samuel J. Shriver

Mr. Shriver, 67, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Shriver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shriver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from West Virginia.

Bradley A. Sundby

Mr. Sundby, 58, has had ITDM since 2013. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sundby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sundby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from South Dakota.

Clayton A. Szydel

Mr. Szydel, 53, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Szydel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Szydel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Jeremy R. Tatro

Mr. Tatro, 36, has had ITDM since 2012. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Tatro understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tatro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Imelda Y. Tolentino

Ms. Tolentino, 42, has had ITDM since 2011. Her endocrinologist examined her in 2018 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Tolentino understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Tolentino meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2018 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Arkansas.

Birt F. Wilkerson, Jr.

Mr. Wilkerson, 67, has had ITDM since 2000. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Wilkerson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilkerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: September 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–20294 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 87]

Railroad Safety Advisory Committee; Re-Establishment

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of re-establishment of Railroad Safety Advisory Committee (RSAC).

SUMMARY: The Federal Railroad Administration (FRA) announces the re-establishment of the Railroad Safety Advisory Committee (RSAC) via a new charter. RSAC is a Federal Advisory Committee established by the U.S. Secretary of Transportation in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the Administrator of FRA on matters relating to railroad safety. This charter will be effective for 2 years from the date it is filed with Congress.

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, (202) 493–6286; or Larry Woolverton, Executive Officer, FRA Office of Railroad Safety, (202) 493–6212.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). The RSAC is composed of 40 representatives from 29 member organizations, representing various rail industry perspectives. The diversity of the committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. Please see the RSAC website for additional information at *https://rsac.fra.dot.gov/.*

Issued in Washington, DC.

Ronald Louis Batory,

Administrator.

[FR Doc. 2018–20312 Filed 9–18–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0034]

Port Authority Trans-Hudson's Request for Positive Train Control Safety Plan Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that Port Authority Trans-Hudson (PATH) submitted to FRA its Positive Train Control Safety Plan (PTCSP), Revision 4.0, dated August 21, 2018, on FRA's Secure Information Repository (SIR) site on August 23, 2018. PATH asks FRA to approve its PTCSP and issue a Positive Train Control System Certification for PATH's Communication Based Train Control (CBTC) system.

DATES: FRA will consider comments received by October 19, 2018 before taking final action on the PTCSP. FRA may consider comments received after that date if practicable.

ADDRESSES: All comments concerning this proceeding should identify Docket Number FRA–2010–0034 and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific Technical Advisor, at 202–493–1332, or *Mark.Hartong@dot.gov,* or Ms. Carolyn Hayward-Williams, Staff Director, Positive Train Control/Signal & Train Control Division, at 202–493–6399, or *c.hayward-williams@dot.gov.*

SUPPLEMENTARY INFORMATION: In its PTCSP, PATH asserts that the CBTC system it is implementing is designed as a stand-alone PTC system as defined in Title 49 Code of Federal Regulations (CFR) 236.1015(e)(3). The PTCSP describes PATH's CBTC system implementation and the associated CBTC system safety processes; safety

analyses; and test, validation, and verification processes used during the development of CBTC. The PTCSP also contains PATH's operational and support requirements and procedures.

PATH's PTCSP and the accompanying request for approval and system certification are available for review online at *www.regulations.gov* (Docket Number FRA–2010–0034) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. 49 CFR 236.1011(e). However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding PATH's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for the request.

Privacy Act Notice

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–20302 Filed 9–18–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit

DATES: Written comments should be received on or before November 19, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit.

OMB Number: 1530–0002.

Form Number: FS Form 150.1 and FS Form 150.2.

Abstract: These forms are used to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The forms are designed to help the financial organization locate any problems and to keep the customer (beneficiary) informed of any action taken.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 203,719.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 27,162.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 13, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–20327 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds or Savings Notes

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds or Savings Notes.

DATES: Written comments should be received on or before November 19, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds or Savings Notes.

OMB Number: 1530–0031.

Form Number: FS Form 2513.

Abstract: The information is requested to establish the right of a voluntary guardian to conduct transactions on behalf of a mentally incapacitated bond or note owner.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 13, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–20339 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Creditor's Request for Payment of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Creditor's Request For Payment of Treasury Securities Belonging To A Decedent's Estate Being Settled Without Administration.

DATES: Written comments should be received on or before November 19, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Creditor's Request For Payment of Treasury Securities Belonging To A Decedent's Estate Being Settled Without Administration.

OMB Number: 1530–0027.

Form Number: FS Form 1050.

Abstract: The information is requested to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1500.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 150.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 13, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–20325 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application For Issue Of United States Mortgage Guaranty Insurance Company Tax And Loss Bonds

DATES: Written comments should be received on or before November 19, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application For Issue Of United States Mortgage Guaranty Insurance Company Tax And Loss Bonds.

OMB Number: 1530–0052.

Form Number: FS Form 3871.

Abstract: The information collected is necessary to establish and maintain Tax and Loss Bond accounts.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 33.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 8.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 13, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–20337 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Disposition of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Disposition of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration.

DATES: Written comments should be received on or before November 19, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disposition of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration.

OMB Number: 1530–0055.

Form Number: FS Form 5336.

Abstract: The information is collected from a voluntary representative of a decedent's estate to support a request for disposition of United States Treasury Securities and/or related payments in the event that the estate is not being administered.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 25,350.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 12,675.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 13, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–20340 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 13, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authority listed below.

Individual

1. JONG, Song Hwa (Korean: 정성화); DOB 05 Feb 1970; nationality Korea, North; Gender Male; Passport 927220230 (Korea, North) issued 11 May 2017 expires 11 May 2022 (individual) [DPRK4].

Designated pursuant to Section 1(a)(vi) of Executive Order 13810 of September 20, 2017, "Imposing Additional Sanctions With Respect to North Korea" (E.O. 13810) for having acted or purported to act for or on behalf of, directly or indirectly, Yanbian Silverstar Network Technology Co., Ltd., a person whose property and interests in property are blocked pursuant to E.O. 13810.

Entities

1. YANBIAN SILVERSTAR NETWORK TECHNOLOGY CO., LTD. (Chinese Simplified: 延边银星网络科技有限公司; Korean: 은성인터네트기술회사) (a.k.a. CHINA SILVER STAR INTERNET TECHNOLOGY COMPANY; a.k.a. SILVER STAR INTERNET TECHNOLOGY CORPORATION; a.k.a. UNSONG INTERNET TECHNOLOGY CORPORATION; a.k.a. YANBIAN SILVER STAR; a.k.a. YANBIAN SILVERSTAR), 20998B-26 Changbaishan East Road, Yanji, Jilin, China [DPRK3] [DPRK4].

Designated pursuant to Section 2(a)(iv) of Executive Order 13722 of March 15, 2016 "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (E.O. 13722) for having engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers' Party of Korea.

Also designated pursuant to Section 1(a)(i) of E.O. 13810 for operating in the information technology industry in North Korea.

2. VOLASYS SILVER STAR, 41 Ulitsa Klary Tsetskin, Vladivostok, Russia [DPRK3] [DPRK4].

Designated pursuant to Section 2(a)(iv) of E.O. 13722 for having engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers' Party of Korea.

Also designated pursuant to Section 1(a)(i) of E.O. 13810 for operating in the information technology industry in North Korea.

Dated: September 13, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–20301 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2018 Breast Cancer Awareness Commemorative Coin and Stamp Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2018 Breast Cancer Awareness Coin and Stamp Set as follows:

Product	Regular price
Coin and Stamp Set	$39.95

FOR FURTHER INFORMATION CONTACT: Rosa Matos, Program Manager, Numismatic and Bullion Directorate; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

Authority: Public Law 114–148.

Dated: September 13, 2018.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2018–20359 Filed 9–18–18; 8:45 am]

BILLING CODE 4810–37–P

UNITED STATES SENTENCING COMMISSION

Request for Applications; Tribal Issues Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of an upcoming vacancy in the at-large membership of the Tribal Issues Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to the at-large membership of the Tribal Issues Advisory Group to apply. An applicant for membership in the Tribal Issues Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the **ADDRESSES** section below. Application materials should be received by the Commission not later than November 19, 2018.

DATES: Application materials for the at-large membership of the Tribal Issues Advisory Group should be received not later than November 19, 2018.

ADDRESSES: An applicant for the at-large membership of the Tribal Issues Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—TIAG Membership.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.* More information about the Tribal Issues Advisory Group is available on the Commission's website at *http://www.ussc.gov/about/who-we-are/advisory-groups.*

SUPPLEMENTARY INFORMATION: The Tribal Issues Advisory Group is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the Tribal Issues Advisory Group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on federal sentencing issues relating to American Indian and Alaska Native defendants and victims, and to offenses committed in Indian country; (3) to engage in meaningful consultation and outreach with tribes, tribal governments, and tribal organizations regarding federal sentencing issues that have tribal implications; (4) to disseminate information regarding federal sentencing issues to tribes, tribal governments, and tribal organizations; and (5) to perform any other related functions as the Commission requests. The advisory group consists of no more than 9 members, each of whom may serve not more than two consecutive three-year terms. Of those 9 members, not more than 1 shall be a Federal judge; 2 shall be from the Executive Branch (one from the United States Department of Justice and one from the United States Department of the Interior); 1 shall be from a federal public defender organization or community defender organization; 1 shall be a tribal court judge; and not more than 4 shall be at-large members.

Members of the Tribal Issues Advisory Group are appointed by the Commission. To be eligible to serve as a member, an individual must have expertise, knowledge and/or experience in the issues considered by the Tribal Issues Advisory Group. The Commission intends that the at-large membership shall include individuals with membership in or experience with tribes, tribal governments, and tribal organizations, appointed in a manner that ensures representation among tribal communities diverse in size, geographic location, and other unique characteristics.

The Commission invites any individual who is eligible to be appointed to the at-large membership of the Tribal Issues Advisory Group to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.4.

William H. Pryor Jr.,

Acting Chair.

[FR Doc. 2018–20311 Filed 9–18–18; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient MS–DRGs and SNF Medical Services; v3.24, Fiscal Year 2019 Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document updates the acute inpatient and the skilled nursing facility (SNF)/sub-acute inpatient facility charges. The updated charges are based on the 2019 Medicare severity diagnosis related groups (MS–DRG).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Office of Community Care, Revenue Operations, Payer Relations and Services, Rates and Charges (10D1C1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 382–2521 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 17.101(a)(1) of Title 38 of the Code of Federal Regulations (CFR) sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran: For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract; for a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or, for a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance. The methodologies for establishing billed amounts for several types of charges are found in 38 CFR 17.101; however, this notice will only address the acute inpatient and the SNF/sub-acute inpatient facility charges.

Based on the methodologies set forth in 38 CFR 17.101(b), this notice updates the acute inpatient facility charges that were based on the 2018 MS–DRGs. Acute inpatient facility charges by MS–DRGs are posted on the Veterans Health Administration (VHA) Office of Community Care's website, at *www.va.gov/communitycare/revenue_ops/payer_rates.asp,* under the ''Reasonable Charges Data Tables'' section, Inpatient Data Table, as Table A (v3.22). This Table A corresponds to the Table A referenced in 82 FR 44701, September 25, 2017. Table A referenced in this notice is v3.24, which provides updated charges based on the 2019 MS–DRGs, will replace Table A (v3.22) posted on the VHA Office of Community Care's website.

Also, this document updates the SNF/sub-acute inpatient facility all-inclusive per diem charge using the methodologies set forth in 38 CFR 17.101(c) and this charge is adjusted by a geographic area factor that is based on the location where the care is provided.

For the geographic area factors, see Table N, Acute Inpatient, and Table O, SNF, on the VHA Office of Community Care's website under the v3.23 link in the ''Reasonable Charges Data Tables'' section. Tables N and O are not being updated by this notice. The SNF/sub-acute inpatient facility per diem charge is posted on the VHA Office of Community Care's website under the ''Reasonable Charges Data Tables'' section, Table B (v3.22). This Table B corresponds to the Table B referenced in 82 FR 44701, September 25, 2017. Table B referenced in this notice is v3.24, which provides an update to the all-inclusive nationwide SNF/sub-acute inpatient facility per diem charge and will replace Table B posted on the VHA Office of Community Care's website.

The charges in this notice for acute inpatient and SNF/sub-acute inpatient facility services are effective October 1, 2018.

This notice is retaining the table designations used for acute inpatient facility charges by MS–DRGs, which is posted on the VHA Office of Community Care's website under ''Reasonable Charges Data Tables.'' This notice is also retaining the table designation used for SNF/sub-acute inpatient facility charges, which is also posted on the VHA Office of Community Care's website. Accordingly, the tables identified as being updated by this notice correspond to the applicable tables referenced in 82 FR 44701, September 25, 2017.

The list of data sources presented in Supplementary Table 1 (v3.24) reflects the updated data sources used to establish the updated charges described in this notice, and will be posted on the VHA Office of Community Care's website under the ''Reasonable Charges Data Sources'' section.

The list of VA medical facility locations is also updated. In Supplementary Table 3, posted on the VHA Office of Community Care's website under the VA Medical Facility Locations section, VA set forth the list of VA medical facility locations, which includes the first three digits of their zip codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the VHA Office of Community Care's website, under the ''Payer Rates and Charges'' information section.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on September 13, 2018 for publication.

Dated: September 14, 2018.

Luvenia Potts,

Program Specialist, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–20331 Filed 9–18–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 182 September 19, 2018

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–20 Biennial Specifications and Management Measures; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8576–01]

RIN 0648–BH93

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–20 Biennial Specifications and Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the 2019–20 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan. This proposed rule would also revise the management measures that are intended to keep the total catch of each groundfish stock or stock complex within the harvest specifications. The proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Comments must be received no later than October 19, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2018–0056, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0056,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–526–4655, fax: 206–526–6736, or email: *Keeley.Kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/.* Background information and documents including an integrated analysis for this action (Analysis), which addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org.* The final 2018 Stock Assessment and Fishery Evaluation (SAFE) report for Pacific Coast groundfish, as well as the SAFE reports for previous years, are available from the Pacific Fishery Management Council's website at *http://www.pcouncil.org.*

Executive Summary

Purpose of the Regulatory Action

This proposed rule would implement the 2019–20 harvest specifications and management measures for groundfish stock taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The purpose of this proposed rule is to conserve and manage Pacific Coast groundfish fishery resources to prevent overfishing, to rebuild overfished stocks, achieve optimum yield (OY), and ensure that management measures are based on the best scientific information available. This action proposes harvest specifications for 2019–20 consistent with existing or revised default harvest control rules for all stocks, and establishes management measures designed to keep catch within the appropriate limits. The harvest specifications are set consistent with the OY harvest management framework described in Chapter 4 of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP).

Major Provisions

This proposed rule contains two types of major provisions. The first are the harvest specifications (overfishing limits (OFLs), acceptable biological catches (ABCs), and annual catch limits (ACLs)), and the second are management measures designed to keep fishing mortality within the ACLs. The Council developed the harvest specifications (OFLs, ABCs, and ACLs) in this rule through a rigorous scientific review and decision making process, which is described later in this proposed rule.

The OFL is the maximum sustainable yield (MSY) harvest level and is an estimate of the catch level above which overfishing is occurring. The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) recommends OFLs based on the best scientific information available. The ABC is an annual catch specification that is the stock or stock complex's OFL reduced by an estimate of scientific uncertainty. The SSC-recommended method for incorporating scientific uncertainty is referred to as the P star-sigma approach, which is discussed in detail in the proposed and final rules for the 2011–12 (75 FR 67810, November 3, 2010; 76 FR 27508, May 11, 2011) and 2013–14 (77 FR 67974, November 12, 2012; 78 FR 580, January 3, 2013) biennial harvest specifications and management measures. The ACL is a harvest specification set equal to or below the ABC. The Council recommends ACLs at a level that should achieve OY from the fishery, which is the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. The ACLs are based on consideration of conservation objectives, socio-economic concerns, management uncertainty, and other factors. All known sources of fishing and scientific research catch are counted against the ACL. Many stocks are further allocated into harvest guidelines (HGs) or annual catch targets (ACTs) for the purposes of dividing catch between different gear types and sectors or building in a precautionary approach to prevent catch from exceeding an ACL.

This proposed rule includes harvest specifications for the two overfished stocks managed under the PCGFMP, yelloweye rockfish and cowcod. For the 2019–20 biennium, NMFS proposes changes to the yelloweye rockfish rebuilding plan, due to its improved

stock rebuilding outlook and changes to the needs of fishing communities, described under section C of this rule. This proposed rule would modify the harvest control rule for this stock and establish harvest specifications and management measures consistent with those revisions. The other overfished stock, cowcod, continues to have a positive rebuilding outlook, and no changes to its rebuilding plan are proposed. Therefore, this rule proposes to establish harvest specifications consistent with the existing rebuilding plan provisions for this stock. Since the 2017–18 biennium, three stocks have been declared rebuilt: Darkblotched rockfish, bocaccio rockfish (bocaccio), and Pacific ocean perch. The harvest control rules for these stocks revert back to those established prior to the stock being declared overfished.

To keep mortality of the stocks managed under the PCGFMP within the ACLs, the Council also recommended management measures. Generally speaking, management measures are intended to rebuild overfished stocks, prevent catch from exceeding the ACLs, and allow for the harvest of healthy stocks. Management measures include time and area restrictions, gear restrictions, trip or bag limits, size limits, and other management tools. Management measures may vary by fishing sector because different fishing sectors require different types of management to control catch. Most of the management measures the Council recommended for 2019–20 were slight variations to existing management measures, and do not represent a change from current management practices. Additionally, the Council recommended several new management measures, including: Establishment of salmon bycatch mitigation measures, modifications to depth restrictions in the Western Cowcod Conservation Area (CCA), modification of discard mortality rates for IFQ lingcod and sablefish, removal of the Shorebased Individual Fishing Quota (IFQ) Program daily vessel limits, removal of the automatic authority on at-sea set-asides, continuation of the IFQ adaptive management pass through, and modification of the retention ratios for incidentally caught lingcod in the salmon troll fishery.

Table of Contents

I. Background

The PCGFMP requires the harvest specifications and management measures for groundfish to be set at least biennially. This proposed rule is based on the Council's final recommendations made at its June 2018 meeting, as well as harvest specifications for some stocks adopted at the Council's April 2018 meeting.

A. Specification and Management Measure Development Process

The Northwest Fisheries Science Center (NWFSC) conducted full stock assessments in 2017 for 9 of the 128 stocks [1] included under the PCGFMP (Blue/deacon rockfish (CA, WA, OR), California scorpionfish, lingcod [north and south], Pacific ocean perch, yellowtail rockfish north of 40°10′ N lat., yelloweye rockfish). Additionally, the NWFSC conducted assessment updates that run new data through existing models for eight stocks (arrowtooth flounder, blackgill rockfish south of 40°10′ N lat., bocaccio S of 43° N lat., darkblotched rockfish). The NWFSC did not update assessments for the remaining stocks, so harvest specifications for these stocks are based on assessments from previous years. The stock assessment reports are available on the Council website (*https://www.pcouncil.org/*).

The Council's stock assessment review panel (STAR panel) reviews the stock assessments, including data moderate assessments, for technical merit, and to determine that each stock assessment document is sufficiently complete. Finally, the SSC reviews the stock assessment and STAR panel reports and makes recommendations to the Council.

When spawning stock biomass (B) falls below the minimum stock size threshold (MSST), a stock is declared overfished, and the Council must develop a rebuilding plan that sets the strategy for rebuilding the stock to B_{MSY} in the shortest time possible, while considering needs of fishing communities and other factors. The current MSST reference point for assessed flatfish stocks is 12.5 percent of initial biomass or $B_{12.5\%}$. For all other assessed groundfish stocks, the current MSST reference point is 25 percent of initial biomass or $B_{25\%}$. The following overfished groundfish stocks would continue be managed under rebuilding plans in 2019–20: Cowcod south of 40°10′ N lat. and yelloweye rockfish.

For overfished stocks, in addition to any stock assessments or stock assessment updates, the NWFSC may also prepare rebuilding analyses. The rebuilding analysis is used to project the future status of the overfished resource under a variety of alternative harvest strategies and to determine the probability of recovering to B_{MSY} or its proxy within a specified timeframe.

The Council considered new stock assessments, stock assessment updates, a rebuilding analysis for yelloweye rockfish, public comment, and advice from its advisory bodies over the course of six Council meetings during development of its recommendations for the 2019–20 harvest specifications and management measures. At each Council meeting between June 2017 and June 2018, the Council made a series of decisions and recommendations that were, in some cases, refined after further analysis and discussion. Detailed information, including the supporting documentation the Council considered at each meeting is available at the Council's website, *www.pcouncil.org.*

The 2019–20 biennial management cycle was the second cycle following PCGFMP Amendment 24 (80 FR 12567, March 10, 2015), which established default harvest control rules and included an Environmental Impact Statement (EIS). The EIS described the ongoing implementation of the PCGFMP and default harvest control rules, along with ten-year projections for harvest specifications and a range of management measures. Under Amendment 24, the default harvest control rules used to determine the

[1] Stocks for which ACLs or ACL contributions to stock complex ACLs are calculated.

previous biennium's harvest specifications (*i.e.,* OFLs, ABCs, and ACLs) are applied automatically to the best scientific information available to determine the future biennium's harvest specifications. NMFS implements harvest specifications based on the default harvest control rules unless the Council makes a different recommendation. Therefore, this rule implements the default harvest control rules, consistent with Amendment 24, for most stocks, and discusses departures from the defaults. The Analysis identifies the preferred alternative harvest control rules, new management measures, and other decision points that were not described in the 2015 EIS and is posted on the NMFS WCR web page (see **SUPPLEMENTARY INFORMATION**) along with this proposed rule.

Information regarding the OFLs, ABCs, and ACLs proposed for groundfish stocks and stock complexes in 2019–20 is presented below, followed by a discussion of the proposed management measures for commercial and recreational groundfish fisheries.

II. Harvest Specifications

This proposed rule would set 2019–20 harvest specifications and management measures for all of the 128 groundfish stocks which have ACLs or ACL contributions to stock complexes managed under the PCGFMP, except for Pacific whiting. Pacific whiting harvest specifications are established annually through a separate bilateral process with Canada.

The proposed OFLs, ABCs, and ACLs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The PCGFMP specifies a series of three categories to define OFLs and ABCs based on the level of reliable information available to fishery scientists. Category one represents the highest level of information quality available, while category three represents the lowest. Category one stocks are the relatively few stocks for which the NWFSC can conduct a ''data rich,'' quantitative stock assessment that incorporates catch-at-age, catch-at-length, or other data. The SSC can generally calculate OFLs and overfished/rebuilding thresholds for these stocks, as well as ABCs, based on the uncertainty of the biomass estimated within an assessment or the variance in biomass estimates between assessments for all stocks in this category. The set of category two stocks includes a large number of stocks for which some biological indicators are available, yet status is based on a ''data-moderate'' quantitative assessment. The category three stocks include minor stocks which are caught, but for which there is, at best, only information on landed biomass. For stocks in this category, there is limited data available for the SSC to quantitatively determine MSY, OFL, or an overfished threshold. Typically, catch-based methods (*e.g.,* depletion-based stock reduction analysis (DBSRA), depletion corrected average catch (DCAC), and average catches) are used to determine the OFL for category three stocks.

A. Proposed OFLs for 2019 and 2020

The SSC derives OFLs for groundfish stocks with stock assessments by applying the harvest rate to the current estimated biomass. $Fx_{\%}$ harvest rates represent the rates of fishing mortality that will reduce the female spawning potential ratio (SPR) to X percent of its unfished level. As an example, a harvest rate of $F_{40\%}$ is more aggressive than $F_{45\%}$ or $F_{50\%}$ harvest rates because $F_{40\%}$ allows more fishing mortality on a stock (as it allows a harvest rate that would reduce the stock to 40 percent of its unfished level).

For 2019–20, the Council maintained its policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (F_{MSY}). A proxy is used because there is insufficient information for most Pacific Coast groundfish stocks to estimate stock-specific F_{MSY} values. Taxon-specific proxy fishing mortality rates are used due to perceived differences in the productivity among different taxa of groundfish. A lower value is used for stocks with relatively high resilience to fishing while higher values are used for less resilient stocks with low productivity. In 2019–20, the Council proposed the following default harvest rate proxies, based on the SSC's recommendations: $F_{30\%}$ for flatfish (meaning an SRP harvest rate that would reduce the stock to 30 percent of its unfished level), $F_{40\%}$ for Pacific whiting, $F_{50\%}$ for rockfish (including longspine and shortspine thornyheads), $F_{50\%}$ for elasmobranchs, and $F_{45\%}$ for other groundfish such as sablefish and lingcod. For unassessed stocks, the Council recommended using a historical catch-based approach (*e.g.,* average catch, depletion-corrected average catch, or depletion-based stock reduction analysis) to set the OFL.

Stocks may be grouped into complexes for various reasons, including: When stocks in a multispecies fishery cannot be targeted independently of one another and MSY cannot be defined on a stock-by-stock basis; when there is insufficient data to measure the stocks' status; or when it is not feasible for fishermen to distinguish individual stocks among their catch. Most groundfish stocks managed in a stock complex are data-poor stocks without full stock assessments. The proposed OFLs for stock complexes are the sum of the OFL contributions for the component stocks, when known. In the 2017–18 harvest specifications, there were eight stock complexes used to manage groundfish stocks pursuant to the PCGFMP. These stock complexes were: (1) Minor Nearshore Rockfish north; (2) Minor Nearshore Rockfish south; (3) Minor Shelf Rockfish north; (4) Minor Shelf Rockfish south (5) Minor Slope Rockfish north; (6) Minor Slope Rockfish south; (7) Other Flatfish; and (8) Other Fish. This rule proposes the following changes to stock complexes: (1) Remove blue/deacon rockfish from the Minor Nearshore Rockfish north complex and group with Oregon black rockfish to create a new complex (Oregon black rockfish/blue rockfish/deacon rockfish); (2) remove Washington kelp greenling from the Other Fish complex and pair with Washington cabezon to create a new complex (Washington cabezon/kelp greenling); (3) remove Oregon kelp greenling from the Other Fish complex and pair with Oregon cabezon to create a new complex (Oregon cabezon/kelp greenling). This proposed rule, if approved, would increase the total of number of stock complexes from eight to eleven.

A detailed description of the scientific basis for all of the SSC-recommended OFLs proposed in this rule is included in the Stock Assessment and Fishery Evaluation (SAFE) document for 2018, available at the Council's website, *www.pcouncil.org.*

B. Proposed ABCs for 2019 and 2020

The ABC is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended P star-sigma approach determines the amount by which the OFL is reduced to establish the ABC. Under this approach, the SSC recommends a sigma (σ) value. The σ value is generally based on the scientific uncertainty in the biomass estimates generated from stock assessments. After the SSC determines the appropriate σ value, the Council chooses a P star (P*) based on its chosen level of risk aversion considering the scientific uncertainties. A P* of 0.5 equates to no additional reduction for scientific

uncertainty beyond the sigma value reduction. The PCGFMP specifies that the upper limit of P* will be 0.45. In combination, the P* and σ values determine the amount by which the OFL will be reduced to establish the SSC-endorsed ABC.

The SSC quantified major sources of scientific uncertainty in the estimates of OFLs and generally recommended a σ value of 0.36 for category one stocks, a σ value of 0.72 for category two stocks, and a σ value of 1.44 for category three stocks. For category two and three stocks, there is greater scientific uncertainty in the OFL estimate because the assessments for these stock assessments are informed by less data than the assessments for category one stocks. Therefore, the scientific uncertainty buffer is generally greater than that recommended for stocks with quantitative stock assessments. Assuming the same P* is applied, a larger σ value results in a larger reduction from the OFL. For 2019–20, the Council continued the general policy of using the SSC-recommended σ values for each stock category. However, the SSC made a few exceptions to the standard σ values assigned to each category. For some stocks, the SSC did not deem the proxy σ values the best scientific information available because the uncertainty in estimated spawning biomass is greater than the σ used as a proxy for other stocks in that category. For 2019–20, the SSC calculated unique σ values for five stocks. For kelp greenling off Oregon, a category 1 stock, the SSC calculated a σ value of 0.44, which is more precautionary than the standard σ value of 0.36 for this category of stocks. For aurora rockfish, also a category 1 stock, the SSC calculated a σ value of 0.39. And for California scorpionfish, the SSC calculated a σ value of 0.582. The SSC also calculated a σ value of 0.783 for California blue/deacon rockfish, and a σ value of 0.803 for Oregon blue/deacon rockfish, both category 2 stocks. These σ values are higher than the standard σ value of 0.72 for this category of stocks.

For 2019–20, the Council maintained the P* policies it established for the previous biennium for most stocks. As was done in 2015–16 and 2017–18, the Council recommended using P* values of 0.45 for all individually managed category one stock, except sablefish. Combining the category one σ value of 0.36 with the P* value of 0.45 results in a reduction of 4.4 percent from the OFL when deriving the ABC. For category two and three stocks, the Council's general policy was to use a P* of 0.4, with a few exceptions. The Council recommended a P* of 0.45 for all of the stocks managed in the Minor Rockfish complexes and the Other Fish complex, as was done in 2017–18. When combined with the σ values of 0.72 and 1.44 for category two and three stocks, a P* value of 0.40 corresponds to 16.7 percent and 30.6 percent reductions, respectively. The Council recommended using P* values of 0.40 for all individually managed category two and three stocks, except those described below. The Council recommended a P* of 0.45 for big skate, black rockfish off Oregon, cowcod, English sole, and yellowtail rockfish south of 40°10′ N lat., as was done in 2015–16 and 2017–18, because there was no new scientific information indicating a change in P* value was warranted.

C. Proposed ACLs for 2019 and 2020

The Council recommends ACLs for each stock and stock complex that is ''in the fishery'', as defined in the PCGFMP. Under the PCGFMP, the biomass level that produces MSY, or B_{MSY}, is defined as the precautionary threshold. When the biomass for an assessed category one or two stock falls below the precautionary threshold, the ACL is set below the ABC using a harvest rate reduction to help the stock return to the B_{MSY} level, which is the management target for groundfish stocks. If a stock biomass is larger than B_{MSY}, the ACL may be set equal to the ABC. Alternatively, even if a stock biomass is larger than B_{MSY}, an ACL may be set below the ABC to address conservation objectives, socioeconomic concerns, management uncertainty, or other factors necessary to meet management objectives.

Under PCGFMP Amendment 24, the Council set up default harvest control rules, which established default policies that would be applied to the best available scientific information to set ACLs each biennial cycle, unless the Council has reasons to diverge from that harvest control rule. A complete description of the default harvest control rules for setting ACLs is described in the proposed and final rule for the 2015–16 harvest specifications and management measures and PCGFMP Amendment 24 (80 FR 687, January 6, 2015; 80 FR 12567, March 10, 2015).

Many groundfish stocks are managed with stock-specific harvest specifications. Often these stocks are category one or category two stocks and their stock status is known. The default harvest control rule for stocks with biomass estimates above MSY is to set the ACL equal to the ABC. The default harvest control rule for stocks with biomass estimates below MSY but above the overfished threshold is to set the ACL below the ABC using a standard reduction on the harvest rate, which is described in the proposed and final rules for the 2015–16 biennium (80 FR 687, January 6, 2015; 80 FR 12567, March 10, 2015). The PCGFMP defines the 40–10 harvest control rule for stocks with a B_{MSY} proxy of $B_{40\%}$ that are in the precautionary zone as the standard reduction. The analogous harvest control rule with the standard reduction for assessed flatfish stocks is the 25–5 harvest control rule. Both ACL harvest control rules are applied after the ABC deduction is made. The further the stock biomass is below the precautionary threshold, the greater the reduction in ACL relative to the ABC, until at $B_{10\%}$ for a stock with a B_{MSY} proxy of $B_{40\%}$, or $B_{5\%}$ for a stock with a B_{MSY} proxy of $B_{25\%}$, the ACL would be set at zero. These harvest policies foster a quicker return to the B_{MSY} level and serve as an interim rebuilding policy for stocks that are below the MSST.

All of the ACLs for stock complexes are less than or equal to the summed ABC contributions of each component stock in each complex. Default harvest control rules are based on stock status. Thus, when the Council revises the stock composition of a stock complex, the default harvest control rule may adjust based on status of the stocks that remain in the complex.

Under the PCGFMP, the Council may recommend setting the ACL at a different level than what the default harvest control rules specify as long as the ACL does not exceed the ABC and complies with the requirements of the Magnuson-Stevens Act. For many of the stocks or stock complexes in the fishery, the Council chose to maintain the default harvest control rules from the previous biennial cycle. Table 1 presents a summary table of the proposed changes to ACL policies for certain stocks for 2019–20.

TABLE 1—PROPOSED CHANGES TO HARVEST CONTROL RULES FOR 2019–20

Stock	Alternative	Harvest control rule	ACL [a]
CA Scorpionfish S of 34°27′ N lat.	Current	150 mt constant catch ACL	150 mt
	Proposed change	ACL = ABC (P* = 0.45)	313 mt
Lingcod N of 40°10′ N lat.	Current	ACL = ABC (P* = 0.45 in OR & WA; P* = 0.4 in CA) w/40–10 adj. for the CA contribution to the ABC and ACL Assumes 1,000 mt and 750 mt removals for 2017 and 2018 in the north and south, respectively and full ACL attainment thereafter.	3,110 mt
	Proposed change	ACL = ABC (P* = 0.45) w/40–10 adj. for the CA contribution to the ABC and ACL Assumes 40% and 75% ACL attainment for 2017 and 2018 in the north and south, respectively and full ACL attainment thereafter.	4,871 mt
Lingcod S of 40°10′ N lat.	Current	ACL = ABC (P* = 0.4) w/40–10 adj. Assumes 1,000 mt and 750 mt removals for 2017 and 2018 in the north and south, respectively and full ACL attainment thereafter.	1,144 mt
	Proposed change	ACL = ABC (P* = 0.45) w/40–10 adj. Assumes 40% and 75% ACL attainment for 2017 and 2018 in the north and south, respectively and full ACL attainment thereafter.	1,039 mt
Yelloweye Rockfish	Current	ABC (P* = 0.4), ACL (SPR = 76.0%); T_{TARGET} = 2027	20 mt
	Proposed change	ABC (P* = 0.4), ACL (SPR = 65.0%); T_{TARGET} = 2029	48 mt

[a] Current ACL is for 2018, Proposed change ACL is for 2019.

The following sections discuss proposed ACLs for the stocks for which the Council's recommended ACLs depart from the existing default harvest control rule.

California Scorpionfish

For the 2017–18 biennium, the default harvest control rule set the ACL for California scorpionfish at a constant value of 150 mt rather than on a rate-based value. The NWFSC conducted a new assessment of California scorpionfish south of 34°27′ N lat. in 2017. The assessment indicated the stock was healthy at a 54 percent depletion at the start of 2017. The Council recommended and NMFS is proposing an alternative harvest control rule for California scorpionfish. The revised harvest control rule would set the ACL equal to the ABC using a P* value of 0.45, consistent with other category one stocks. The resulting 2019–20 ACLs would more than double compared to the 2018 ACL under this new harvest control rule. The stock is projected to remain healthy (*i.e.,* greater than 40 percent depletion) for the next ten years under the proposed alternative harvest control rule.

Lingcod

The NWFSC conducted two assessments for lingcod in 2017—one each for the areas north and south of the California/Oregon border at 42° N lat. Current spawning stock biomass is estimated to be 57.9 percent in the northern assessment area relative to unfished spawning biomass, and has continued to increase over the last five years as a result of high recruitment in 2008 and 2013. Current spawning stock biomass is estimated to be 32.1 percent in the southern assessment area relative to unfished spawning biomass. Although spawning biomass in the southern assessment area is estimated to have been increasing in recent years, recruitment is estimated to have been well below average over the last 10 to 15 years, which suggests that stock biomass is not increasing for the southern portion of the stock at the same rate as for the northern portion of the stock. The SSC endorsed the 2017 north and south lingcod stock assessments as the best scientific information available for status determination and management, and designated both portions of the stock as category one. The stocks had been previously managed as category two stocks. The current harvest control rule sets the ACL equal to the ABC for the portion of the northern stock off Oregon, but applies the 40–10 precautionary reduction to the portion of the northern stock off California (*i.e.,* between 42° and 40°10′ N lat.), and to the whole of the southern stock using the most recent 5-year (2012–2016) average percentage of swept area biomass estimates.

This proposed rule would change the P* value from 0.4 to 0.45 for both portions of the stock, reflecting greater confidence in the current stock assessments. The resulting 2019 and 2020 ACLs for the northern portion of the stock would increase by approximately 64 percent and 68 percent, respectively, compared to the 2018 ACL under this new harvest control rule. The resulting 2019 and 2020 ACL under this new harvest control rule for the southern portion of the stock would decrease by approximately 9 percent and 24 percent, respectively, compared to the 2018 ACL. This proposed action is expected to allow moderate growth of the stock under an average recruitment assumption in the next ten years.

Overfished Stocks and Changes to Rebuilding Plans

When a stock has been declared overfished, the Council must develop and manage the stock in accordance with a rebuilding plan. For overfished stocks in the PCGFMP, this means that the harvest control rule for overfished stocks sets the ACL based on the rebuilding plan. The proposed rules for the 2011–12 (75 FR 67810, November 3, 2010) and 2013–14 (77 FR 67974, November 14, 2012) harvest specifications and management measures contain extensive discussions on the management approach used for overfished stocks, which are not repeated here. In addition, the SAFE document posted on the Council's website at *http://www.pcouncil.org/groundfish/safe-documents/* contains a detailed description of each overfished stock, its status and management, as well as the SSC's approach for rebuilding analyses. This document discusses several previously overfished stocks that have rebuilt since the last biennium, as well as provisions for the two remaining overfished stocks in the PCGFMP, namely cowcod south of 40°10′ N lat. and yelloweye rockfish. The Council proposed cowcod ACLs for 2019 and 2020 based on the current cowcod rebuilding plan, so additional details are not repeated here. Appendix F to the PCGFMP contains the most recent rebuilding plan parameters, as well as a history of each overfished stock, and can be found at *http://www.pcouncil.org/groundfish/fisherymanagement-plan/.*

Stocks Rebuilt Since Last Biennium

When a stock is determined to be rebuilt, its harvest control rule automatically reverts back to the default harvest control rule for the next biennium. For the 2019–20 biennium, three stocks were declared rebuilt: Bocaccio, Pacific ocean perch, and darkblotched rockfish. In addition to the harvest control rules for these stocks reverting back to the defaults for the 2019–20 biennium, other requirements for overfished stocks are removed. One such change is that these stocks would no longer be listed under the priority stock observer reporting requirements at § 660.140(h)(1)(i)(*3*). This proposed change is described further under the heading, P. Administrative Actions, in this preamble.

Yelloweye Rockfish (Sebastes Ruberrimus)

Yelloweye rockfish was declared overfished in 2002. The Council adopted a rebuilding plan for the stock in 2004, and revised the rebuilding plan in 2011 under Amendment 16–4 to the PCGFMP. The current rebuilding plan parameters include an SPR harvest rate of 76 percent and a median target time for rebuilding (T_{TARGET}) of 2074 (the year for which there is a 50 percent probability that the stock is rebuilt). The NWFSC conducted a new stock assessment for yelloweye rockfish in 2017, and the SSC conducted a rebuilding analysis using the updated assessment. The rebuilding analysis includes a recalculation of rebuilding parameters that inform the Council's decision-making process. According to the rebuilding analysis, should the Council decide to revise the existing rebuilding plan, the new minimum time to rebuild (T_{MIN}; the time to rebuild if there was no fishing) would be 2026 and T_{TARGET} would be changed from 2074 (in the 2011 assessment) to 2027 (in the 2017 assessment). Under the current harvest control rule, the ACL for yelloweye would increase to 29 mt and 30 mt in 2019 and 2020, respectively, an increase from 20 mt in 2018. This improvement in stock status outlook is due to several factors, including: Lower than expected catches of yelloweye rockfish in recent years; a more optimistic value on stock recruit steepness, which corresponds to a more productive stock; and strong year classes entering the spawning population in recent years.

As a result of the improvement in stock outlook, the Council recommended, and NMFS is proposing, changing the SPR harvest rate for yelloweye rockfish to 65 percent and changing the T_{TARGET} to 2029. This change in the rebuilding plan would allow an ACL for yelloweye rockfish of 48 mt in 2019 and 49 mt in 2020. Within the ACL, for 2019, the Council recommended a fishery harvest guideline (HG) of 42.1 mt, of which 3.4 mt is the trawl HG and 38.6 mt is the nontrawl HG. For 2020, NMFS proposes a fishery HG of 42.1 mt, of which 3.4 is the trawl HG and 39.5 is the nontrawl HG. For more discussion of the use of HGs, see section II (Harvest Specifications), C, entitled ''C. Biennial Fishery Allocations'' in this preamble.

Additionally, the Council recommended, and NMFS is proposing, to establish Annual Catch Targets (ACTs) within the nontrawl allocation HG. The nontrawl sector includes the limited entry fixed gear and open access fixed gear fisheries as well as the recreational fisheries for Washington, Oregon, and California. The nearshore fisheries occur off of Oregon and California and are subject to both Federal and state HGs as well as other state-specific management measures. The non-nearshore fisheries include the limited entry and federal open access fixed gear fleets. Table 2 outlines the harvest specifications that were in place for yelloweye rockfish for 2018 for comparison purposes. Tables 3 and 4 outline the proposed harvest specifications for 2019 and 2020 for yelloweye rockfish.

TABLE 2—2018 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)
All sectors	58	48	20	14
Nontrawl				12.9
Non-Nearshore				0.7
Nearshore				2.0
Washington Recreational				3.3
Oregon Recreational				3
California Recreational				3.9
Trawl				1.1

TABLE 3—2019 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)	ACT (mt)
All sectors	82	74	48	42	
Nontrawl				38.6	
Non-Nearshore				2.0	1.6
Nearshore				6.0	4.7
Washington Recreational				10.0	7.8
Oregon Recreational				8.9	7.0
California Recreational				11.6	9.1
Trawl				3.4	

TABLE 4—2020 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)	ACT (mt)
All sectors	84	77	49	43	

TABLE 4—2020 HARVEST SPECIFICATIONS FOR YELLOWEYE ROCKFISH—Continued

	OFL (mt)	ABC (mt)	ACL (mt)	HG (mt)	ACT (mt)
Nontrawl	.....	.....	.....	39.5	.....
Non-Nearshore	.....	.....	.....	2.1	1.7
Nearshore	.....	.....	.....	6.2	4.9
Washington Recreational	.....	.....	.....	10.2	8.1
Oregon Recreational	.....	.....	.....	9.1	7.2
California Recreational	.....	.....	.....	11.9	9.4
Trawl	.....	.....	.....	3.4	.....

The Council recommended using ACTs for the nontrawl sector as a precaution. As discussed in the Analysis, because yelloweye rockfish catch has been restricted for many years, it is difficult to project how encounter rates will change under the proposed higher catch limits and the associated suite of management measures that should allow for an overall expansion of groundfish fishery effort (see section 4.2.1.3 of the Analysis). This precautionary approach to higher catch limits would allow more access to target fisheries for the nontrawl sector, while also managing for the uncertainty and volatility in catch of this overfished stock by this sector.

The Analysis demonstrates how the proposed changes to the rebuilding plan select a T_{TARGET} that is as short as possible, while giving consideration to the status and biology of the overfished species and the needs of the fishing communities, consistent with Section 303(e)(4) of the Magnuson-Stevens Act (see Appendix B of the Analysis). The Council indicated that a new default harvest control rule may more appropriately account for the needs of West Coast communities by providing greater opportunity in both commercial and recreational groundfish sectors and improving income stability for dependent communities.

West Coast fishing communities depend on a portfolio of commercial and recreational fisheries to support year-round operations. Recent coastwide declines in commercial fisheries for Dungeness crab, salmon, sardines, tuna, pink shrimp, halibut, and other non-groundfish stocks due to changing environmental conditions and changes in management have created considerable instability for many communities. Additionally, many of these communities have experienced substantial declines in recreational fishing activity, notably for salmon and for tuna (see Section B.1.1. of Appendix B). Groundfish fishing activity has traditionally helped communities weather cyclical changes in abundance in other non-groundfish fisheries. However, the restrictions in catch of target groundfish stocks necessary to support rebuilding of overfished groundfish stocks over the past 15 years has limited both commercial and recreational groundfish fishing opportunities. The loss of groundfish fishing opportunities further affects fishing communities through loss of processor activity and loss of business for support services.

The proposed change to the yelloweye rockfish rebuilding plan is intended to support continued yelloweye rebuilding progress while providing more stability for coastal communities through increased access to co-occurring target stocks. Yelloweye rockfish bycatch is rare and unpredictable, but can occur in sporadic ''lightning strikes'' of large magnitude. Because yelloweye rockfish catch is difficult to predict, the Council has constrained yelloweye rockfish catch below the ACL set in the current rebuilding plan by conservatively managing co-occurring target stocks. This proposed rebuilding plan would increase the estimated T_{TARGET} by two years, from 2027 to 2029, which is still within the required 10-year rebuilding timeframe specified in section 304(e)(4) of the Magnuson-Stevens Act, but which would more than double the yelloweye rockfish ACL in 2019 compared to 2018.

The higher ACLs resulting from the revised rebuilding plan allow a suite of management measures that could expand groundfish fishing opportunities. For commercial trawl vessels, this proposed action would facilitate more trading of yelloweye rockfish allocation, which should allow for less risk-averse fishing strategies and as a result, an increase in attainment of underutilized stocks, including lingcod, chilipepper rockfish, and Pacific cod (see Section B.5.2.3 of Appendix B of the Analysis). For commercial fixed gear vessels, the yelloweye rockfish ACL increases could support future actions to consider reopening the nontrawl Rockfish Conservation Area or to consider increasing trip limits for target stocks such as lingcod (see Section B.5.2.2 of Appendix B of the Analysis). In addition, the proposed increases in the yelloweye rockfish ACL would allow for additional research opportunities to collect much-needed data to better inform stock assessments and management decisions (see Section B.1.3 of Appendix B of the Analysis).

Recreational fishing opportunities would have the greatest potential for expansion from this proposed action. For the recreational sectors in communities off Washington, Oregon, and California, the proposed change to the rebuilding plan and higher ACLs would allow shorter periods of time with depth restrictions in place and access to deeper depths during seasons with depth restrictions. Allowing recreational fishermen to access additional fishing grounds should allow them to target a broader suite of stocks, such as yellowtail rockfish, lingcod, and chilipepper rockfish, while also reducing pressure on sensitive nearshore stocks such as black rockfish (see Section B.5.3 of Appendix B of the Analysis). This increase in recreational effort would especially benefit the communities of Neah Bay, WA; Winchester Bay, OR; and Fort Bragg, CA, which are highly dependent on recreational opportunities (see Section B.5 of Appendix B of the Analysis).

D. Summary of ACL Changes From 2018 to 2019–20

Table 5 compares the ACLs for major stocks for 2018, 2019, and 2020. Due to proposed changes in stock complex composition, not all stocks are shown below. Many stocks would have higher ACLs in 2019 and 2020 than in 2018. The only stock that would have an ACL more than 10 percent below the 2018 ACL is starry flounder. The change in stock abundance for starry flounder is largely driven by a change in the way the stock is assessed, which better accounts for the uncertainty in the stock status of this data poor stock. As a result, for 2019–20, starry flounder has a more precautionary OFL, ABC, and ACL. Overall attainment of starry flounder has been low in recent years, so this change is not expected to have

a substantial impact on the fleet (see Section A.3.4 of Appendix A of the Analysis).

TABLE 5—ACLS FOR MAJOR STOCKS FOR 2018, 2019, AND 2020

[Overfished stocks are capitalized]

Stock	Area	2018 ACL (mt)	2019 ACL (mt)	2020 ACL (mt)	Percent change 2018 to 2019
COWCOD	S of 40°10′ N lat	10	10	10	0
YELLOWEYE ROCKFISH	Coastwide	20	48	49	140
Arrowtooth Flounder	Coastwide	13,743	15,574	12,750	13
Big Skate	Coastwide	494	494	494	0
Black Rockfish	California (S of 42° N lat.)	332	329	326	−1
Black Rockfish	Washington (N of 46°16′ N lat.)	301	298	297	−1
Bocaccio [a]	S of 40°10′ N lat	741	2,097	2,011	183
Cabezon	California (S of 42° N lat.)	149	147	146	−1
California Scorpionfish	S of 34°27′ N lat	150	313	307	108
Canary Rockfish	Coastwide	1,526	1,450	1,368	−5
Chilipepper Rockfish	S of 40°10′ N lat	2,507	2,536	2,410	1
Darkblotched Rockfish [a]	Coastwide	653	765	815	17
Dover Sole	Coastwide	50,000	50,000	50,000	0
English Sole	Coastwide	7,537	10,090	10,135	34
Lingcod	N of 40°10′ N lat	3,110	4,871	4,541	57
Lingcod	S of 40°10′ N lat	1,144	1,039	869	−9
Longnose skate	Coastwide	2,000	2,000	2,000	0
Longspine Thornyhead	N of 34°27′ N lat	2,747	2,603	2,470	−5
Longspine Thornyhead	S of 34°27′ N lat	867	822	780	−5
Pacific Cod	Coastwide	1,600	1,600	1,600	0
Pacific Ocean Perch [a]	N of 40°10′ N lat	281	4,340	4,229	1444
Petrale Sole	Coastwide	3,013	2,908	2,845	−3
Sablefish	N of 36° N lat	5,475	5,606	5,723	2
Sablefish	S of 36° N lat	1,944	1,990	2,032	2
Shortbelly Rockfish	Coastwide	500	500	500	0
Shortspine Thornyhead	N of 34°27′ N lat	1,698	1,683	1,669	−1
Shortspine Thornyhead	S of 34°27′ N lat	898	890	883	−1
Spiny Dogfish	Coastwide	2,083	2,071	2,059	−1
Splitnose Rockfish	S of 40°10′ N lat	1,761	1,750	1,731	−1
Starry Flounder	Coastwide	1,282	452	452	−65
Widow Rockfish	Coastwide	12,655	11,831	11,199	−7
Yellowtail Rockfish	N of 40°10′ N lat	6,002	5,997	5,716	0

[a] Stock was declared rebuilt in 2017.

III. Management Measures

This section describes biennial fishery harvest guidelines and set-asides used to further allocate the ACLs to the various components on the fishery, routine management measures to control fishing, and new management measures proposed for 2019–20. Routine management measures for the commercial fishery modify fishing behavior during the fishing year to ensure that catch is constrained below the ACL, and include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Routine management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. New management measures proposed for the 2019–20 biennial cycle would work in combination with current management measures to control fishing effort/activity.

A. Deductions From the ACLs

Before making allocations to the primary commercial and recreational components of groundfish fisheries, the Council recommends ''off-the-top deductions,'' or deductions from the ACLs to set aside fish for certain types of activities. Off the top deductions account for four distinct sources of groundfish mortality: Harvest in Pacific Coast treaty Indian tribal fisheries; harvest in scientific research activities; harvest in non-groundfish fisheries (incidental catch); and harvest that occurs under exempted fishing permits (EFPs). These off-the-top deductions are proposed for individual stocks or stock complexes and can be found in the footnotes to Tables 1a and 2a to part 660, subpart C.

B. Stock Complex Composition Restructuring

The Council recommended, and NMFS is proposing, modifications to the existing stock complexes used for harvest specifications and management that would create three new stock complexes. Changes in the composition of stock complexes do not affect the underlying harvest specifications because the stock complex ACL is simply the sum of the constituent stocks' specifications. The stocks in the proposed stock complex restructuring are predominately shallow water nearshore stocks that occur primarily within state waters. Nearly all the removals for these stocks are attributed to the recreational and commercial nearshore fisheries that are subject to joint state and Federal management.

The first modification would remove Oregon blue/deacon rockfish (BDR) from the Nearshore Rockfish complex north of 40°10′ N latitude and pair it with Oregon black rockfish to form a new Oregon black/BDR complex. The second modification would remove Oregon and Washington kelp greenling and Washington cabezon from the Other Fish complex to form two new stock complexes: An Oregon Kelp Greenling/

Cabezon Complex and a Washington Kelp Greenling/Cabezon Complex. The objectives of the stock complex proposals are: (1) Better alignment of stocks per the complex goals and definitions as defined in the PCGFMP and National Standard 1 of the Magnuson-Stevens Act; (2) reduced management complexity; and 3) enhanced management flexibility (*e.g.,* greater ability to take inseason actions). These proposed changes to stock complex composition better comply with the National Standard 1 guidelines, which recommend stocks managed in a stock complex ''should have a similar geographic distribution, life history characteristics, and vulnerabilities to fishing pressure such that the impact of management actions on the stocks is similar.'' These complex proposals pertain primarily to the commercial nearshore and recreational fisheries, as these are shallow water stocks infrequently encountered by the trawl sectors or other fisheries.

Oregon Black/Blue/Deacon Rockfish Complex

The Council recommended removing Oregon BDR rockfish from the Nearshore Rockfish complex north of 40°10′ N. latitude, and pairing it with Oregon black rockfish, which is currently managed individually, to form a new Oregon black/BDR complex. Note that blue and deacon rockfish are separate stocks, but they are referred to collectively since they were assessed together and therefore have joint harvest specifications. Blue/deacon rockfish are more frequently found in the middle of the water column, whereas the other stocks in the Nearshore Rockfish complex are more strongly associated with benthic habitats. Oregon black rockfish is an important target fishery, especially in the recreational sector. As detailed in Section C.3 of Appendix C of the Analysis, this proposed action would better align management of Oregon BDR rockfish with black rockfish, a stock that is also a midwater stock and often co-occurs with BDR rockfish. The proposed action would provide more targeted management of Oregon BDR rockfish by moving Oregon BDR from a larger stock complex to a much smaller one. However, this action could have the potential to provide less targeted management for black rockfish by moving it from individual management into a complex. The risk of less targeted management would be that catch could exceed the stock's ACL contribution while remaining under the overall complex ACL.

As a measure to prevent negative effects on black rockfish as a result of moving it into a complex, the Council recommended and NMFS is proposing an HG for the stock at its ACL contribution level to the complex. For 2019, the HG would be 515.8 mt, and for 2020, 512.2 mt. Additionally, as discussed in Section 4.3.1.3 of the Analysis, Oregon Department of Fish and Wildlife (ODFW) intends to implement mitigation measures to prevent any change in the risk of overfishing for Oregon black rockfish. These measures include establishing and managing catch against state harvest guidelines for the component stocks of the new BDR complex, shortening the state catch reporting time lag from one month to one week to allow for rapid state-level management response, and revising ODFW inseason catch projection methods to better monitor rapid periodic increases in recreational fishing effort. ODFW has also proposed action within its state regulations to reduce its aggregate state recreational bag limit from seven to five fish per day, which could slow the overall catch rate during the recreational season. Finally, NMFS's recent approval of longleader fishing gear for use in waters off Oregon (83 FR 13428; March 29, 2018) could shift some fishing effort away from black rockfish and towards underutilized midwater stocks, primarily widow and yellowtail rockfish. If this change to the stock complex structure is approved, these additional measures would ensure a level of management scrutiny for black rockfish similar to the level it would receive if it were managed individually.

Other Fish Complex

The Other Fish complex originated as a compilation of stocks that did not match well with other complexes. Because the complex is composed of biologically dissimilar stocks (*e.g.,* ratfish, skates, sharks, grenadier, greenling, cabezon, and codling), the grouping has not supported practical management of its component stocks. Over time, the Council has redesignated some stocks in the original complex as ecosystem components, or has removed some stocks from the complex for individual management (*e.g.,* big skate, 82 FR 9634; February 7, 2017). This proposed action would remove three stocks from the Other Fish complex and incorporate them into two new complexes to allow for more accurate management of these stocks. This action would also require the addition of scientific sorting requirements for the limited entry trawl, limited entry fixed gear, and open access fixed gear. These sorting requirements would allow proper accounting of the catch of component stock in these new complexes separate from the Other Fish complex.

Oregon Kelp Greenling/Cabezon Complex

This proposed action would remove Oregon kelp greenling from the Other Fish complex and pair it with Oregon cabezon, which is currently managed individually, to create the Oregon Kelp Greenling/Cabezon Complex. This proposed action was recommended because these stocks share a greater similarity to each other (*e.g.,* both are solitary nearshore stocks that often co-occur) compared to the other stocks within the Other Fish complex. As a measure to prevent any increase in the risk of overfishing for cabezon as a result of moving it into a complex, the Council recommended and NMFS is proposing a HG for the stock at its ACL contribution level to the complex. For 2019 and 2020, the HG would be 46.8 mt. The mitigation measures ODFW intends to implement for the Oregon black/BRD complex, described above, would similarly help prevent adverse effects on cabezon from moving from individual management into a stock complex.

Washington Kelp Greenling/Cabezon Complex

This proposed action would remove Washington kelp greenling and Washington cabezon from the Other Fish complex to form a Washington Kelp Greenling/Cabezon Complex. In Washington, kelp greenling and cabezon are retained in recreational groundfish fisheries. They are nearshore stocks that are generally not targeted and often co-occur. As both of the stocks are currently managed within a larger complex, moving them to their own complex would provide more targeted management. As part of this proposed action, the Washington Department of Fish and Wildlife would be better able to implement inseason management actions for these stocks, if needed.

C. Biennial Fishery Allocations

The Council recommends two-year trawl and nontrawl allocations during the biennial specifications process for all stocks without long-term allocations or stocks where the long-term allocation is suspended because the stock is declared overfished. For all stocks, except sablefish north of 36° N lat., the Council recommends allocations for the trawl and nontrawl sectors based on the fishery harvest guideline. The fishery harvest guideline is the tonnage that remains after subtracting the off-the-top deductions described in section III

(Management Measures), A, entitled ''Deductions from the ACLs,'' in this preamble. The two-year allocations and recreational harvest guidelines are designed to accommodate anticipated mortality in each sector as well as variability and uncertainty in those mortality estimates. Allocations described below are detailed in the harvest specification tables appended to 50 CFR part 660, subpart C in the regulatory text of this proposed rule.

Big Skate

The Council recommended and NMFS is proposing the allocations shown in Table 6 for big skate in 2019 and 2020. These allocations are anticipated to accommodate estimates of mortality of big skate, by sector, in 2019–20.

TABLE 6—2019 AND 2020 TRAWL/NONTRAWL ALLOCATIONS OF BIG SKATE

	Percentage	Allocation (mt)
Nontrawl	5	22.6
Trawl	95	429.5

Bocaccio

Bocaccio was declared rebuilt since last biennium. The Council recommended and NMFS is proposing the allocations shown in Table 7 for bocaccio in 2019 and 2020. These allocations are anticipated to accommodate estimates of mortality of bocaccio, by sector, in 2019–20 and address the stock's newly rebuilt status.

TABLE 7—2019 AND 2020 ALLOCATIONS OF BOCACCIO

	2019 HG (mt)	2020 HG (mt)
Trawl	800.7	767.1
Non-nearshore	382.0	366.0
Nearshore	4.8	4.6
California recreational	863.4	827.2

Canary Rockfish

The Council recommended and NMFS is proposing the allocations in Table 8 for canary rockfish in 2019 and 2020. These allocations are anticipated to accommodate estimates of mortality of canary rockfish, by sector, in 2019–20, and maintain the same allocation scheme as in 2018.

TABLE 8—2019 AND 2020 ALLOCATIONS OF CANARY ROCKFISH

	2019 HG (mt)	2020 HG (mt)
Shorebased IFQ Program	953.6	894.3
At-sea Sectors	46	46
Catcher/processor	16	16
Mothership	30	30
Non-nearshore	43.8	41.2
Nearshore	94.3	88.7
Washington recreational	47.1	44.3
Oregon recreational	70.7	66.5
California recreational	127.3	119.7

Cowcod

For 2019–20, the Council recommended and NMFS is proposing setting a cowcod ACT at 6 mt, and having it function as a fishery harvest guideline similar to the ACT in the 2017–18 biennium; it is the amount that would be allocated across groundfish fisheries. Table 9 shows the trawl/nontrawl allocations for cowcod for 2019 and 2020. NMFS anticipates the proposed allocation structure will keep catch below the 2019–20 cowcod ACT, and NMFS maintains the same allocation scheme as in 2018.

TABLE 9—2019 AND 2020 TRAWL/NONTRAWL ALLOCATIONS OF COWCOD

	Percentage	Allocation (mt)
Nontrawl	36	2.2
Trawl	64	3.8

Longnose Skate

The Council recommended and NMFS is proposing the trawl/nontrawl allocations for longnose skate in Table 10. The allocation percentages reflect historical catch of longnose skate in the two sectors, and NMFS maintains the same allocation scheme that was in place for longnose skate in 2018.

TABLE 10—2019 AND 2020 TRAWL/NONTRAWL ALLOCATIONS OF LONGNOSE SKATE

	Percentage	Allocation (mt)
Nontrawl	10	185.2
Trawl	90	1,666.5

Minor Nearshore Rockfish

Harvest specifications for Minor Nearshore Rockfish north of 40°10′ N lat. are proposed to decrease from the 103.2 mt in 2017–18 to 81 mt in 2019 and 92 mt in 2020 due to the proposed removal of Oregon black rockfish from the complex.

The states intend to manage catch using state-specific harvest guidelines: 18.6 mt for Washington; 23.2 mt for Oregon, and 36.6 mt for California for 2019. For 2020, 18.3 mt for Washington; 23.0 mt for Oregon, and 37.9 mt for California. However, instead of implementing state specific harvest guidelines in Federal regulations, the state Council representatives from Oregon and Washington committed to heightened inseason communication regarding catches of stocks managed in the complex, relative to the harvest guidelines, consistent with the current state coordinated management. Under state management, landed component stocks within the Minor Nearshore Rockfish complex must be sorted by stock. Because the states may also take inseason action independent of NMFS, the proposed action is not anticipated to result in exceeding the complex ACL in 2019–20.

Minor Shelf Rockfish

Allocations for Minor Shelf Rockfish are recommended by the Council and proposed by NMFS for each biennial cycle. The proposed allocations for 2019 and 2020 are shown in Table 12. This maintains the same allocation percentages as have been in place for the Minor Shelf Rockfish complexes since 2011.

TABLE 12—TRAWL/NONTRAWL ALLOCATIONS FOR MINOR SHELF ROCKFISH NORTH AND SOUTH OF 40°10′ N LAT.

		Percentage	2019 HG	2020 HG
Minor Shelf Rockfish north of 40°10′ N lat	Trawl	60.2	1,190	1,186.6
	Nontrawl	39.8	786.9	784.5
Minor Shelf Rockfish south of 40°10′ N lat	Trawl	12.2	188.6	188.6
	Nontrawl	87.8	1,357.3	1,357.3

Minor Slope Rockfish

Minor Slope Rockfish were allocated between the trawl and nontrawl fisheries in PCGFMP Amendment 21. This action applies those Amendment 21 allocation percentages to the updated 2019–20 fishery harvest guidelines. Blackgill rockfish in California was assessed in 2011 and has continued to be managed within the Minor Slope Rockfish complex, but with a stock-specific HG south of 40°10′ N lat. beginning in 2013. For 2019–20 the Council recommended a blackgill rockfish harvest guideline equal to the ABC contribution for the portion of the stock south of 40°10′ N lat.; this harvest guideline is 159 mt for 2019 and 2020.

D. Tribal Fisheries

Tribes implement management measures for Tribal fisheries both independently as sovereign governments and cooperatively with the management measures in the Federal regulations. The Tribes may adjust their Tribal fishery management measures inseason to stay within the Tribal harvest targets and estimated impacts to overfished stocks. The only change to Tribal harvest targets and management measures proposed for the 2019–20 biennium is an increase in the petrale sole harvest target from 220 mt to 290 mt.

The Tribes proposed trip limit management in Tribal fisheries for 2019–20 for several stocks, including several rockfish stocks and stock complexes. This rule proposes maintaining the same trip limits for Tribal fisheries as those in place in 2018. For rockfish stocks, Tribal regulations will continue to require full retention of all overfished rockfish stocks and marketable non-overfished rockfish stocks. The Tribes will continue to develop management measures, including depth, area, and time restrictions, in the directed Tribal Pacific halibut fishery in order to minimize incidental catch of yelloweye rockfish.

E. Routine Modifications to the Boundaries Defining Rockfish Conservation Areas

Rockfish Conservation Areas (RCAs) are large area closures intended to reduce the catch of a stock or stock complex by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. These sets of coordinates, or lines, are not gear or fishery specific, but can be used in combination to define an area. NMFS then implements fishing restrictions for a specific gear and/or fishery within each defined area.

For the 2019–20 biennium, the Council recommended minor adjustments to the 75 fathom (fm) (137 m), 100 fm (183 m), 125 fm (229 m), and 150 fm (274 m) depth contours off of California to more accurately refine the depth contours. These proposed modifications would adjust boundaries for RCAs around Santa Cruz Island, Spanish Canyon, Delgada Canyon, Cordell Bank, Point Ano Nuevo, San Miguel Island, and Anacapa Island.

Additionally, this proposed rule would correct the coordinates for the 125 fm (229 m) depth contour recommended by the Council in June 2017 around Usal Canyon and Noyo Canyon. The Council recommended

these modifications to fix errors that were discovered during a previous change to the RCA line from 150 fm (274 m) to 125 fm (229 m) as part of the 2017–18 harvest specifications and management measures (82 FR 9634; February 7, 2017). When NMFS implemented changes to the RCA line, it was determined that the latitude and longitude coordinates for several areas were crossed over between 125 and 150 fathoms. These proposed changes would provide access to canyons that were previously open when the 150 fm (274 m) line was in effect, and which were intended to be open after the previous changes to the RCA line.

F. Limited Entry Trawl

Incidental Trip Limits for IFQ Vessels

For vessels fishing in the Shorebased IFQ Program, with either groundfish trawl gear or nontrawl gears, the following incidentally-caught stocks are managed with trip limits: Minor Nearshore Rockfish north and south, black rockfish, cabezon (46°16′ to 40°10′ N lat. and south of 40°10′ N lat.), spiny dogfish, shortbelly rockfish, big skate, Pacific whiting, and the Other Fish complex. For all stocks except big skate, this rule proposes maintaining the same IFQ fishery trip limits for these stocks for the start of the 2019–20 biennium as those in place in 2018. For big skate, the Council proposes reverting trip limits to those implemented at the start of the 2017–18 biennium. Trip limits for the IFQ fishery can be found in Table 1 North and Table 1 South to part 660, subpart D in the regulatory text of this proposed rule. Changes to trip limits are considered a routine measure under § 660.60(c), and may be implemented or adjusted, if determined necessary, through inseason action.

G. Limited Entry Fixed Gear and Open Access Nontrawl Fishery

Management measures for the limited entry fixed gear (LEFG) and open access (OA) nontrawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Management measures, including area restrictions and trip limits in these nontrawl fisheries, are generally designed to allow harvest of target stocks while keeping catch of overfished stocks low. For the 2019–20 biennium, changes to management measures include: changes to trip limits for sablefish, minor slope rockfish and darkblotched rockfish, canary rockfish, lingcod, shortspine rockfish, and longspine rockfish. Proposed 2019–20 trip limits for these changes are specified in Table 2 (North), Table 2 (South) to subpart E for LEFG and in Table 3 (North) and Table 3 (South) to subpart F for OA in the regulatory text of this proposed rule.

Sablefish Trip Limits

Sablefish are managed separately north and south of 36° N lat. For the portion of the stock north of 36° N lat., the Council recommended and NMFS is proposing raising the trip limits for the LEFG fleet from those in 2018 between 75 to 100 lb (34 to 45 kg) a week depending on the period of the year. For the OA fleet, the trip limits would be the same as in 2018. For the portion south of 36° N lat., the Council recommended the limited entry and open access trip limits remain the same as those in 2018. The proposed sablefish trip limits for 2019–20 are shown in Table 13.

TABLE 13—SABLEFISH TRIP LIMITS FOR LIMITED ENTRY AND OPEN ACCESS SECTORS NORTH AND SOUTH OF 36° N LAT.

Sector	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sept–Oct	Nov–Dec
Limited entry	north of 36° N lat	1,200 lb/week; not to exceed 3,600 lb bi-monthly.					
	south of 36° N lat	2,000 lb/week.					
Open Access	north of 36° N lat	300 lb daily, or one landing per week up to 1,000 lb, not to exceed 2,000 lb bi-monthly.					
	south of 36° N lat	300 lb daily, or 1 landing per week up to 1,600 lb, not to exceed 3,200 lb bimonthly.					

Minor Slope Rockfish and Darkblotched Rockfish Trip Limits

In the 2017–18 biennium, the trip limit for minor slope rockfish and darkblotched rockfish for the OA sector was linked to the landed weight of sablefish for the trip. The current trip limit for minor slope rockfish and darkblotched rockfish north of 40°10′ N lat. is no more than 25 percent of the landed weight of sablefish per trip, which corresponds to a maximum of 500 lb (227 kg) bi-monthly (25 percent of the 2,000 lb (907 kg) bi-monthly limit of sablefish). This is an aggregate limit for all stocks combined. For 2019–20, the Council proposed and NMFS is recommending decoupling this limit from the landed weight of sablefish and instead creating a stand-alone trip limit for minor slope rockfish and darkblotched rockfish of 500 lb (227 kg) per month (all stocks combined). The new limit would be double the current limit. The Council recommended and NMFS is proposing the new trip limit structure because it would be simpler for OA participants to abide by and would better allow them to retain more, and discard less, of their incidental catches.

Canary Rockfish Trip Limits

The Council recommended and NMFS is proposing that canary rockfish retention would be permitted in the LEFG sector between 40°10′ N latitude and 34°27′ N latitude, with a trip limit of 300 pounds per two months. For the area south of 34°27′ N latitude, the trip limit would be the same, except for a closure during Period 2 (March-April). For OA, the structure would be similar, with a 150 lb (68 kg) per two months limit, and a closure during Period 2 (March-April) south of 40°10′ N latitude. These proposed closures for the canary rockfish trip limits would align with the trip limit structure for the Minor Shelf Rockfish, Deeper Nearshore Rockfish, Shallow Nearshore Rockfish, California scorpionfish, and lingcod south of 40°10′ N lat. Establishing a canary rockfish bi-monthly trip limit that matches the Shelf Rockfish trip limit would provide a uniform approach for monitoring, management, and law enforcement. Table 14 shows the proposed trip limits for 2019 and 2020 for canary rockfish.

TABLE 14—PROPOSED CANARY ROCKFISH TRIP LIMITS FOR LIMITED ENTRY AND OPEN ACCESS SECTORS

Sector	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sept–Oct	Nov–Dec
Limited entry	N of 40°10′ N lat	300 lb/2 months.					
	40°10′ N lat.—34°27′ N lat.	300 lb/2 months.					
	S of 34°27′ N lat	300 lb/2 months.	CLOSED	300 lb/2 months.			
Open Access	N of 40°10′ N lat	150 lb/2 months.					
	S of 40°10′ N lat	50 lb/2 months.	CLOSED	150 lb/2 months.			

Lingcod Trip Limits

Lingcod is managed north and south of 40°10′ N lat. The Council recommends OFLs, ABCs, ACLs, and HGs separately for each of these stocks. Historically, the Council has also recommended trip limits for LEFG and OA for each of these two stocks. For 2019–20, the Council proposed and NMFS is recommending two separate LEFG and OA trip limits for lingcod north of 40°10′ N lat.: one set of trip limits for the area north of 42° N lat., and one set of trip limits for the area between 42° N lat. and 40°10′ N lat. The new latitude break would allow more flexibility for alternative management strategies by state agencies to promote fishing opportunity while staying within state-specific yelloweye rockfish shares. In addition, this new latitude break aligns with the 42° N lat. latitudinal break used in the stock assessment (see Section A.2.6 of Appendix A of the Analysis). This proposed rule would establish a trip limit for LEFG of 2,000 lb (907 kg) per 2 months for the area north of 42° N lat. and a trip limit of 1,400 lb (635 kg) per 2 months for the area between 42° N lat. and 40°10′ N lat. For OA, this rule would establish a trip limit of 900 lb (408 kg) per 2 months for the area north of 42° N lat., and a trip limit of 600 lb (272 kg) per 2 months for the area between 42° N lat. and 40°10′ N lat. Overall, the lingcod trip limits proposed for 2019–20 are higher than those in place in 2018, which is possible due to higher ACLs for co-occurring yelloweye rockfish. Table 15 below shows proposed trip limits for lingcod north of 40°10′ N lat.

TABLE 15—PROPOSED LINGCOD TRIP LIMITS NORTH OF 40°10′ N LAT.

Sector	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sept–Oct	Nov–Dec
Limited entry	North of 42° N lat	2,000 lb/2 months.					
	42° N Lat. to 40°10′ N lat	1,400 lb/2 months.					
Open access	N of 42° N lat	900 lb/month.					
	42° N Lat. to 40°10′ N lat	600 lb/month.					

For lingcod south of 40°10′ N lat., ACLs for the 2019–20 biennium are lower compared to 2018. Therefore, this rule proposes reductions to lingcod trip limits for both LEFG and OA. Table 16 below shows proposed trip limits.

TABLE 16—PROPOSED LINGCOD TRIP LIMITS SOUTH OF 40°10′ N LAT.

Sector	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sept–Oct	Nov–Dec
Limited entry	200 lb/2 months	CLOSED	800 lb/2 months.	1,200 lb/2 months		600 lb/ month	300 lb/ month.
Open Access	300 lb/month	CLOSED	300 lb/month.				

Shortspine and Longspine Rockfish Trip Limits

Retention of shortspine and longspine thornyheads is currently prohibited year-round for the OA sector north of 34°27′ N lat. This proposed rule would provide a 50 lb (23 kg) per month trip limit for shortspine and longspine thornyheads north of 40°10′ N lat. only. Retention would continue to be prohibited for OA from 40°10′ N lat. to 34°27′ N lat. The Council recommended and NMFS is proposing this trip limit based on an industry recommendation to allow retention of incidental catches. The current retention prohibition is likely a holdover from when there were separate LEFG and OA allocations of thornyheads under the nontrawl allocation. OA attainment of longspine and shortspine thornyheads north of 34°27′ N latitude would be expected to remain low under this proposed rule, as they continue to be an incidental catch rather than a targeted stock.

Primary Sablefish Tier Limits

Some limited entry fixed gear permits are endorsed to receive annual sablefish quota, or tier limits. Vessels registered

with one, two, or up to three of these permits may participate in the primary sablefish fishery. The proposed tier limits are as follows: in 2019, Tier 1 at 47,637 lb (21,608 kg), Tier 2 at 21,653 lb (9,822 kg), and Tier 3 at 12,373 lb (5,612 kg). In 2020 and beyond, the following annual limits are in effect: Tier 1 at 48,642 lb (22,064 kg), Tier 2 at 22,110 lb (10,029 kg), and Tier 3 at 12,634 lb (5,731 kg).

H. Recreational Fisheries

This section describes the recreational fisheries management measures proposed for 2019–20. The Council primarily recommends depth restrictions and groundfish conservation areas (GCAs) to constrain catch within the recreational harvest guidelines for each stock. Most of the changes to recreational management measures are modifications to existing measures.

Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits for stocks targeted in recreational fisheries. These measures are designed to limit catch of overfished stocks found in the waters adjacent to each state while allowing target fishing opportunities in their particular recreational fisheries. The following sections describe the recreational management measures proposed in each state.

Washington

The state of Washington manages its marine fisheries in four areas: Marine Area 1 extends from the Oregon/Washington border to Leadbetter Point; Marine Area 2 extends from Leadbetter Point to the mouth of the Queets Rivers; Marine Area 3 extends from the Queets River to Cape Alava; and Marine Area 4 extends from Cape Alava to the Sekiu River. This proposed rule would align the lingcod season in Marine Area 4 with the recreational groundfish season and the lingcod season in Marine Areas 1–3. This adjustment would allow for an additional month of fishing in Marine Area 4 compared to 2018. Additionally, the proposed rule would allow retention of yellowtail and widow rockfish seaward of 20 fm (37 m) in July and August in Marine Areas 3 and 4. The aggregate groundfish bag limits off Washington would continue to be nine fish in all areas. However, the sub-bag limit for canary rockfish, previously 2 fish in all marine areas, would be removed, and the cabezon sub-bag limit would be changed from two fish per day to one fish for all marine areas. Additionally, this rule proposes removing the 18-in (45.7-cm) minimum size limit for cabezon in Marine Area 4. The Council recommended these changes, which allow more access to target stocks with fewer restrictions, supported by the proposed increases to the yelloweye rockfish ACL described in Section C of this rule.

Consistent with the 2017–18 biennium, the Council proposed continuing to prohibit recreational fishing for groundfish and Pacific halibut inside the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA), a C-shaped closed area off the northern Washington coast, the South Coast Recreational YRCA, and the Westport Offshore YRCA. Coordinates for YRCAs are defined at § 660.70.

Oregon

The Council proposed that Oregon recreational fisheries in 2019–20 would operate under the same season structures and GCAs as provided for 2017–18. This rule also proposes to allow all-depth fishing in April, May, and September. The Council's proposed expansions to fishing-depth access during these months is supported by the proposed increased yelloweye rockfish ACL, described in section II (Harvest Specifications) C, entitled, ''Proposed ACLs for 2019 and 2020,'' of this preamble. The Council proposed maintaining the 2017–18 aggregate bag limits and size limits in Oregon recreational fisheries. The proposed limits are: three lingcod per day, with a minimum size of 22 in (56 cm); 25 flatfish per day, excluding Pacific halibut; and a marine fish aggregate bag limit of 10 fish per day, where cabezon have a minimum size of 16 in (41 cm).

California

The Council manages recreational fisheries off of California in five separate management areas. Season and area closures differ between California management areas to limit incidental catch of overfished stocks while providing as much recreational fishing opportunity as possible. The Council's proposed California season structure includes additional time and depth opportunities, which are supported by the proposed increase to the yelloweye rockfish ACL described in Section C. Table 17 shows the proposed season structure and depth limits by management area for 2019 and 2020.

Table 17. Proposed Season Structure and Depth Limits by Management Area for 2019 and 2020.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	Closed				May 1 – Oct 31 <30fm						All Depth	
Mendocino	Closed				May 1 – Oct 31 <20fm						All Depth	
San Francisco	Closed			April 1 – Dec 31 <40fm								
Central	Closed			April 1 – Dec 31 <50fm								
Southern	Closed		Mar 1 – Dec 31 <75 fm									

The Council recommended that size, bag, and sub-bag limits would remain the same as for 2018 for all stocks except for lingcod. To keep within allowable limits, the lingcod bag limit would be split into separate limits for north (42° N lat. (California/Oregon border) to 40°10′ N lat. (Northern Management Area)) and south (40°10′ N lat. to the U.S. border with Mexico (Mendocino Management Area, San Francisco Management Area, Central Management Area, and Southern Management Area)). The Council proposed maintaining the limit in the north area at 2 lingcod per day, but recommended reducing the limit in the south area to 1 lingcod per day (down from 2 in 2018). Additionally, this rule proposes to allow year-round retention of California scorpionfish in all management areas, which is supported by the proposed increase in the ACL for this stock in 2019–20 described in section II (Harvest Specifications), C, entitled ''Proposed ACLs for 2019 and 2020,'' in this preamble.

I. Salmon Bycatch Mitigation Measures

In December 2017, NMFS completed an Endangered Species Act (ESA) consultation on the continued implementation of the PCGFMP and published a Biological Opinion (available at *http://www.pcouncil.org*). As part of its proposed action for the consultation, the Council estimated Chinook and coho catch in the whiting and non-whiting groundfish fisheries. The Council estimated that the whiting sector (including tribal and non-tribal vessels in the mothership, catcher/processor (C/P), and Shoreside whiting fleets) would take 11,000 Chinook salmon and 474 coho salmon, and the non-whiting sector (including tribal and non-tribal vessels in the Shoreside trawl, fixed gear, and recreational fleets) would take 5,500 Chinook salmon and 560 coho salmon.

Additionally, the Council included in its proposed action a reserve amount of Chinook, 3,500 fish, in the event that bycatch increases unexpectedly. The reserve is a safeguard against catch exceeding the total Chinook take estimate, which is an immediate trigger for reinitiation under section 7 of the ESA. Either the whiting or non-whiting sector, or both sectors, may access the reserve in a given year, but the reserve is limited to 3,500 Chinook total. Access to the reserve is not guaranteed for either sector. Accessing the reserve in three out of any five consecutive years will also trigger reinitiation of the ESA consultation.

The incidental take statement (ITS) includes six reasonable and prudent measures (RPMs) that require the Council and NMFS to take certain actions to minimize take of endangered and threatened Chinook and coho salmon in Pacific Coast groundfish fisheries. These RPMs are non-discretionary, and were developed based on the Biological Opinion's analysis of the Pacific Coast groundfish fishery's interactions with salmon. The ITS provides terms and conditions (T&C) under each RPM that are also non-discretionary, and are required to implement each specific RPM. Actions performed in compliance with the terms and conditions of the ITS are not considered to be prohibited taking under the ESA.

The Biological Opinion required that specific T&Cs from the ITS must be considered within the 2019–20 biennial harvest specifications and management measures process. These include: (1) Review existing mechanisms in the PCGFMP and regulations for avoiding and reducing salmon bycatch to determine if these measures are adequate to allow for timely inseason management to keep the sectors from exceeding their bycatch guidelines (T&C 2.a); (2) develop and implement initial regulations governing the reserve of 3,500 Chinook salmon (T&C 3.a); and (3) develop automatic closure mechanisms if sectors exceed their bycatch guideline and/or the reserve (T&C 3.c).

At its March 2018 meeting, the Council's Groundfish Management Team (GMT) reviewed current monitoring provisions in the PCGFMP, existing mitigation measures, and historical industry bycatch avoidance tactics (see Section C.2 of Appendix C of the Analysis). Additionally, the GMT investigated salmon bycatch data by area, depth, and time for the whiting and non-whiting midwater trawl sectors to determine if depth restrictions would be effective for reducing salmon bycatch (see Section C.3 of Appendix C of the Analysis). As a result of that review, the Council recommended modifications to existing depth-based management tools for salmon bycatch mitigation and the creation of new depth-based management tools to meet T&C 2.a. The Council proposed: (1) Eliminating the Ocean Salmon Conservation Zone (OSCZ); (2) adding a new bycatch reduction area (BRA) at the 200 fm (366 m) depth contour for vessels using midwater trawl gear; (3) prohibiting the use of midwater trawls and require the use of selective flatfish trawls for any bottom trawl vessels in the Columbia River Salmon Conservation Zone (CRSCZ) and the Klamath River Salmon Conservation Zone (KRSCZ); and (4) implementing automatic closure mechanisms for the Chinook salmon bycatch guidelines and reserve. The Council and NMFS will continue to implement other terms and conditions in future rulemakings.

The proposed salmon bycatch mitigation measures would protect ESA-listed salmon species, and help maintain bycatch below the bycatch guideline limits described in the proposed action of the Biological Opinion. Three of the four proposed measures would benefit salmon by managing bycatch in the groundfish fisheries. The Council proposed removing the OSCZ because the Analysis suggested that this existing provision is ineffective for reducing salmon bycatch.

Ocean Salmon Conservation Zone

The OSCZ consists of all waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. When NMFS projects that the Pacific whiting fishery (tribal and non-tribal) may take in excess of 11,000 Chinook salmon within a calendar year, NMFS implements a coastwide closure in the OSCZ for all sectors (Pacific whiting IFQ fishery, the catcher/processor (C/P) sector, and the mothership sector) through automatic action. The OSCZ was first implemented as an emergency rule, effective from August 26, 2005, to February 27, 2006 (70 FR 51682; August 31, 2005) as a means to reduce Chinook salmon bycatch rates in nearshore areas. NMFS later permanently added the OSCZ as mechanism to limit Chinook salmon interactions in the whiting fishery during periods of high bycatch (71 FR 78657; December 29, 2006). NMFS has used this depth-based management tool only once since implementation. On October 20, 2014, NMFS closed the OSCZ to Pacific whiting vessels after determining the Pacific whiting fishery took over 11,000 Chinook salmon.

The GMT concluded through its review that the OSCZ provision is not an effective tool for salmon bycatch mitigation. Catch data from 2004 to 2017 demonstrates that, even in high bycatch years, Chinook salmon catch in the Pacific whiting fishery is not likely to reach the 11,000 fish threshold until the fall, around October. The C/P sector and the mothership sector have not fished in the depths within the OSCZ after October since 2011, and the Pacific whiting IFQ fishery has had minimal activity within the depths of the OCSZ after the fall (see section C.1.4 of Appendix C of the Analysis). Therefore, by the time the OSCZ would be triggered by Chinook bycatch in the groundfish fishery, none of the sectors would be fishing in the area that would be closed. For these reasons, NMFS proposes to remove the OCSZ provision from the regulations. Because this provision has limited utility as a bycatch management tool, NMFS does not expect any discernable effects from removing this provision from the regulations.

Bycatch Reduction Areas (BRAs)

BRAs are depth-based management provisions used to close waters shallower than a specified depth contour to fishing in order to minimize impacts to groundfish or any prohibited or protected species, such as salmon. Under current regulations, NMFS, in consultation with the Council and through the routine management process, can implement BRAs to close areas shoreward of the 75-, 100-, and 150-fm (137-, 183-, and 274-m) depth contours for a specific sector (*i.e.,* C/P, mothership, whiting IFQ, and Shoreside IFQ Program non-whiting midwater).

BRAs are also available through automatic action if a whiting sector is projected to reach or exceed a sector-specific groundfish allocation prior to attaining the whiting allocation. However, the 75-, 100-, and 150-fm (137-, 183-, and 274-m) BRAs are not currently available for salmon bycatch mitigation for any of the sectors and are not proposed to be modified through this action.

The Council recommended adding the 200-fm (366-m) depth contour as a BRA available for implementation through routine inseason action to mitigate salmon bycatch in any of the groundfish midwater trawl sectors. The groundfish midwater trawl sectors subject to this area closure would be the Pacific whiting IFQ fishery, the C/P sector, and the mothership sector, as well as the non-whiting midwater trawl sector, which primarily targets widow rockfish and yellowtail rockfish. If the Council and NMFS implemented the 200-fm (366-m) BRA during a fishing season, vessels using midwater trawl gear to target either whiting or non-whiting groundfish would be excluded from waters shoreward of the 200-fm (366-m) depth contour, but would still be allowed to fish in waters seaward of 200-fm (366-m). This action would only apply to non-tribal midwater trawl vessels. NMFS expects that the Tribes would implement area management measures to mitigate salmon bycatch, if necessary.

The Council and NMFS monitor the salmon bycatch rates of the fleet inseason. If any sector's bycatch rates exceed those considered in the Biological Opinion, the Council and NMFS could take inseason action to implement the BRA for any of the midwater trawl sectors. The effects of this proposed action would depend on these sectors' ability to fish in areas deeper than 200 fm (366 m). Section C.1.4 of Appendix C of the Analysis contains a description of the recent catch data by depth. The shoreside whiting trawl sector, and especially the non-whiting midwater trawl sector, would likely have limited or no ability to fish seaward of 200 fm (366 m) due to horsepower restrictions and because the catch targets (canary rockfish, widow rockfish, yellowtail rockfish) are primarily found in shallower depths. The sectors that would be unable to effectively operate if the proposed BRA were put into place would experience negative economic effects from this action. The level of economic impacts would depend on when the BRA was implemented. The non-whiting midwater trawl fishery typically lands a significant portion of its catch later in the year. Thus, if NMFS were to implement a BRA after October, a prohibition on fishing shoreward of 200 fm (366 m) could significantly reduce this fleet's landings of canary, yellowtail, and widow rockfish. As discussed in Section 4.3.1.1 of the Analysis, on average, the non-whiting midwater trawl fleet lands 25.8 percent of its target stocks from October to December.

The at-sea sectors have historically been able to fish seaward of 200 fm (366 m), but in limited capacity. The MS sector's capacity to fish seaward of 200 fm (366 m) is particularly limited. Additionally, data from the C/P and MS sector from 2011 to 2017 has shown higher amounts of incidental catch of spiny dogfish, yellowtail rockfish, and widow rockfish seaward of 200 fm (366 m), compared to shoreward of 200 fm (Section C.1.4 of Appendix C of the Analysis). Therefore, if NMFS implements the 200-fm (366-m) BRA and sectors choose to fish seaward of 200 fm (366 m) due to salmon bycatch concerns, there could be increased incidental catch of these stocks.

Incidental catch of widow rockfish by the at-sea sector is managed under an allocation, while catch of yellowtail rockfish is managed under a set-aside for the sector. Allocations are managed more closely than set-asides. If an allocation is exceeded, the fishery is closed. Set-asides are generally managed on an annual basis unless there is a risk of overall catch exceeding an ACL for the stock, unforeseen impacts on another fishery, or conservation concerns, in which case inseason action may be taken. The at-sea sector's catch of both of these stocks has been at or below allowable amounts in recent years. For yellowtail rockfish, the overall attainment of the ACL was around 50 percent, so even if at-sea catch increased, NMFS does not expect the risk of exceeding the ACL to change. Catch of spiny dogfish is managed under an HG for the entire Pacific Coast groundfish fishery, which ensures catch will remain below the ACL for this stock.

This proposed action, if approved, would use the existing regulations for inseason actions, which allow a single meeting process. If the Council and NMFS determine that any of the midwater trawl sectors is encountering Chinook salmon at a bycatch rate above that analyzed in the Biological Opinion, NMFS could issue a single **Federal Register** notice to implement the BRA, provided that waiver of notice and comment meet the requirements of the Administrative Procedure Act.

Columbia River Salmon Conservation Zone and the Klamath River Salmon Conservation Zone

This proposed action would also close the CRSCZ and the KRSCZ to all midwater trawling and to bottom trawling, unless vessels are using a selective flatfish trawl (SFFT). This action is a term and condition of the Biological Opinion. Under current regulations, vessels using midwater trawl gear in the Pacific whiting primary season are prohibited from fishing in the CRSCZ and the KRSCZ. This proposed action would extend the area prohibition to vessels using midwater trawl gear to target rockfish, including widow rockfish and yellowtail rockfish, a reemerging fishery following the rebuilding of widow rockfish in 2012.

Additionally, this proposed action would maintain protection for these areas that is currently included under a blanket requirement that groundfish trawl vessels use SFFT gear shoreward of the trawl RCA north of 40°10′ N lat. Both the CRSCZ and KRSCZ are located inside this area. NMFS proposed removing this blanket requirement in a separate proposed rule. This proposed action would reestablish the SFFT requirement inside the CRSCZ and KRSCZ.

Bycatch Guideline and Reserve Management

This proposed action would create a provision in the regulations to give NMFS automatic authority to close either or both of the whiting and non-whiting sector fisheries if: (1) Either sector catches its guideline limit and the reserve amount; or (2) either sector reaches its guideline limit when the other sector has already taken the reserve amount. The closure would be effective until the end of the fishing year on December 31. This proposed measure is a term and condition of the Biological Opinion. However, the Council and NMFS intend to use other available tools, including area management tools, to help manage salmon bycatch prior to guideline limits being taken, with the result of sectors being closed for the remainder of the fishing year.

The proposed action organizes the various sectors of the Pacific Coast groundfish fishery into one of two groupings: The whiting sector and the non-whiting sector. The whiting sector includes the tribal and non-tribal Pacific whiting IFQ fishery, the C/P sector, and the mothership sector. The non-whiting sector includes the tribal and non-tribal Shoreside IFQ Program, the LEFG fishery, the OA fishery, and the recreational fisheries off of Washington,

Oregon, and California. The proposed action includes only select recreational fisheries that are not accounted for in pre-season salmon modeling. The recreational fisheries not accounted for in preseason salmon modeling are those occurring outside of the open salmon seasons and the Oregon longleader fishery. Any Chinook salmon bycatch in these fisheries must be attributed to the non-whiting threshold, and these fisheries are subject to potential closures. Chinook salmon bycatch from each fishery accrues to the larger sector (*i.e.,* whiting or non-whiting) level. As described in the Biological Opinion, access to the reserve for additional Chinook salmon bycatch above the sector's guideline limit is not guaranteed. However, if one sector surpasses its guideline limit, it may be allowed to continue fishing, with additional salmon bycatch accounted for within the reserve. Under such a scenario, if the sector's bycatch reached the reserve limit, all fisheries within that sector would be subject to an automatic closure. If one sector is allowed to access the reserve in a given calendar year, then the other sector, upon reaching its guideline limit, would be subject to an automatic closure rather than potentially being able to access the reserve.

Under the existing regulations for automatic actions at § 660.60(d), a closure notice would be published in the **Federal Register** and be effective immediately for all fisheries within either or both of the whiting or non-whiting sectors. NMFS waives notice and comment under the Administrative Procedure Act if good cause exists. Section C.1.4 of Appendix C of the Analysis describes the effects of this proposed action on the whiting and non-whiting sectors under different scenarios, based on potential closures lasting from either October or December through the remainder of the fishing year. Under any of the closure scenarios, the effect on groundfish would be reduced landings and underattainment of the ACL for target stocks. The economic effects of this action are greatest under an October closure scenario, and are least under a December closure scenario.

The Analysis discusses that both the bottom trawl and non-whiting midwater trawl sectors typically have high catch after October. Section 4.3.1.1 estimates that an October closure would have the greatest effect on the C/P fleet because, on average, this fleet catches 45 percent of its whiting catch between October and the end of the year. Under the December closure scenario, the average percentage of target catch that could potentially be left unharvested ranges from 0.5 percent for the Shoreside whiting fleet to 13 percent for the nonwhiting midwater trawl fleet. Overall, Section C.4 of Appendix C of the Analysis estimates that a closure starting in October could have an economic impact of $138.6 million in income and 2,083 jobs for the Pacific Coast groundfish fishery as a whole, assuming no fishery effort substitutions to offset losses. For the low impact (December only closure) scenario, the Analysis estimates the impact to be losses of $24.6 million in income and 349 jobs.

Whether or not there will be an economic impact of a closure depends upon the likelihood that a closure would occur. Since 2002, when the West Coast Groundfish Observer Program (WCGOP) first began monitoring the groundfish fishery, the whiting sector (including the at-sea, shorebased, and tribal components) has taken more than 11,000 Chinook in two years, in 2005 and in 2014. In the non-whiting sector, the bottom trawl fleet takes the majority of the salmon bycatch. Since 2002, the bottom trawl fleet has taken more than 5,500 Chinook twice, in 2002 and 2003. Overall, over the last 15 years, there has never been a situation where both sectors exceeded their guideline levels at the same time. Therefore, NMFS believes that it is unlikely that a closure would be triggered. However, the closure mechanisms are a term and condition of the Biological Opinion and are, therefore, included in this proposed rule. Such a mechanism would serve to limit impact on listed salmon in extraordinary circumstances.

J. Modifications to Depth Restrictions Within the Western CCA

This proposed action would modify the allowed fishing depths from 20-fm (37-m) to 40-fm (73-m) for the commercial fixed gear fishery and the recreational fishery inside the Western Cowcod Conservation Area (CCA). This action would also add new waypoints approximating the 30-fm (55-m) and 40-fm (73-m) depth contours around Santa Barbara Island, San Nicolas Island, Tanner Bank, and Cortes Bank, because waypoints approximating these contours do not exist at these depths currently. Fisheries are allowed to operate in areas shallower than the depth limit. This proposed action is intended to allow additional opportunities for commercial fixed gear and recreational vessels to target healthy stocks (nearshore rockfish, shelf rockfish, cabezon, kelp greenling, California scorpionfish, and lingcod), while still closing the depths where the overall density of cowcod is the greatest to provide protections as the stock continues to rebuild.

The Council originally established two CCAs (Western and Eastern) in 2001 as area closures to promote cowcod rebuilding. These area closures prohibited fishing in the main portion of cowcod's depth range (overall distribution 22 to 270-fm (40 to 494-m), with the highest density from 100 to 130-fm (183 to 238-m)) to reduce encounters and mortality to allow the stock to rebuild more quickly. The Western CCA encompasses 5,126-mi^2 (13,276-km^2) and is located in the Southern California Bight south of Point Conception. The CCA is also expected to provide protections for bronzespotted rockfish, a stock with similar life history characteristics, habitat associations, and vulnerability to fishing as cowcod. Commercial landings of bronzespotted dropped in the late 1980s and have remained at low levels from 1990 to present.

Under the current regulations, 40.4-mi^2 (104.6 km^2) (or less than 1 percent of the entire CCA) is open to fishing due to the 20-fm (37-m) depth restriction. By increasing the depth to a 40-fm (73-m) depth restriction, this proposed rule would increase the fishable area to 150.4- mi^2 (389.5-km^2).

In the 2009–10 biennial specifications and management measures, the Council recommended modifying the recreational depth restrictions inside the CCA to 30-fm (55-m). NMFS disapproved this recommendation in the final rule (76 FR 27508; May 11, 2011), because there was limited information on the impacts of the proposed action on cowcod, especially juvenile cowcod, which could delay rebuilding. NMFS also indicated that, because the ACL for cowcod was low (4 mt at that time), any measures that potentially increased cowcod mortality required better information on potential biological and economic effects. At the time of NMFS' disapproval, cowcod was at 4.5 percent of unfished biomass with a projected time to rebuild of 2071.

Since the 2009–10 disapproval, the NWFSC conducted a new stock assessment for cowcod (assessed in 2013). The 2013 assessment concluded that the stock is rebuilding much more quickly than anticipated under its rebuilding plan. Cowcod is expected to be rebuilt by 2020, assuming full removal of the ACL, which is 48 years ahead of the target end date for the rebuilding plan. Over the past several years, cowcod harvest has consistently been far below the ACL (see Section C.6 of Appendix C of the Analysis). As

discussed in section III (Management Measures), C, entitled ''Biennial Fishery Allocations,'' of this preamble, NMFS is proposing to set the cowcod ACT at 6 mt for 2019–20.

The 2013 cowcod assessment explored ecosystem interactions and updated habitat preferences of juvenile cowcod based on research published since the previous full assessment in 2007. The stock assessment identified young of the year fish as being distributed between 52 and 277-m (28–151-fm), with juveniles found slightly deeper. NMFS survey data and recent catch data from observed trips inside the Western CCA encountered no cowcod (juvenile or adult) within the proposed depth openings (see Section C.6 of Appendix C of the Analysis). Overall, the proposed measure is not expected to result in increased cowcod encounters, because the highest densities of cowcod are found outside of the depths in which this measure would allow commercial fixed gear and recreational fishing. Additionally, the proposed measure is not expected to increase mortality for bronzespotted rockfish, because this stock is found between 41-fm (75-m) and 205-fm (375-m), which is outside the depth range of the proposed action.

The Council recommended this measure because the additional data on habitat usage from the 2013 stock assessment, the improved cowcod stock trajectory, and the higher ACT for cowcod demonstrate that there would be no adverse impacts expected for cowcod from this action. The expected benefits of this action for the commercial and recreational fleets are described separately below.

Commercial

This proposed action would allow greater access to valuable and underattained stocks in this remote area. Recent commercial fixed gear fishing effort has been very low within the Western CCA due to limited opportunities within the current depth restrictions. The proposed depth changes within the CCA would allow greater access to deeper stocks and would create an economic incentive for vessels to make trips to the area. NMFS expects that a modest increase in the number of fixed gear vessels fishing in this area may occur as a result of this proposed action; however the magnitude of increase is difficult to quantify. A redistribution of depth of catch is also expected as a result of the increased depths available for fishing. The effects on groundfish of any increase in effort would be limited through the existing 2-month trip limits delineated in Table 2 (South) to part 660.330.

Recreational

This proposed action would allow recreational fishing within the Western CCA out to 40 fathoms (73 m). NMFS expects this measure would increase the catch of target stocks, including shelf rockfish, bocaccio, deeper nearshore rockfish, and lingcod. The proposed action would also be expected to reduce pressure on shallower nearshore rockfish stocks by allowing access to currently inaccessible desirable nearshore (*i.e.,* copper rockfish) and shelf rockfish (*i.e.,* vermilion rockfish) found in deeper waters.

NMFS expects that this action would result in an increase in the number of angler trips, and an increase in the amount of recreational catch, and result in a redistribution of depth of catch. Allowing access to deeper depths inside the Western CCA is expected to increase the number of groundfish trips between 10 percent and 20 percent, particularly out of Ventura and Los Angeles, given the proximity of these ports to the Western CCA (see Section C.7 of Appendix C of the Analysis). This would provide additional revenues to charter boat crews in the form of fish processing and tips.

K. Modification of Lingcod and Sablefish Discard Mortality Rates

This rule proposes to modify the discard mortality rates (DMRs) for lingcod and sablefish used to debit IFQ accounts in the Shorebased IFQ Program. Currently, NMFS debits IFQ accounts for 100 percent of all catch of these stocks, regardless of survival after discarding. The Council recommended implementing lower discard mortality rates for lingcod and sablefish to match those endorsed by the SSC and used for year-end groundfish catch accounting. For many other stocks, the best scientific information available does not indicate discard survival rates high enough to warrant consideration of a survival credit. The DMRs in Table 18 reflect the best scientific information available.

TABLE 18—PROPOSED DISCARD MORTALITY RATES FOR LINGCOD AND SABLEFISH

Stock	Gear	Proposed DMR (percent)
Lingcod	Bottom trawl	50
	Fixed gear [a]	7
Sablefish	Bottom trawl	50
	Fixed gear [a]	20

[a] Applies to both pot and hook and line gear.

By providing IFQ participants with discard survival credits for lingcod and sablefish, this action better meets some of the objectives of the IFQ program, such as increased attainments of and increased value of IFQ stocks, such as Dover sole and thornyheads. In addition, this action aligns DMRs with those used in year-end catch accounting, which creates consistency in mortality estimates. This proposed action would allow modest increases in attainment of co-occurring target stocks, and increase marketability and value of retained catch by eliminating the need to retain small fish that are not economically marketable or desirable. Landings and mortality would be expected to increase proportionally by the amount of QP savings/gains the credit would provide, which for sablefish could be a gain of one-half the bottom trawl discards (9–21 mt per year) and four-fifths the fixed gear discards (11–20 mt per year), which could be converted into additional landings. Therefore, the resulting gains in landings of sablefish could be an extra 5–11 mt for bottom trawl and 9–16 mt for fixed gear, which would only be about a 1 percent increase in total coastwide IFQ mortality of this stock (see Section C.5 of Appendix C of the Analysis).

As described in Section C.5 of Appendix C of the Analysis, overall, this proposed action would not be expected to result in substantial changes to discarding behavior because there are operational costs for discarding in terms of labor time for sorting catch, extra fishing time necessary to replace the

discarded fish, as well as the potential risk that further fishing will not result in catching larger fish. However, the resulting ''savings'' of trawl sablefish, due to a decreased deduction for discarded fish, could possibly increase landings of co-occurring, underattained stocks, such as Dover sole, shortspine thornyheads, and longspine thornyheads (see Section C.5 of Appendix C of the Analysis). Although this measure could increase attainment, IFQ participants' total fishing mortality would continue to be managed to individual and sector allocations, and catch would be constrained by the total ACL for each stock.

L. Removal of IFQ Daily Vessel Limits

Under the Shorebased IFQ Program, a quota share (QS) permit authorizes a person or group to own QS. A QS account is an account that contains QS allocations registered to the QS permit for IFQ and individual bycatch quota (IBQ) stocks. At the beginning of each calendar year, NMFS issues quota pounds (QPs) to each QS account based on the IFQ or IBQ sector allocation. For QPs to cover catch (landings and discards) by a vessel in the shorebased IFQ program, the QS permit owner must transfer QPs from the QS account to a vessel account. Vessel limits in vessel accounts restrict the amount of QPs that any vessel can catch or hold. NMFS calculates annual QP vessel limits, which are a set percentage of the total IFQ sector allocation based on formulas set through Amendment 20 to the PCGFMP. The annual vessel QP limit restricts the amount of used and unused QP in a vessel account during a fishing year.

NMFS also sets daily vessel limits for overfished stocks, which cap the amount of overfished stock QPs any vessel account can have available in their account on a given day. The Council and NMFS established daily vessel limits to prevent a person from acquiring additional QP from others before those QP are needed. IFQ sector allocations of some overfished stocks are low, which creates a strong incentive for hoarding of QP for these stocks to cover unexpected high catch events. This daily limit keeps QP of overfished stocks on the market and available for trading. The daily limits are set equal to the control limits for each stock, which limit the amount of QS and IBQ that a person, individually or collectively, may own or control. Because daily limits are set at the level of the QS control limits, they have no effect on those who only use QP from their own QS account.

Amendment 20 to the PCGFMP intended for daily limits to apply for overfished stocks. This means that when stocks are declared rebuilt, the daily limit for that stock must be removed through rulemaking. In the 2017–18 biennium, bocaccio (south), darkblotched rockfish, and Pacific ocean perch were declared rebuilt, so this action proposes to remove the daily limits for these stocks. However, because the daily vessel limit has been ineffective for keeping catch available for trading, this rule proposes to eliminate the daily limits for all stocks. Thus, in addition to bocaccio (south), darkblotched rockfish, and Pacific ocean perch, this rule also proposed to remove daily vessels limits for cowcod (south), yelloweye rockfish, and Pacific halibut.

As explained in in Section C.5 of Appendix C of the Analysis, there may be strategies to circumvent the daily vessel limit. First, vessel owners can sign sales contracts in advance, but delay transferring QP for a stock until a vessel account's unused QP drops below the daily limit. Second, entities can temporarily acquire trawl permits and use them to establish a second vessel account in which they can store QP.

There is also evidence that the daily limit is not constraining for several stocks. Table C–65 in the Analysis indicates that for the remaining overfished stocks and Pacific halibut, from 2011 through 2017, there has been only one instance of a vessel landing more than the daily limit. For the recently rebuilt stocks, there has generally been at least one vessel landing more than the daily limit each year for Pacific ocean perch, but this has rarely occurred for bocaccio and darkblotched rockfish since the start of the Shorebased IFQ Program. Because the daily limits for the remaining overfished stocks and for Pacific halibut have not been constraining, NMFS expects that eliminating this provision would not have a measurable effect on the fishery.

M. Removal of Automatic Authority for Darkblotched Rockfish and Pacific Ocean Perch Set-Asides for At-Sea Sector

Amendment 21 to the PCGFMP (75 FR 60867; October 1, 2010) established allocations for darkblotched rockfish and Pacific ocean perch catch in the at-sea sector (C/P and mothership sectors). At that time, darkblotched rockfish and Pacific ocean perch were overfished, and the ACLs and fishery allocations for these stocks were low. NMFS has authority to take automatic action to close the at-sea sector, if necessary, to ensure that darkblotched rockfish and Pacific ocean perch stays below the allocation. In recent years, both of the at-sea sectors have exceeded their allocations of darkblotched rockfish (the C/P sector in 2011, and the mothership sector in 2014). The latter resulted in an emergency Council meeting, and NMFS took emergency action to reopen the fisheries (79 FR 67095; November 12, 2014). However, because the overall attainment of the darkblotched rockfish ACL had been low, the Council recommended and NMFS approved Amendment 21–3 to the PCGFMP (83 FR 757; January 8, 2018). Amendment 21–3 replaced the at-sea sector Pacific ocean perch and darkblotched rockfish allocations with sector-specific set-asides with a reserve for the C/P and mothership sectors. The allocation for the at-sea sectors is a percentage of the trawl allocation of each stock.

Set-asides are managed on an annual basis unless there is a risk of catch exceeding a harvest specification (ACL, ACT, or HG) inseason, unforeseen impact on another fishery, or conservation concerns, in which case inseason action may be taken. Amendment 21–3 also included a reserve, or buffer, for set-asides. The buffer is an amount deducted from the ACL as part of the process of determining the fishery HG (which serves as the basis of allocating between trawl and nontrawl fisheries), and is intended to account for higher than expected incidental catch. The buffer for darkblotched rockfish and Pacific ocean perch was established under Amendment 27 to the PCGFMP (82 FR 9634; February 7, 2017). NMFS has the authority to close either at-sea sector if it is projected to exceed its set-aside value, taking into account the buffer, for either darkblotched rockfish or Pacific ocean perch.

Darkblotched rockfish and Pacific ocean perch have both been declared rebuilt. The proposed 2019–20 ACLs for both stocks are higher, reflecting the change in stock status. In addition, because of the change in stock status, there is currently no buffer proposed for 2019–20. Because of these changes, darkblotched rockfish and Pacific ocean perch would be managed as de facto allocations for the at-sea sectors. This proposed rule would remove NMFS's automatic authority to close either sector if they exceed their set-aside value for these stocks, so that they are managed like all other at-sea set-asides in the PCGFMP. The Analysis demonstrates that the expected risk of the at-sea sectors exceeding their set-aside values for darkblotched rockfish and Pacific ocean perch is low, due to low overall attainment in the trawl

sector in recent years. In addition, because this proposed adjustment would remove the risk of shutting down the fishery after reaching the set aside, it increases the likelihood that the at-sea sectors could attain their Pacific whiting allocation (see Section C.4 of Appendix C of the Analysis).

N. Continuation of Adaptive Management Pass Through

Under the Amendment 20 Trawl Rationalization Program, NMFS reserves 10 percent of the QS for each of the non-whiting stocks (including halibut individual bycatch quota) each year for an adaptive management program. While the Council has never used the allocation for this purpose, conceptually, an adaptive management program could distribute the reserved QP to fishery participants to address adverse effects of the Shoreside IFQ program, including impacts to community or processor stability, conservation concerns, or other effects. NMFS could also distribute the reserved QPs to facilitate new entrants to participate in the groundfish fishery. To date, the Council has not recommended establishing an adaptive management program. Therefore, NMFS has distributed (passed through) these QP to quota shareholders each fishing year in proportion to their QS for each stock. This rule proposes that NMFS will continue to pass through the QP reserved for the adaptive management program until the Council recommends an alternative use of adaptive management program QP. This is an administrative measure that would not affect fishing opportunity and related catch.

O. Modification of the Incidental Lingcod Retention Ratio in the Salmon Troll Fishery

This proposed action would adjust the existing incidental retention ratio for landing lingcod based on the number of Chinook landed in the ocean salmon troll fishery in the area north of 40° 10' N. latitude. The purpose of the ratio is to allow salmon trollers to retain incidentally caught lingcod, but to discourage lingcod targeting. Currently, participants are allowed to retain 1 lingcod per 15 Chinook salmon plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the nontrawl RCA. This limit only applies when lingcod retention is allowed. Vessels participating in the ocean salmon troll fishery must be equipped with a vessel monitoring system (VMS) to retain incidentally caught groundfish. This proposed action would allow retention of 1 lingcod per 5 Chinook salmon plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. For 2019–20, the lingcod fishery is proposed to be open year-round for the open access groundfish fishery. The Council can adjust the ratio of lingcod retention per Chinook landed through inseason adjustments, if necessary.

As Section C.9 of Appendix C of the Analysis notes, this action would be the first modification of the ratio since it was implemented in 2009 (74 FR 9874; March 6, 2009). The Council recommended this measure because there has been an increased rate of lingcod encounters as Chinook harvest opportunities have declined. This increased encounter rate has resulted in an increase in regulatory discards of lingcod. This proposed action would align the lingcod retention limit with the true lingcod encounter rate in the salmon troll fishery while continuing to discourage lingcod targeting. Salmon trollers would still to be subject to the existing overall limit of 10 lingcod per trip and the existing requirement to have VMS in order to retain any incidentally caught groundfish. NMFS does not expect this proposed action will create an incentive for salmon trollers to target lingcod because these vessels would still be restricted to an overall limit of 10 lingcod per trip.

P. Administrative Actions

NMFS also proposes four minor changes to the regulatory text to clarify regulatory intent. NMFS proposes to add big skate to the LEFG and OA fixed gear fisheries trip limit tables, Table 2 North and Table 2 South to Part 660 Subpart E, and Table 3 North and Table 3 South to Part 660 Subpart F. Big skate is not currently listed in the trip limit table for either the LEFG or OA fisheries, and as such is unlimited. Adding it to the trip limit tables would provide clarity on this existing management measure.

This proposed rule would remove an obsolete reference to halibut weight provisions at § 660.333(c)(3). The obsolete reference originally mirrored a provision in California state regulations, but the California Department of Fish and Wildlife removed this provision from state regulations in 2004.

This proposed rule would clarify the application of Amendment 21–3 set-aside management of darkblotched rockfish and Pacific ocean perch for the at-sea sector for both years of the biennium in Tables 1b, 2b, 1d, and 2d to part 660, subpart C.

Finally, this action would remove the WCGOP priority sampling requirement for canary rockfish and bocaccio, formerly overfished stocks that were declared rebuilt, as requested by the Council at their March 2017 meeting. Under this requirement, observers are required to count and weigh these fish on a docked vessel prior to offloading. This requirement was implemented to prevent vessels from discarding overfished stocks for which they may have low QP at port prior to offload. Under 50 CFR 660.60(c)(1), the Council can modify the list of stocks subject to this catch monitoring requirement as a routine management measure. In March 2017, the Council recommended that the priority sampling requirement be removed for canary rockfish and bocaccio because these stocks are now rebuilt.

IV. Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state, ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the non-whiting tribal management measures, which was passed by the Council. Those management measures, which were

developed and proposed by the tribes, are included in this proposed rule.

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

NMFS prepared an integrated Analysis for this action, which addresses the statutory requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. The full suite of alternatives analyzed by the Council can be found on the Council's website at *www.pcouncil.org.* This Analysis does not contain all the alternatives, because an EIS was prepared for the 2015–16 biennial harvest specifications and management measures and is available from NMFS (see **ADDRESSES**). This EIS examined the harvest specifications and management measures for 2015–16 and ten year projections for routinely adjusted harvest specifications and management measures. The ten year projections were produced to evaluate the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main component of each biennial cycle. Therefore, the EA for the 2019–20 cycle tiers from the 2015–16 EIS and focuses on the harvest specifications and management measures that were not within the scope of the ten year projections in the 2015–16 EIS. A copy of the EA is available from NMFS (see **ADDRESSES**). This action also announces a public comment period on the EA.

An initial regulatory flexibility analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates). A small harvesting business has combined annual receipts of $11 million [2] or less for all affiliated operations worldwide.

A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide. NMFS is applying this standard to catcher/processors (C/Ps) for the purposes of this rulemaking, because these vessels earn the majority of their revenue from selling processed fish.

For marinas and charter/party boats, a small business is one that has annual receipts not in excess of $7.5 million. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

For the purposes of this rulemaking, a nonprofit organization is determined to be ''not dominant in its field of operation'' if it is considered small under one of the following Small Business Administration (SBA) size standards: environmental, conservation, or professional organizations are considered small if they have combined annual receipts of $15 million or less, and other organizations are considered small if they have combined annual receipts of $7.5 million or less. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

Description and estimate of the number of small entities to which the rule applies, and estimate of economic impacts by entity size and industry

This proposed rule would regulate businesses that participate in the groundfish fishery. This rule would directly affect commercial vessels in the groundfish fisheries, trawl QS holders and Pacific whiting catch history endorsed permit holders (which include shorebased whiting processors), tribal vessels, and charterboat vessels. Additionally, a provision of this proposed rule would regulate commercial vessels in the salmon troll fleet.

To determine the number of small entities potentially affected by this rule, NMFS reviewed analyses of fish ticket data and limited entry permit data, information on charterboat, tribal, and open access fleets, available cost-earnings data developed by NWFSC, and responses associated with the permitting process for the Trawl Rationalization Program where applicants were asked if they considered themselves a small business based on SBA definitions. This rule would primarily regulate businesses that harvest groundfish.

Charter Operations

There were an estimated 287 active Commercial Passenger Fishing Vessels (charter boats) engaged in groundfish fishing in California in 2017. In 2017, an estimated 49 charter boats targeted groundfish in Oregon. There is no Oregon license or tracking of party fishing (or ''six pack'') vessel businesses that will also be impacted, however in one week in August 2017, there were 285 boat trips targeting recreational groundfish in Oregon; this number includes the 49 charter vessels and is the upper bound of the number of such entities likely to be impacted in Oregon. Similarly in Washington, the number of party/charter vessels likely to be impacted by the proposed rule was 182 in 2017. All 705 of these vessels are likely to be impacted by changes in recreational catch guidelines for groundfish in their respective states.

Commercial Vessels

Groundfish

Entities that are not registered as trusts, estates, governments, or non-profits are assumed to earn the majority of their revenue from commercial fishing. There are 124 QS permit owners, who collectively received 76.5 percent of the QP issued in 2018. Limited entry groundfish vessels are required to self-report size across all affiliated entities; of the business who earn the majority of their revenue from commercial fishing, one self-reported as large. This entity owns four groundfish permits and one QS permit. 264 entities owning 376 permits self-reported as small. The average small entity owns 1.4 permits, with 30 small entities owning between 3–6 permits each. Open access groundfish vessel owners are assumed

[2] On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015; 50 CFR part 200). The $11 million standard became effective on July 1, 2016, and after that date it is to be used in all NMFS rules subject to the RFA. Id. at 81194. This NMFS rule is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry, respectively.

to earn the majority of their revenue from fishing and would thus fall into this Small Business Administration definition. 186 non-limited entry vessels harvested at least $10,000 worth of groundfish in 2017; these are likely to be impacted by the proposed rule. This number is likely an upper bound, as some entities may own more than one vessel. However, these generally small operations are assumed to be independent entities; with the top three vessels having coastwide (including non-groundfish) revenues averaging $585,000. Median revenues were $37,000 per vessel.

In addition to benefits from increasing ACLs in the harvest specifications, several of the new management measures contained in the proposed rule are likely to benefit vessels. Clarifications resulting from the stock complex restructuring and updates to Rockfish Conservation Area coordinates may streamline management burden for vessels. IFQ vessels are expected to benefit from the removal of daily vessel quota pounds, which did not appear to constrain operations, but which did account for some level of administrative burden for quota pound account managers. With the elimination of these limits, managers will have greater flexibility in moving and holding quota pounds for the remaining overfished species and halibut IBQ. These vessels and vessel account operators may also benefit somewhat from changes to the discard mortality rates in the IFQ program. Some of the non-trawl fixed gear vessels are expected to benefit by the modifications to the commercial depths inside the Western Cowcod Conservation area in California.

Salmon Trollers

The proposed rule primarily impacts entities in the groundfish fishery. However, one new management measure included the proposed rule will likely benefit vessels primarily involved in the salmon troll fishery, through a modification in the incidental lingcod retention ratio in that fishery. This modification reflects the increased rate of lingcod encounters during declining Chinook salmon harvest seasons. This modification would allow salmon trollers to retain and sell a larger number of lingcod caught incidentally when targeting salmon. The level of activity varies substantially, with trips ranging from 500 to over 5,500 in a year. The subsector of the fleet expected to benefit from the proposed rule is much smaller, as historically a small proportion has elected to land lingcod within the previously allowed limits. In order to land lingcod, the vessel would have to install VMS, which (among other factors) likely deters salmon trollers. Thus, this provision of the proposed rule is likely to impact 3 of 220 vessels operating in California. In Oregon, between 7 and 85 trollers have landed lingcod, and in Washington between 10 and 17 trollers have landed lingcod. The proposed rule would confer a small benefit to these 105 vessels, which landed lingcod on a median of 1–2 trips, with vessels in the 90th percentile landing lingcod on 5 trips annually. This small positive benefit is not expected to be a substantial impact. A substantial number of small entities in the overall salmon troll fishery are not likely to be impacted by the proposed rule.

QS Owners

Because the harvest specifications process determines the amount of QP available in the catch share (Shorebased IFQ Program) sector, this proposed rule will impact QS. Twenty-two non-whiting QS permit owners are estimated to be primarily engaged in seafood product preparation and packaging, based on holdings of first receiver permit affiliation in the non-public West Coast Region permits database. According to the size standard described above, three of the entities that own three of these permits are considered small. These small processing entities were issued 1.7 percent of the non-whiting QP issued in 2018. Some of these small processing entities also own groundfish permits, which are required on both catcher vessels and catcher processors, and which would be regulated by the proposed rule; three small entities primarily engaged in seafood processing own two groundfish permits. Thirty groundfish vessel permits are owned by seven entities that are considered large, as estimated by NMFS using the standard described above, and as estimated by information regarding ownership affiliation and self-reported size on groundfish permits and first receiver site license permits (self-reported using the standard described above). Six of these seven large processing entities were issued 10.2 percent of the non-whiting QP issued in 2018 across sixteen QS permits.

Governmental Jurisdictions

According to the public IFQ Account database as of June 19, 2018, the City of Monterey owns QS of ten stocks. The U.S. Census estimates the population to be 28,454 as of July 1, 2017, so would be considered a small governmental jurisdiction by the RFA standard noted above. The City of Monterey received 0.5 percent of the QP issued for 2018, according to the public IFQ Account database.

Not-for-Profits

According to the public IFQ Account database, six not-for-profit organizations own QS in the catch share program and would thus be impacted by the trawl sector allocation under this proposed rule. Five of these would be considered small by the definition noted above (with 2016 annual receipts as reported on IRS form 990 of $120–500 thousand dollars), and one would be considered large (with self-reported fiscal year 2017 receipts of $1.1 billion). Collectively, the five small not-for-profit organizations received 7.2 percent of the non-whiting [3] QP issued in 2018, and the large not-for-profit organization received 0.5 percent. The large not-for-profit organization also owned four limited entry trawl permits which would be impacted by the management measures of the rule.

Small Trusts

Eleven personal or family trusts/estates owned QS permits and would thus potentially be impacted by the trawl sector allocation under this proposed rule. All of these are assumed to be smaller than the size standard noted above. Collectively, these eight small entities received 4.2 percent of the non-whiting QP issued for 2018.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

In the event of a fishery closure under the Biological Opinion provisions included in this rule (50 CFR 660.60(d)(1)(v) and (vi) of this proposed rule), the loss of revenue in groundfish fisheries would likely have a substantial negative impact on a significant number of small entities, and an equal impact on all large entities in the fishery. However, such a closure is not anticipated by NMFS and the Council, given historic catch levels and the existence of cooperative management structures with extensive inseason monitoring. Because these provisions are non-discretionary under the ESA, there are no significant alternatives to the proposed rule that would minimize adverse economic impacts on small entities.

The Council considered alternatives to the actions in this proposed rule that

[3] Whiting is issued annually through a separate rulemaking process resulting from international treaty negotiations. (See 83 FR 22401 for more information and 2018 allocations.)

would have a lower level of benefits to small entities. The Council did not consider alternatives that would have greater benefits to small entities, as these would not have met several primary objectives of the rule (the prevention of overfishing, the rebuilding of overfished stocks, and ensuring conservation).

Under the No Action alternative, the default harvest specifications and associated routine management measures would be implemented using best scientific information available to establish default harvest control rules for all groundfish stocks. The Council considered alternative specifications for California scorpionfish, lingcod north of 40°10' N lat, and yelloweye rockfish. In each case, the Council selected the harvest control rule that resulted in the maximum benefits to both large and small directly regulated entities. Routine management measures are adjusted according to harvest specifications, which also impact the new management measures available for implementation.

Regulatory Flexibility Act (RFA) Determination of No Significant Impact

The RFA requires Federal agencies to conduct an analysis of the impact of the proposed rule on small entities. The proposed rule would impact a significant number of small entities, but that these impacts are expected to range from neutral to positive, depending on individual response to increased harvest guidelines and updated management measures. Because there are no anticipated compliance costs or other adverse effects, NMFS concludes (subject to review of any pertinent public comments) that the rule will not have a substantial adverse impact on the significant number of directly regulated entities.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 4, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11:

■ a. In the definition of ''Conservation area(s)'', revise paragraph (1); and

■ b. In the definition of ''Groundfish'':

■ i. Revise paragraphs (6) and (7)(i) introductory text;

■ ii. Redesignate paragraph (7)(i)(B) as (7)(i)(C);

■ iii. Add new paragraph (7)(i)(B); and

■ iv. Revise paragraph (9).

The revisions and additions read as follows:

§ 660.11 General definitions.

* * * * *

*Conservation Area(s) * * **

(1) Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. Regulations at § 660.60(c)(3) describe the various purposes for which these GCAs may be implemented. Regulations at § 660.70 define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Bank. GCAs also include Bycatch Reduction Areas (BRAs), and Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to conservation needs. Regulations at §§ 660.70 through 660.74 define boundary lines with latitude/longitude coordinates; regulations at Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, and Tables 3 (North) and 3 (South) of subpart F set seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

* * * * *

*Groundfish * * **

* * * * *

(6) Roundfish: Cabezon, *Scorpaenichthys marmoratus;* kelp greenling, *Hexagrammos decagrammus;* lingcod, *Ophiodon elongatus;* Pacific cod, *Gadus macrocephalus;* Pacific whiting, *Merluccius productus;* sablefish, *Anoplopoma fimbria.* Species listed below with an area-specific listing are managed within a complex in that area-specific listing.

(i) Between 46°16′ N lat. and the U.S. Canada border (Washington): Cabezon, *S. marmoratus* and kelp greenling, *H. decagrammus.*

(ii) Between 46°16′ N lat. and 42° N lat. (Oregon): Cabezon, *S. marmoratus* and kelp greenling, *H. decagrammus.*

(7) * * *

(i) Nearshore rockfish includes black rockfish, *Sebastes melanops* (off Washington) and the following nearshore rockfish species managed in ''minor rockfish'' complexes:

* * * * *

(B) Between 46°16′ N lat. and 42° N lat. (Oregon): black rockfish, *S. melanops,* blue rockfish, *S. mystinus,* deacon rockfish, *S. diaconus.*

* * * * *

(9) ''Other Fish'': kelp greenling (*Hexagrammos decagrammus*) off California and leopard shark (*Trakis semifasciata*).

* * * * *

■ 3. Amend § 660.40 as follows:

■ a. Remove paragraphs (a), (c), and (d);

■ b. Redesignate paragraph (b) as paragraph (a), and paragraph (e) as paragraph (b); and

■ c. Revise newly redesignated paragraph (b).

The revision reads as follows:

§ 660.40 Overfished species rebuilding plans.

* * * * *

(b) *Yelloweye rockfish.* Yelloweye rockfish was declared overfished in 2002. The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2029. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 65.0 percent.

■ 4. In § 660.50, revise paragraphs (f)(2)(ii) and (f)(6) and add paragraph (h) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(ii) The Tribal allocation is 561 mt in 2019 and 572 mt in 2020 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36′ N lat.) ACL. The Tribal allocation is reduced by 1.5 percent for estimated discard mortality.

* * * * *

(6) *Petrale sole.* For petrale sole, treaty fishing vessels are restricted to a fleetwide harvest target of 290 mt each year.

* * * * *

(h) *Salmon bycatch.* This fishery may be closed through automatic action at 660.60(d)(1)(v) and (d)(1)(vi).

■ 5. In § 660.55, revise paragraphs (c)(1)(i)(A) and (B) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) *Darkblotched rockfish*. Distribute 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sectors). The distribution of darkblotched rockfish to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. Darkblotched rockfish distributed to the MS sector and C/P sector are managed as set-asides at Table 1d and Table 2d, subpart C. The allocation of darkblotched rockfish to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

(B) *Pacific Ocean Perch (POP).* Distribute 17 percent or 30 mt, whichever is greater, of the total trawl allocation of POP to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sector). The distribution of POP to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. POP distributed to the MS sector and C/P sector are managed as set-asides at Table 1d and Table 2d, subpart C. The allocation of POP to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

* * * * *

■ 6. Amend § 660.60 as follows:

■ a. Revise paragraph (d)(1)(v);

■ b. Remove paragraph (d)(1)(vii);

■ c. Redesignate paragraph (d)(1)(vi) as paragraph (d)(1)(vii); and

■ d. Add new paragraph (d)(1)(vi).

The revision and addition read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) * * *

(v) Close one or both of the whiting or non-whiting sectors of the groundfish fishery upon that sector having exceeded its annual Chinook salmon bycatch guideline and the reserve. The whiting sector includes the Pacific whiting IFQ fishery, MS, and C/P sectors. The non-whiting sector includes the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in § 660.360(d).

(A) The whiting sector Chinook salmon bycatch guideline is 11,000 fish.

(B) The non-whiting sector Chinook salmon bycatch guideline is 5,500 fish.

(C) The reserve is 3,500 fish.

(vi) Close the whiting or non-whiting sector of the groundfish fishery upon that sector having exceeded its annual Chinook salmon bycatch guideline if the other sector has already been closed after exceeding its Chinook salmon bycatch guideline and the reserve. The whiting sector includes the Pacific whiting IFQ fishery, MS, and C/P sectors. The non-whiting sector includes the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in § 660.360(d).

* * * * *

■ 7. Amend § 660.71 as follows:

■ a. Redesignate paragraphs (k) through (n) as paragraphs (o) through (r); and

■ b. Add new paragraphs (k) through (n) and paragraphs (s) through (v).

The additions read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.

* * * * *

(k) The 30 fm (55 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.38′ N lat., 119°03.15′ W long.;

(2) 33°29.64′ N lat., 119°00.58′ W long.;

(3) 33°27.24′ N lat., 119°01.73′ W long.;

(4) 33°27.76′ N lat., 119°03.48′ W long.;

(5) 33°29.50′ N lat., 119°04.20′ W long.; and

(6) 33°30.38′ N lat., 119°03.15′ W long.

(l) The 30 fm (55 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°18.39′ N lat., 119°38.87′ W long.;

(2) 33°18.63′ N lat., 119°27.52′ W long.;

(3) 33°15.24′ N lat., 119°20.10′ W long.;

(4) 33°13.27′ N lat., 119°20.10′ W long.;

(5) 33°12.16′ N lat., 119°26.82′ W long.;

(6) 33°13.20′ N lat., 119°31.87′ W long.;

(7) 33°15.70′ N lat., 119°38.87′ W long.;

(8) 33°17.52′ N lat., 119°40.15′ W long.; and

(9) 33°18.39′ N lat., 119°38.87′ W long.

(m) The 30 fm (55 m) depth contour around Tanner Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°43.02′ N lat., 119°08.52′ W long.;

(2) 32°41.81′ N lat., 119°06.20′ W long.;

(3) 32°40.67′ N lat., 119°06.82′ W long.;

(4) 32°41.62′ N lat., 119°09.46′ W long.; and

(5) 32°43.02′ N lat., 119°08.52′ W long.

(n) The 30 fm (55 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°29.73′ N lat., 119°12.95′ W long.;

(2) 32°28.17′ N lat., 119°07.04′ W long.;

(3) 32°26.27′ N lat., 119°04.14′ W long.;

(4) 32°25.22′ N lat., 119°04.77′ W long.;

(5) 32°28.60′ N lat., 119°14.15′ W long.; and

(6) 32°29.73′ N lat., 119°12.95′ W long.

* * * * *

(s) The 40 fm (73 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.87′ N lat., 119°02.43′ W long.;

(2) 33°29.87′ N lat., 119°00.34′ W long.;

(3) 33°27.08′ N lat., 119°01.65′ W long.;

(4) 33°27.64′ N lat., 119°03.45′ W long.;

(5) 33°29.12′ N lat., 119°04.55′ W long.;

(6) 33°29.66′ N lat., 119°05.49′ W long.; and

(7) 33°30.87′ N lat., 119°02.43′ W long.

(t) The 40 fm (73 m) depth contour around Tanner Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°43.40′ N lat., 119°08.56′ W long.;

(2) 32°41.36′ N lat., 119°05.02′ W long.;
(3) 32°40.07′ N lat., 119°05.59′ W long.;
(4) 32°41.51′ N lat., 119°09.76′ W long.; and
(5) 32°43.40′ N lat., 119°08.56′ W long.

(u) The 40 fm (73 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°19.30′ N lat., 119°41.05′ W long.;
(2) 33°19.42′ N lat., 119°27.88′ W long.;
(3) 33°14.31′ N lat., 119°17.48′ W long.;
(4) 33°12.90′ N lat., 119°17.64′ W long.;
(5) 33°11.89′ N lat., 119°27.26′ W long.;
(6) 33°12.19′ N lat., 119°29.96′ W long.;
(7) 33°15.42′ N lat., 119°39.14′ W long.;
(8) 33°17.58′ N lat., 119°41.38′ W long.; and
(9) 33°19.30′ N lat., 119°41.05′ W long.

(v) The 40 fm (73 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 32°30.00′ N lat., 119°12.98′ W long.;
(2) 32°28.33′ N lat., 119°06.81′ W long.;
(3) 32°25.69′ N lat., 119°03.21′ W long.;
(4) 32°24.66′ N lat., 119°03.83′ W long.;
(5) 32°28.48′ N lat., 119°14.66′ W long.; and
(6) 32°30.00′ N lat., 119°12.98′ W long.

■ 8. Amend § 660.72 as follows:
■ a. Redesignate paragraphs (k)(15) through (31) as (k)(17) through (33), respectively; and
■ b. Add new paragraphs (k)(15) and (16).

The additions read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(k) * * *

(15) 33°57.77′ N lat., 119°33.49′ W long.;
(16) 33°57.64′ N lat., 119°35.78′ W long.;

* * * * *

■ 9. Amend § 660.73 as follows:
■ a. Revise paragraphs (a)(178), (a)(181), (a)(190) through (192), and (d)(205) through (354);
■ b. Add paragraphs (d)(355) through (363);
■ c. Revise paragraphs (h)(281) through (313); and
■ d. Add paragraphs (h)(314) through (316).

The revisions and additions read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(a) * * *

(178) 40°10.13′ N lat., 124°21.92′ W long.;

* * * * *

(181) 40°06.39′ N lat., 124°17.26′ W long.;

* * * * *

(190) 40°01.00′ N lat., 124°09.96′ W long.;
(191) 39°58.07′ N lat., 124°11.81′ W long.;
(192) 39°56.39′ N lat., 124°08.69′ W long.;

* * * * *

(d) * * *

(205) 40°02.67′ N lat., 124°11.83′ W long.;
(206) 40°02.70′ N lat., 124°10.57′ W long.;
(207) 40°04.08′ N lat., 124°10.09′ W long.;
(208) 40°04.08′ N lat., 124°09.10′ W long.;
(209) 40°01.23′ N lat., 124°08.91′ W long.;
(210) 40°01.18′ N lat., 124°09.92′ W long.;
(211) 39°58.05′ N lat., 124°11.87′ W long.;
(212) 39°56.39′ N lat., 124°08.70′ W long.;
(213) 39°54.64′ N lat., 124°07.31′ W long.;
(214) 39°53.87′ N lat., 124°07.95′ W long.;
(215) 39°52.42′ N lat., 124°08.18′ W long.;
(216) 39°49.64′ N lat., 124°06.05′ W long.;
(217) 39°49.30′ N lat., 124°04.60′ W long.;
(218) 39°48.49′ N lat., 124°03.86′ W long.;
(219) 39°47.73′ N lat., 124°04.59′ W long.;
(220) 39°42.50′ N lat., 124°00.60′ W long.;
(221) 39°34.23′ N lat., 123°56.82′ W long.;
(222) 39°33.00′ N lat., 123°56.44′ W long.;
(223) 39°30.96′ N lat., 123°56.00′ W long.;
(224) 39°31.34′ N lat., 123°56.71′ W long.;
(225) 39°32.03′ N lat., 123°57.44′ W long.;
(226) 39°31.43′ N lat., 123°58.16′ W long.;
(227) 39°05.56′ N lat., 123°57.24′ W long.;
(228) 39°01.75′ N lat., 123°56.83′ W long.;
(229) 38°59.52′ N lat., 123°55.95′ W long.;
(230) 38°58.98′ N lat., 123°56.57′ W long.;
(231) 38°57.50′ N lat., 123°56.57′ W long.;
(232) 38°53.91′ N lat., 123°56.00′ W long.;
(233) 38°42.57′ N lat., 123°46.60′ W long.;
(234) 38°28.72′ N lat., 123°35.61′ W long.;
(235) 38°28.01′ N lat., 123°36.47′ W long.;
(236) 38°20.94′ N lat., 123°31.26′ W long.;
(237) 38°15.94′ N lat., 123°25.33′ W long.;
(238) 38°10.95′ N lat., 123°23.19′ W long.;
(239) 38°05.52′ N lat., 123°22.90′ W long.;
(240) 38°08.46′ N lat., 123°26.23′ W long.;
(241) 38°06.95′ N lat., 123°28.03′ W long.;
(242) 38°06.25′ N lat., 123°29.70′ W long.;
(243) 38°04.57′ N lat., 123°31.37′ W long.;
(244) 38°02.32′ N lat., 123°31.09′ W long.;
(245) 37°59.97′ N lat., 123°28.43′ W long.;
(246) 37°58.10′ N lat., 123°26.69′ W long.;
(247) 37°55.46′ N lat., 123°27.05′ W long.;
(248) 37°51.51′ N lat., 123°24.86′ W long.;
(249) 37°45.01′ N lat., 123°12.09′ W long.;
(250) 37°35.67′ N lat., 123°01.56′ W long.;
(251) 37°26.62′ N lat., 122°56.21′ W long.;
(252) 37°14.41′ N lat., 122°49.07′ W long.;
(253) 37°11.00′ N lat., 122°45.87′ W long.;
(254) 37°07.00′ N lat., 122°41.97′ W long.;
(255) 37°03.19′ N lat., 122°38.31′ W long.;
(256) 37°00.99′ N lat., 122°35.51′ W long.;
(257) 36°58.31′ N lat., 122°27.56′ W long.;
(258) 37°00.54′ N lat., 122°24.74′ W long.;
(259) 36°57.81′ N lat., 122°24.65′ W long.;

(260) 36°58.54′ N lat., 122°21.67′ W long.;
(261) 36°56.52′ N lat., 122°21.70′ W long.;
(262) 36°55.37′ N lat., 122°18.45′ W long.;
(263) 36°52.16′ N lat., 122°12.17′ W long.;
(264) 36°51.53′ N lat., 122°10.67′ W long.;
(265) 36°48.05′ N lat., 122°07.59′ W long.;
(266) 36°47.35′ N lat., 122°03.27′ W long.;
(267) 36°50.71′ N lat., 121°58.17′ W long.;
(268) 36°48.89′ N lat., 121°58.90′ W long.;
(269) 36°47.70′ N lat., 121°58.76′ W long.;
(270) 36°48.37′ N lat., 121°51.15′ W long.;
(271) 36°45.74′ N lat., 121°54.18′ W long.;
(272) 36°45.50′ N lat., 121°57.73′ W long.;
(273) 36°44.02′ N lat., 121°58.55′ W long.;
(274) 36°38.84′ N lat., 122°01.32′ W long.;
(275) 36°35.63′ N lat., 122°00.98′ W long.;
(276) 36°32.47′ N lat., 121°59.17′ W long.;
(277) 36°32.52′ N lat., 121°57.62′ W long.;
(278) 36°30.16′ N lat., 122°00.55′ W long.;
(279) 36°24.56′ N lat., 121°59.19′ W long.;
(280) 36°22.19′ N lat., 122°00.30′ W long.;
(281) 36°20.62′ N lat., 122°02.93′ W long.;
(282) 36°18.89′ N lat., 122°05.18′ W long.;
(283) 36°14.45′ N lat., 121°59.44′ W long.;
(284) 36°13.73′ N lat., 121°57.38′ W long.;
(285) 36°14.41′ N lat., 121°55.45′ W long.;
(286) 36°10.25′ N lat., 121°43.08′ W long.;
(287) 36°07.67′ N lat., 121°40.92′ W long.;
(288) 36°02.51′ N lat., 121°36.76′ W long.;
(289) 36°01.04′ N lat., 121°36.68′ W long.;
(290) 36°00.00′ N lat., 121°35.15′ W long.;
(291) 35°57.84′ N lat., 121°33.10′ W long.;
(292) 35°45.57′ N lat., 121°27.26′ W long.;
(293) 35°39.02′ N lat., 121°22.86′ W long.;
(294) 35°25.92′ N lat., 121°05.52′ W long.;
(295) 35°16.26′ N lat., 121°01.50′ W long.;
(296) 35°07.60′ N lat., 120°56.49′ W long.;
(297) 34°57.77′ N lat., 120°53.87′ W long.;
(298) 34°42.30′ N lat., 120°53.42′ W long.;
(299) 34°37.69′ N lat., 120°50.04′ W long.;
(300) 34°30.13′ N lat., 120°44.45′ W long.;
(301) 34°27.00′ N lat., 120°39.24′ W long.;
(302) 34°24.71′ N lat., 120°35.37′ W long.;
(303) 34°21.63′ N lat., 120°24.86′ W long.;
(304) 34°24.39′ N lat., 120°16.65′ W long.;
(305) 34°22.48′ N lat., 119°56.42′ W long.;
(306) 34°18.54′ N lat., 119°46.26′ W long.;
(307) 34°16.37′ N lat., 119°45.12′ W long.;
(308) 34°15.91′ N lat., 119°47.29′ W long.;
(309) 34°13.80′ N lat., 119°45.40′ W long.;
(310) 34°11.69′ N lat., 119°41.80′ W long.;
(311) 34°09.98′ N lat., 119°31.87′ W long.;
(312) 34°08.12′ N lat., 119°27.71′ W long.;
(313) 34°06.35′ N lat., 119°32.65′ W long.;
(314) 34°06.80′ N lat., 119°40.08′ W long.;
(315) 34°07.48′ N lat., 119°47.54′ W long.;
(316) 34°08.21′ N lat., 119°54.90′ W long.;
(317) 34°06.85′ N lat., 120°05.60′ W long.;
(318) 34°07.03′ N lat., 120°10.47′ W long.;
(319) 34°08.77′ N lat., 120°18.46′ W long.;
(320) 34°11.89′ N lat., 120°28.09′ W long.;
(321) 34°12.53′ N lat., 120°29.82′ W long.;
(322) 34°09.02′ N lat., 120°37.47′ W long.;
(323) 34°01.01′ N lat., 120°31.17′ W long.;
(324) 33°58.07′ N lat., 120°28.33′ W long.;
(325) 33°53.37′ N lat., 120°14.43′ W long.;
(326) 33°50.53′ N lat., 120°07.20′ W long.;
(327) 33°45.88′ N lat., 120°04.26′ W long.;
(328) 33°38.19′ N lat., 119°57.85′ W long.;
(329) 33°38.19′ N lat., 119°50.42′ W long.;
(330) 33°42.36′ N lat., 119°49.60′ W long.;
(331) 33°53.95′ N lat., 119°53.81′ W long.;
(332) 33°55.99′ N lat., 119°41.40′ W long.;
(333) 33°58.48′ N lat., 119°27.90′ W long.;
(334) 33°59.24′ N lat., 119°23.61′ W long.;
(335) 33°59.35′ N lat., 119°21.71′ W long.;
(336) 33°59.94′ N lat., 119°19.57′ W long.;
(337) 34°04.48′ N lat., 119°15.32′ W long.;
(338) 34°02.80′ N lat., 119°12.95′ W long.;
(339) 34°02.39′ N lat., 119°07.17′ W long.;
(340) 34°03.75′ N lat., 119°04.72′ W long.;
(341) 34°01.82′ N lat., 119°03.24′ W long.;
(342) 33°59.33′ N lat., 119°03.49′ W long.;
(343) 33°59.01′ N lat., 118°59.56′ W long.;
(344) 33°59.51′ N lat., 118°57.25′ W long.;
(345) 33°58.83′ N lat., 118°52.50′ W long.;
(346) 33°58.55′ N lat., 118°41.86′ W long.;
(347) 33°55.10′ N lat., 118°34.25′ W long.;
(348) 33°54.30′ N lat., 118°38.71′ W long.;
(349) 33°50.88′ N lat., 118°37.02′ W long.;
(350) 33°39.78′ N lat., 118°18.40′ W long.;
(351) 33°35.50′ N lat., 118°16.85′ W long.;
(352) 33°32.46′ N lat., 118°10.90′ W long.;
(353) 33°34.11′ N lat., 117°54.07′ W long.;
(354) 33°31.61′ N lat., 117°49.30′ W long.;
(355) 33°16.36′ N lat., 117°35.48′ W long.;
(356) 33°06.81′ N lat., 117°22.93′ W long.;
(357) 32°59.28′ N lat., 117°19.69′ W long.;
(358) 32°55.37′ N lat., 117°19.55′ W long.;
(359) 32°53.35′ N lat., 117°17.05′ W long.;
(360) 32°53.36′ N lat., 117°19.12′ W long.;
(361) 32°46.42′ N lat., 117°23.45′ W long.;
(362) 32°42.71′ N lat., 117°21.45′ W long.; and
(363) 32°34.54′ N lat., 117°23.04′ W long.

* * * * *

(h) * * *

(281) 34°07.10′ N lat., 120°10.37′ W long.;

(282) 34°11.07′ N lat., 120°25.03′ W long.;

(283) 34°09.00′ N lat., 120°18.40′ W long.;

(284) 34°13.16′ N lat., 120°29.40′ W long.;

(285) 34°09.41′ N lat., 120°37.75′ W long.;

(286) 34°03.15′ N lat., 120°34.71′ W long.;

(287) 33°57.09′ N lat., 120°27.76′ W long.;

(288) 33°51.00′ N lat., 120°09.00′ W long.;

(289) 33°38.16′ N lat., 119°59.23′ W long.;

(290) 33°37.04′ N lat., 119°50.17′ W long.;

(291) 33°42.28′ N lat., 119°48.85′ W long.;

(292) 33°53.96′ N lat., 119°53.77′ W long.;

(293) 33°55.88′ N lat., 119°41.05′ W long.;

(294) 33°59.18′ N lat., 119°23.64′ W long.;

(295) 33°59.26′ N lat., 119°21.92′ W long.;

(296) 33°59.94′ N lat., 119°19.57′ W long.;

(297) 34°03.12′ N lat., 119°15.51′ W long.;

(298) 34°01.97′ N lat., 119°07.28′ W long.;

(299) 34°03.60′ N lat., 119°04.71′ W long.;

(300) 33°59.30′ N lat., 119°03.73′ W long.;

(301) 33°58.87′ N lat., 118°59.37′ W long.;

(302) 33°58.08′ N lat., 118°41.14′ W long.;

(303) 33°50.93′ N lat., 118°37.65′ W long.;

(304) 33°39.54′ N lat., 118°18.70′ W long.;

(305) 33°35.42′ N lat., 118°17.14′ W long.;

(306) 33°32.15′ N lat., 118°10.84′ W long.;

(307) 33°33.71′ N lat., 117°53.72′ W long.;

(308) 33°31.17′ N lat., 117°49.11′ W long.;

(309) 33°16.53′ N lat., 117°36.13′ W long.;

(310) 33°06.77′ N lat., 117°22.92′ W long.;

(311) 32°58.94′ N lat., 117°20.05′ W long.;

(312) 32°55.83′ N lat., 117°20.15′ W long.;

(313) 32°46.29′ N lat., 117°23.89′ W long.;

(314) 32°42.00′ N lat., 117°22.16′ W long.;

(315) 32°39.47′ N lat., 117°27.78′ W long.; and

(316) 32°34.83′ N lat., 117°24.69′ W long.

* * * * *

■ 10. Tables 1a to part 660, subpart C through 1d to part 660, subpart C are revised to read as follows:

Sec.

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Table 1a to Part 660, Subpart C—2019, Specifications of OFL, ABC, ACL, ACT and Fishery HG (Weights in Metric Tons)

Stocks/Stock Complexes	Area	OFL	ABC	ACL[a/]	Fishery HG[b/]
COWCOD c/	S. of 40°10' N. lat.	74	67	10	8
COWCOD	(Conception)	61	56	NA	NA
COWCOD	(Monterey)	13	11	NA	NA
YELLOWEYE ROCKFISH d/	Coastwide	82	74	48	42
Arrowtooth Flounder e/	Coastwide	18,696	15,574	15,574	13,479
Big Skate f/	Coastwide	541	494	494	452
Black Rockfish g/	California (S. of 42° N. lat.)	344	329	329	328
Black Rockfish h/	Washington (N. of 46°16' N. lat.)	312	298	298	280
Bocaccio i/	S. of 40°10' N. lat.	2,194	2,097	2,097	2,051
Cabezon j/	California (S. of 42° N. lat.)	154	147	147	147
California Scorpionfish k/	S. of 34°27' N. lat.	337	313	313	311
Canary Rockfish l/	Coastwide	1,517	1,450	1,450	1,383
Chilipepper Rockfish m/	S. of 40°10' N. lat.	2,652	2,536	2,536	2,451
Darkblotched Rockfish n/	Coastwide	800	765	765	731
Dover Sole o/	Coastwide	91,102	87,094	50,000	48,404
English Sole p/	Coastwide	11,052	10,090	10,090	9,874
Lingcod q/	N. of 40°10' N. lat.	5,110	4,885	4,871	4,593
Lingcod r/	S. of 40°10' N. lat.	1,143	1,093	1,039	1,028
Longnose Skate s/	Coastwide	2,499	2,389	2,000	1,852
Longspine Thornyhead t/	N. of 34°27' N. lat.	4,112	3,425	2,603	2,553
Longspine Thornyhead u/	S. of 34°27' N. lat.			822	821
Pacific Cod v/	Coastwide	3,200	2,221	1,600	1,094
Pacific Whiting w/	Coastwide	y/	y/	y/	y/
Pacific Ocean Perch x/	N. of 40°10' N lat.	4,753	4,340	4,340	4,318
Petrale Sole y/	Coastwide	3,042	2,908	2,908	2,587
Sablefish z/	N. of 36° N. lat.	8,489	7,750	5,606	See Table 1c
Sablefish aa/	S. of 36° N. lat			1,990	1,986
Shortbelly Rockfish bb/	Coastwide	6,950	5,789	500	483
Shortspine Thornyhead cc/	N. of 34°27' N. lat.	3,089	2,573	1,683	1,618
Shortspine Thornyhead dd/	S. of 34°27' N. lat.			890	889

Spiny Dogfish ee/	Coastwide	2,486	2,071	2,071	1,738
Splitnose Rockfish ff/	S. of 40°10' N. lat.	1,831	1,750	1,750	1,733
Starry Flounder gg/	Coastwide	652	452	452	433
Widow Rockfish hh/	Coastwide	12,375	11,831	11,831	11,583
Yellowtail Rockfish ii/	N. of 40°10' N. lat.	6,568	5,997	5,997	4,952
Black Rockfish/Blue Rockfish/Deacon Rockfish jj/	Oregon (Between 46° 16' N. lat. and 42° N. lat.)	677	617	617	616
Cabezon/Kelp Greenling kk/	Oregon (Between 46° 16' N. lat. and 42° N. lat.)	230	218	218	218
Cabezon/Kelp Greenling ll/	Washington (N. of 46°16' N. lat.)	13	11	11	11
Nearshore Rockfish mm/	N. of 40°10' N. lat.	91	81	81	79
Shelf Rockfish nn/	N. of 40°10' N. lat.	2,309	2,054	2,054	1,977
Slope Rockfish oo/	N. of 40°10' N. lat.	1,887	1,746	1,746	1,665
Nearshore Rockfish pp/	S. of 40°10' N. lat.	1,300	1,145	1,142	1,138
Shelf Rockfish qq/	S. of 40°10' N. lat.	1,919	1,625	1,625	1,546
Slope Rockfish rr/	S. of 40°10' N. lat.	856	744	744	724
Other Flatfish ss/	Coastwide	8,750	6,498	6,498	6,249
Other Fish tt/	Coastwide	286	239	239	230

a/ Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

b/ Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

c/ Cowcod south of 40°10' N lat. 2 mt is deducted from the ACL to EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 6 mt is being set for the Conception and Monterey areas combined.

d/ Yelloweye rockfish. The 48 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 6.1 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.62 mt), EFP catch (0.24 mt) and research catch (2.92 mt), resulting in a fishery HG of 42 mt. The non-trawl HG is

38.6 mt. The non-nearshore HG is 2.0 mt and the nearshore HG is 6.0 mt. Recreational HGs are: 10 mt (Washington); 8.9 mt (Oregon); and 11.6 mt (California). In addition, there are the following ACTs: non-nearshore (1.6 mt), nearshore (4.7 mt), Washington recreational (7.8 mt), Oregon recreational (7.0 mt), and California recreational (9.1 mt).

e/ Arrowtooth flounder. 2,094.9 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), EFP fishing (0.1 mt), and research catch (13 mt), resulting in a fishery HG of 13,479 mt.

f/ Big skate. 41.9 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (21.3 mt), EFP fishing (0.1 mt), and research catch (5.5 mt), resulting in a fishery HG of 452 mt.

g/ Black rockfish (California). 1.3 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt) and incidental open access fishery (0.3 mt), resulting in a fishery HG of 328 mt.

h/ Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 280 mt.

i/ Bocaccio south of 40°10' N lat. The stock is managed with stock-specific harvest specifications south of 40°10' N. lat. and within the Minor Shelf Rockfish complex north of 40°10' N. lat. 46.1 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt), EFP catch (40 mt) and research catch (5.6 mt), resulting in a fishery HG of 2,051 mt. The California recreational fishery south of 40°10' N lat has an HG of 863.4 mt.

j/ Cabezon (California). 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 147 mt.

k/ California scorpionfish south of 34°27' N lat. 2.4 mt is deducted from the ACL to accommodate the incidental open access fishery (2.2 mt) and research catch (0.2 mt), resulting in a fishery HG of 311 mt.

l/ Canary rockfish. 67.1 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.3 mt), EFP catch (8 mt), and research catch (7.8 mt), resulting in a fishery HG of 1,383 mt. Recreational HGs are: 47.1 mt (Washington); 70.7 mt (Oregon); and 127.3 mt (California).

m/ Chilipepper rockfish south of 40°10' N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. 84.9 mt is deducted from the ACL to accommodate the incidental open access fishery (11.5 mt), EFP fishing (60 mt), and research catch (13.4 mt), resulting in a fishery HG of 2,451 mt.

n/ Darkblotched rockfish. 33.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.6 mt), and research catch (8.5 mt) resulting in a fishery HG of 731 mt.

o/ Dover sole. 1,595.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (49.3 mt), EFP fishing (0.1 mt), and research catch (49.2 mt), resulting in a fishery HG of 48,404 mt.

p/ English sole. 216.2 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (8.1 mt), EFP fishing (0.1 mt), and research catch (8 mt), resulting in a fishery HG of 9,874 mt.

q/ Lingcod north of 40°10' N lat. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (9.8 mt), EFP catch (1.6 mt) and research catch (16.6 mt), resulting in a fishery HG of 4,593 mt.

r/ Lingcod south of 40°10' N lat. 11.3 mt is deducted from the ACL to accommodate the incidental open access fishery (8.1 mt) and research catch (3.2 mt), resulting in a fishery HG of 1,028 mt.

s/ Longnose skate. 148.3 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (5.7 mt), EFP catch (0.1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,852 mt.

t/ Longspine thornyhead north of 34°27′ N. lat. 50.4 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (6.2 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,553 mt.

u/ Longspine thornyhead south of 34°27′ N. lat. 1.4 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 821 mt.

v/ Pacific cod. 506.2 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.5 mt), EFP fishing (0.1 mt), and the incidental open access fishery (0.6 mt), resulting in a fishery HG of 1,094 mt.

w/ Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2019 meeting.

x/ Pacific ocean perch north of 40°10' N lat. 22.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), EFP fishing (0.1 mt), and research catch (3.1 mt) resulting in a fishery HG of 4,318 mt.

y/ Petrale sole. 320.6 mt is deducted from the ACL to accommodate the Tribal fishery (290 mt), the incidental open access fishery (6.4 mt), EFP catch (0.1 mt), and research catch (24.1 mt), resulting in a fishery HG of 2,587 mt.

z/ Sablefish north of 36° N lat. The 40-10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003-2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N. lat. and 26.2 percent apportioned south of 36° N. lat. The northern ACL is 5,606 mt and is reduced by 561 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.). The 561 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

aa/ Sablefish south of 36° N lat. The ACL for the area south of 36° N. lat. is 1,990 mt (26.2 percent of the calculated coastwide ACL value). 4.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt) and research catch (2.4 mt), resulting in a fishery HG of 1,986 mt.

bb/ Shortbelly rockfish. 17.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt), EFP catch (0.1 mt), and research catch (8.2 mt), resulting in a fishery HG of 483 mt.

cc/ Shortspine thornyhead north of 34°27′ N. lat. 65.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (4.7 mt), EFP catch (0.1 mt), and research catch (10.5 mt), resulting in a fishery HG of 1,618 mt for the area north of 34°27′ N. lat.

dd/ Shortspine thornyhead south of 34°27′ N. lat. 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt) and research catch (0.7 mt), resulting in a fishery HG of 889 mt for the area south of 34°27′ N. lat.

ee/ Spiny dogfish. 333 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (22.6 mt), EFP catch (1.1 mt), and research catch (34.3 mt), resulting in a fishery HG of 1,738 mt.

ff/ Splitnose rockfish south of 40°10' N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N. lat. 16.6 mt is deducted from the ACL to accommodate the incidental open access fishery (5.8 mt), research catch (9.3 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,733 mt.

gg/ Starry flounder. 18.8 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research catch (0.6 mt), and the incidental open access fishery (16.1 mt), resulting in a fishery HG of 433 mt.

hh/ Widow rockfish248.4 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (3.1 mt), EFP catch (28 mt) and research catch (17.3 mt), resulting in a fishery HG of 11,583 mt.

ii/ Yellowtail rockfish north of 40°10' N lat. 1,045.1 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (4.5 mt), EFP catch (20 mt) and research catch (20.6 mt), resulting in a fishery HG of 4,952 mt.

jj/ Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.3 mt) and EFP catch (0.9 mt), resulting in a fishery HG of 616 mt.

kk/ Cabezon/kelp greenling (Oregon). 0.2 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 218 mt.

ll/ Cabezon/kelp greenling (Washington). There are no deductions from the ACL so the fishery HG is equal to the ACL of 11 mt.

mm/Nearshore Rockfish north of 40°10' N lat. 2.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP fishing (0.1 mt), research catch (0.3 mt) and the incidental open access fishery (0.9 mt), resulting in a fishery HG of 79 mt.

nn/ Shelf Rockfish north of 40°10' N lat. 76.9 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (17.7 mt), EFP catch (4.5 mt), and research catch (24.7 mt), resulting in a fishery HG of 1,977 mt.

oo/ Slope Rockfish north of 40°10' N lat. 80.8 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (21.7 mt), EFP catch (1.5 mt), and research catch (21.6 mt), resulting in a fishery HG of 1,665 mt.

pp/ Nearshore Rockfish south of 40°10' N lat. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,138 mt.

qq/ Shelf Rockfish south of 40°10' N lat. 79.1 mt is deducted from the ACL to accommodate the incidental open access fishery (4.6 mt), EFP catch (60 mt), and research catch (14.5 mt), resulting in a fishery HG of 1,546 mt.

rr/ Slope Rockfish south of 40°10' N lat. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (16.9 mt), EFP catch (1 mt), and research catch (2.3 mt), resulting in a fishery HG of 724 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10' N lat. set equal to the species' contribution to the 40-10-adjusted ACL.

Harvest of blackgill rockfish in all groundfish fisheries south of 40°10' N lat. counts against this HG of 159 mt.

ss/ Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 249.5 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (161.6 mt), EFP fishing (0.1 mt), and research catch (27.8 mt), resulting in a fishery HG of 6,249 mt.

tt/ Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 8.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.8 mt) and research catch (0.1 mt), resulting in a fishery HG of 230 mt.

Table 1b. to Part 660, Subpart C—2019, Allocations by Species or Species Group (Weight in Metric Tons)

Stocks/Stock Complexes	Area	Fishery HG or ACT a/ b/	Trawl		Non-Trawl	
			%	Mt	%	Mt
Arrowtooth flounder	Coastwide	13,479.1	95%	12,805.1	5%	674.0
Big skate a/	Coastwide	452.1	95%	429.5	5%	22.6
Bocaccio a/	S of 40°10' N. lat.	2,050.9	39%	800.7	61%	1,250.2
Canary rockfish a/c/	Coastwide	1,382.9	72%	999.6	28%	383.3
Chilipepper rockfish	S of 40°10' N. lat.	2,451.1	75%	1,838.3	25%	612.8
COWCOD a/b/	S of 40°10' N. lat.	6.0	36%	2.2	64%	3.8
Darkblotched rockfish d/	Coastwide	731.2	95%	694.6	5%	36.6
Dover sole	Coastwide	48,404.4	95%	45,984.2	5%	2,420.2
English sole	Coastwide	9,873.8	95%	9,380.1	5%	493.7
Lingcod	N of 40'10° N. lat.	4,593.0	45%	2,066.9	55%	2,526.2
Lingcod	S of 40'10° N. lat.	1,027.7	45%	462.5	55%	565.2
Longnose skate a/	Coastwide	1,851.7	90%	1,666.5	10%	185.2
Longspine thornyhead	N of 34°27' N. lat.	2,552.6	95%	2,425.0	5%	127.6
Pacific cod	Coastwide	1,093.8	95%	1,039.1	5%	54.7
Pacific whiting	Coastwide	TBD	100%	TBD	0%	TBD
Pacific ocean perch e/	N of 40°10' N. lat.	4,317.6	95%	4,101.7	5%	215.9
Petrale sole	Coastwide	2,587.4	95%	2,458.0	5%	129.4
Sablefish	N of 36° N. lat.	NA	See Table 1c			
Sablefish	S of 36° N. lat.	1,985.8	42%	834.0	58%	1,151.8
Shortspine thornyhead	N of 34°27' N. lat.	1,617.7	95%	1,536.8	5%	80.9
Shortspine thornyhead	S of 34°27' N. lat.	888.8	NA	50.0	NA	838.8
Splitnose rockfish	S of 40°10' N. lat.		95%	1,646.7	5%	86.7

		1,733.4				
Starry flounder	Coastwide	433.2	50%	216.6	50%	216.6
Widow rockfish f/	Coastwide	11,582.6	91%	10,540.2	9%	1,042.4
YELLOWEYE ROCKFISH	Coastwide	41.9	8%	3.4	92%	38.6
Yellowtail rockfish	N of 40°10' N. lat.	4,951.9	88%	4,357.7	12%	594.2
Minor Shelf Rockfish North a/	N of 40°10' N. lat.	1,977.1	60.2%	1,190.2	39.8%	786.9
Minor Shelf Rockfish South a/	S of 40°10' N. lat.	1,545.9	12.2%	188.6	87.8%	1,357.3
Minor Slope Rockfish North	N of 40°10' N. lat.	1,665.2	81%	1,348.8	19%	316.4
Minor Slope Rockfish South	S of 40°10' N. lat.	723.8	63%	456.0	37%	267.8
Other Flatfish	Coastwide	6,248.5	90%	5,623.7	10%	624.9

a/ Allocations decided through the biennial specification process.
b/ The cowcod fishery harvest guideline is further reduced to an ACT of 6.0 mt.
c/ 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.
d/ Consistent with regulations at §660.55(c), 9 percent (62.5 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 26.3 mt for the Shorebased IFQ Program, 15.0 mt for the MS sector, and 21.3 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).
e/ Consistent with regulations at §660.55(c), 17 percent (697.3 mt) of the total trawl allocation for Pacific ocean perch is allocated to the Pacific whiting fishery, as follows: 292.9 mt for the Shorebased IFQ Program, 167.4 mt for the MS sector, and 237.1 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).
f/ Consistent with regulations at §660.55(c), 10 percent (1,054 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 442.7 mt for the shorebased IFQ fishery, 253 mt for the mothership fishery, and 358.4 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

Table 1c. to Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2019

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research				Percent	mt	Percent	mt b/
2019	5,606	561	30.68	6	1.1	5,007	90.6	4,537	9.4	471

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		All Trawl	At-sea Whiting	Shorebased IFQ	All FG	Primary	DTL
2019	4,537	2,631	50	2,581	1,905	1,620	286

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 553 mt in 2019.

b/ The open access HG is taken by the incidental OA fishery and the directed OA fishery.

c/ The trawl allocation is 58 percent of the limited entry HG.

d/ The limited entry fixed gear allocation is 42 percent of the limited entry HG.

Table 1d. to Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2019

Stock or Stock Complex	Area	Set Aside (mt)
COWCOD	S. of 40°10 N. lat.	NA
YELLOWEYE ROCKFISH	Coastwide	0
Arrowtooth flounder	Coastwide	70
Bocaccio	S. of 40°10 N. lat.	NA
Canary rockfish a/	Coastwide	Allocation
Chilipepper rockfish	S. of 40°10 N. lat.	NA
Darkblotched rockfish b/	Coastwide	36.3
Dover sole	Coastwide	5
English sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose skate	Coastwide	5
Longspine thornyhead	N. of 34°27 N. lat.	5
Longspine thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific cod	Coastwide	5
Pacific Halibut c/	Coastwide	10
Pacific ocean perch d/	N. of 40°10 N. lat.	404.5
Pacific Whiting	Coastwide	Allocation
Petrale sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine thornyhead	N. of 34°27 N. lat.	30
Shortspine thornyhead	S. of 34°27 N. lat.	NA
Starry flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
Yellowtail rockfish	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

b/ Darkblotched rockfish will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at § 660.55(c)(1)(i)(A), resulting in a set-aside of 15.0 mt for the MS sector, and a set-aside of 21.3 mt for the C/P sector.

c/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to be approximately 5 mt each).

d/ Pacific ocean perch will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at § 660.55(c)(1)(i)(B), resulting in a set-aside of 167.4 mt for the MS sector, and a set-aside of 237.1 mt for the C/P sector.

■ 11. Tables 2a to part 660, subpart C through 2d to part 660, supbart C are revised to read as follows:

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Table 2a. to Part 660, Subpart C—2020, and Beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest Guidelines (Weights in Metric Tons)

Stocks/Stock Complexes	Area	OFL	ABC	ACL[a/]	Fishery HG[b/]
COWCOD c/	S. of 40°10' N. lat.	76	68	10	8
COWCOD	(Conception)	62	57	NA	NA
COWCOD	(Monterey)	13	11	NA	NA
YELLOWEYE ROCKFISH d/	Coastwide	84	77	49	43
Arrowtooth Flounder e/	Coastwide	15,306	12,750	12,750	10,655
Big Skate f/	Coastwide	541	494	494	452
Black Rockfish g/	California (S. of 42° N. lat.)	341	326	326	325
Black Rockfish h/	Washington (N. of 46°16' N. lat.)	311	297	297	279
Bocaccio i/	S. of 40°10' N. lat.	2,104	2,011	2,011	1,965
Cabezon j/	California (S. of 42° N. lat.)	153	146	146	146
California Scorpionfish k/	S. of 34°27' N. lat.	331	307	307	305
Canary Rockfish l/	Coastwide	1,431	1,368	1,368	1,301
Chilipepper Rockfish m/	S. of 40°10' N. lat.	2,521	2,410	2,410	2,325
Darkblotched Rockfish n/	Coastwide	853	815	815	781
Dover Sole o/	Coastwide	92,048	87,998	50,000	48,404
English Sole p/	Coastwide	11,101	10,135	10,135	9,919
Lingcod q/	N. of 40°10' N. lat.	4,768	4,558	4,541	4,263
Lingcod r/	S. of 40°10' N. lat.	977	934	869	858
Longnose Skate s/	Coastwide	2,474	2,365	2,000	1,852
Longspine Thornyhead t/	N. of 34°27' N. lat.	3,901	3,250	2,470	2,420
Longspine Thornyhead u/	S. of 34°27' N. lat.			780	779
Pacific Cod v/	Coastwide	3,200	2,221	1,600	1,094
Pacific Whiting w/	Coastwide	y/	y/	y/	y/
Pacific Ocean Perch x/	N. of 40°10' N lat.	4,632	4,229	4,229	4,207
Petrale Sole y/	Coastwide	2,976	2,845	2,845	2,524
Sablefish z/	N. of 36° N. lat.	8,648	7,896	5,723	See Table 2c
Sablefish aa/	S. of 36° N. lat			2,032	2,028
Shortbelly Rockfish bb/	Coastwide	6,950	5,789	500	483
Shortspine Thornyhead cc/	N. of 34°27' N. lat.	3,063	2,551	1,669	1,604
Shortspine Thornyhead dd/	S. of 34°27' N. lat.			883	882
Spiny Dogfish ee/	Coastwide	2,472	2,059	2,059	1,726

Splitnose Rockfish ff/	S. of 40°10' N. lat.	1,810	1,731	1,731	1,714
Starry Flounder gg/	Coastwide	652	452	452	433
Widow Rockfish hh/	Coastwide	11,714	11,199	11,199	10,951
Yellowtail Rockfish ii/	N. of 40°10' N. lat.	6,261	5,716	5,716	4,671
Black Rockfish/Blue Rockfish/Deacon Rockfish jj/	Oregon (Between 46° 16' N. lat. and 42° N. lat.)	670	611	611	609
Cabezon/Kelp Greenling kk/	Oregon (Between 46° 16' N. lat. and 42° N. lat.)	216	204	204	204
Cabezon/Kelp Greenling ll/	Washington (N. of 46°16' N. lat.)	12	10	10	10
Nearshore Rockfish mm/	N. of 40°10' N. lat.	92	82	82	79
Shelf Rockfish nn/	N. of 40°10' N. lat.	2,302	2,048	2,048	1,971
Slope Rockfish oo/	N. of 40°10' N. lat.	1,873	1,732	1,732	1,651
Nearshore Rockfish pp/	S. of 40°10' N. lat.	1,322	1,165	1,163	1,159
Shelf Rockfish qq/	S. of 40°10' N. lat.	1,919	1,626	1,625	1,546
Slope Rockfish rr/	S. of 40°10' N. lat.	855	743	743	723
Other Flatfish ss/	Coastwide	8,202	6,041	6,041	5,792
Other Fish tt/	Coastwide	286	239	239	230

a/ Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

b/ Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

c/ Cowcod south of 40°10' N lat. 2 mt is deducted from the ACL to accommodate EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 6 mt is being set for the Conception and Monterey areas combined.

d/ Yelloweye rockfish. The 49 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 6.1 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.62 mt), EFP catch (0.24 mt) and research catch (2.92 mt), resulting in a fishery HG of 43 mt. The non-trawl HG is

39.5 mt. The non-nearshore HG is 2.1 mt and the nearshore HG is 6.2 mt. Recreational HGs are: 10.2 mt (Washington); 9.1 mt (Oregon); and 11.9 mt (California). In addition, there are the following ACTs: non-nearshore (1.7 mt), nearshore (4.9 mt), Washington recreational (8.1 mt), Oregon recreational (7.2 mt), and California recreational (9.4 mt).

e/ Arrowtooth flounder. 2,094.9 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), EFP fishing (0.1 mt), and research catch (13 mt), resulting in a fishery HG of 10,655 mt.

f/ Big skate. 41.9 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (21.3 mt), EFP fishing (0.1 mt), and research catch (5.5 mt), resulting in a fishery HG of 452 mt.

g/ Black rockfish (California). 1.3 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt) and the incidental open access fishery (0.3 mt), resulting in a fishery HG of 325 mt.

h/ Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 279 mt.

i/ Bocaccio south of 40°10’ N lat. The stock is managed with stock-specific harvest specifications south of 40°10' N. lat. and within the Minor Shelf Rockfish complex north of 40°10' N. lat. 46.1 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt), EFP catch (40 mt) and research catch (5.6 mt), resulting in a fishery HG of 1,965 mt. The California recreational fishery has an HG of 827.2 mt.

j/ Cabezon (California). 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 146 mt.

k/ California scorpionfish south of 34°27' N lat. 2.4 mt is deducted from the ACL to accommodate the incidental open access fishery (2.2 mt) and research catch (0.2 mt), resulting in a fishery HG of 305 mt.

l/ Canary rockfish. 67.1 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.3 mt), EFP catch (8 mt), and research catch (7.8 mt), resulting in a fishery HG of 1,301 mt. Recreational HGs are: 44.3 mt (Washington); 66.5 mt (Oregon); and 119.7 mt (California).

m/ Chilipepper rockfish south of 40°10' N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. 84.9 mt is deducted from the ACL to accommodate the incidental open access fishery (11.5 mt), EFP fishing (60 mt), and research catch (13.4 mt), resulting in a fishery HG of 2,325 mt.

n/ Darkblotched rockfish. 33.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.6 mt), and research catch (8.5 mt) resulting in a fishery HG of 781 mt.

o/ Dover sole. 1,595.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (49.3 mt), EFP fishing (0.1 mt), and research catch (49.2 mt), resulting in a fishery HG of 48,404 mt.

p/ English sole. 216.2 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (8.1 mt), EFP fishing (0.1 mt), and research catch (8 mt), resulting in a fishery HG of 9,919 mt.

q/ Lingcod north of 40°10' N lat. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (9.8 mt), EFP catch (1.6 mt) and research catch (16.6 mt), resulting in a fishery HG of 4,263 mt.

r/ Lingcod south of 40°10' N lat. 11.3 mt is deducted from the ACL to accommodate the incidental open access fishery (8.1 mt) and research catch (3.2 mt), resulting in a fishery HG of 858 mt.

s/ Longnose skate. 148.3 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (5.7 mt), EFP catch (0.1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,852 mt.

t/ Longspine thornyhead. 50.4 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (6.2 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,420 mt.

u/ Longspine thornyhead south of 34°27′ N. lat. 1.4 mt is deducted from the ACL to research catch, resulting in a fishery HG of 779 mt.

v/ Pacific cod. 506.2 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), EFP catch (0.1 mt), research catch (5.5 mt), and the incidental open access fishery (0.6 mt), resulting in a fishery HG of 1,094 mt.

w/ Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2020 meeting.

x/ Pacific ocean perch north of 40°10' N lat. 22.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), EFP fishing (0.1 mt), and research catch (3.1 mt)-resulting in a fishery HG of 4,207 mt.

y/ Petrale sole. 320.6 mt is deducted from the ACL to accommodate the Tribal fishery (290 mt), the incidental open access fishery (6.4 mt), EFP catch (0.1 mt), and research catch (24.1 mt), resulting in a fishery HG of 2,524 mt.

z/ Sablefish north of 36° N lat. The 40-10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003-2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N. lat. and 26.2 percent apportioned south of 36° N. lat. The northern ACL is 5,723 mt and is reduced by 572 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.). The 572 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

aa/ Sablefish south of 36° N lat. The ACL for the area south of 36° N. lat. is 2,032 mt (26.2 percent of the calculated coastwide ACL value). 4.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt) and research catch (2.4 mt), resulting in a fishery HG of 2,028 mt.

bb/ Shortbelly rockfish. 17.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt), EFP catch (0.1 mt), and research catch (8.2 mt), resulting in a fishery HG of 483 mt.

cc/ Shortspine thornyhead north of 34°27′ N. lat. 65.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (4.7 mt), EFP catch (0.1 mt), and research catch (10.5 mt), resulting in a fishery HG of 1,604 mt for the area north of 34°27′ N. lat.

dd/ Shortspine thornyhead south of 34°27′ N. lat. 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt) and research catch (0.7 mt), resulting in a fishery HG of 882 mt for the area south of 34°27′ N. lat.

ee/ Spiny dogfish. 333 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (22.6 mt), EFP catch (1.1 mt), and research catch (34.3 mt), resulting in a fishery HG of 1,726 mt.

ff/ Splitnose rockfish south of 40°10' N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N. lat. 16.6 mt is deducted from the ACL to accommodate the incidental open access fishery (5.8 mt), research catch (9.3 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,714 mt.

gg/ Starry flounder. 18.8 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research catch (0.6 mt), and the incidental open access fishery (16.1 mt), resulting in a fishery HG of 433 mt.

hh/ Widow rockfish. 248.4 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (3.1 mt), EFP catch (28 mt) and research catch (17.3 mt), resulting in a fishery HG of 10,951 mt.

ii/ Yellowtail rockfish north of 40°10' N lat. 1,045.1 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (4.5 mt), EFP catch (20 mt) and research catch (20.6 mt), resulting in a fishery HG of 4,671 mt.

jj/ Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.3 mt) and EFP catch (0.9 mt), resulting in a fishery HG of 609 mt.

kk/ Cabezon/Kelp greenling (Oregon). 0.2 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 204 mt.

ll/ Cabezon/Kelp greenling (Washington). There are no deductions from the ACL so the fishery HG is equal to the ACL of 10 mt.

mm/ Nearshore Rockfish north of 40°10' N lat. 2.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP catch (0.1 mt), research catch (0.3), and the incidental open access fishery (0.9 mt), resulting in a fishery HG of 79 mt.

nn/ Shelf Rockfish north of 40°10' N lat. 76.9 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (17.7 mt), EFP catch (4.5 mt), and research catch (24.7 mt), resulting in a fishery HG of 1,971 mt.

oo/ Slope Rockfish north of 40°10' N lat. 80.8 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (21.7 mt), EFP catch (1.5 mt), and research catch (21.6 mt), resulting in a fishery HG of 1,651 mt.

pp/ Nearshore Rockfish south of 40°10' N lat. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,159 mt.

qq/ Shelf Rockfish south of 40°10' N lat. 79.1 mt is deducted from the ACL to accommodate the incidental open access fishery (4.6 mt), EFP catch (60 mt), and research catch (14.5 mt), resulting in a fishery HG of 1,546 mt.

rr/ Slope Rockfish south of 40°10' N lat. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (16.9 mt), EFP catch (1 mt), and research catch (2.3 mt), resulting in a fishery HG of 723 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10' N lat. set equal to the species' contribution to the 40-10-adjusted ACL.

Harvest of blackgill rockfish in all groundfish fisheries south of 40°10' N lat counts against this HG of 159 mt.

ss/ Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 249.5 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (161.6 mt), EFP fishing (0.1 mt), and research catch (27.8 mt), resulting in a fishery HG of 5,792 mt.

tt/ Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 8.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.8 mt) and research catch (0.1 mt), resulting in a fishery HG of 230 mt.

Table 2b. to Part 660, Subpart C—2020, and Beyond, Allocations by Species or Species Group [Weight in Metric Tons]

Stocks/Stock Complexes	Area	Fishery HG or ACT a/ b/	Trawl		Non-trawl	
			%	Mt	%	Mt
Arrowtooth flounder	Coastwide	10,655.1	95%	10,122.3	5%	532.8
Big skate a/	Coastwide	452.1	95%	429.5	5%	22.6
Bocaccio a/	S of 40°10' N. lat.	1,964.9	39%	767.1	61%	1,197.8
Canary rockfish a/d/	Coastwide	1,300.9	72%	940.3	28%	360.6
Chilipepper rockfish	S of 40°10' N. lat.	2,325.1	75%	1,743.8	25%	581.3
COWCOD a/b/	S of 40°10' N. lat.	6.0	36%	2.2	64%	3.8
Darkblotched rockfish c/	Coastwide	781.2	95%	742.1	5%	39.1
Dover sole	Coastwide	48,404.4	95%	45,984.2	5%	2,420.2
English sole	Coastwide	9,918.8	95%	9,422.9	5%	495.9
Lingcod	N of 40'10° N. lat.	4,263.0	45%	1,918.4	55%	2,344.7
Lingcod	S of 40'10° N. lat.	857.7	45%	386.0	55%	471.7
Longnose skate a/	Coastwide	1,851.7	90%	1,666.5	10%	185.2
Longspine thornyhead	N of 34°27' N. lat.	2,419.6	95%	2,298.6	5%	121.0
Pacific cod	Coastwide	1,093.8	95%	1,039.1	5%	54.7
Pacific whiting	Coastwide	TBD	100%	f/	0%	TBD
Pacific ocean perch e/	N of 40°10' N. lat.	4,206.6	95%	3,996.3	5%	210.3
Petrale sole	Coastwide	2,524.4	95%	2,398.2	5%	126.2
Sablefish	N of 36° N. lat.	NA	See Table 2c			
Sablefish	S of 36° N. lat.	2,027.8	42%	851.7	58%	1,176.1
Shortspine thornyhead	N of 34°27' N. lat.	1,603.7	95%	1,523.5	5%	80.2
Shortspine thornyhead	S of 34°27' N.		NA	50.0	NA	831.8

	lat.	881.8				
Splitnose rockfish	S of 40°10' N. lat.	1,714.4	95%	1,628.7	5%	85.7
Stary flounder	Coastwide	433.2	50%	216.6	50%	216.6
Widow rockfish f/	Coastwide	10,950.6	91%	9,965.0	9%	985.6
YELLOWEYE ROCKFISH	Coastwide	42.9	8%	3.4	92%	39.5
Yellowtail rockfish	N of 40°10' N. lat.	4,670.9	88%	4,110.4	12%	560.5
Minor Shelf Rockfish North	N of 40°10' N. lat.	1,971.1	60.2%	1,186.6	39.8%	784.5
Minor Shelf Rockfish South	S of 40°10' N. lat.	1,545.9	12.2%	188.6	87.8%	1,357.3
Minor Slope Rockfish North	N of 40°10' N. lat.	1,651.2	81%	1,337.5	19%	313.7
Minor Slope Rockfish South	S of 40°10' N. lat.	722.8	63%	455.4	37%	267.4
Other Flatfish	Coastwide	5,791.5	90%	5,212.4	10%	579.2

a/ Allocations decided through the biennial specification process.

b/ The cowcod fishery harvest guideline is further reduced to an ACT of 6.0 mt.

c/ 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

d/ Consistent with regulations at §660.55(c), 9 percent (66.8 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 28.1 mt for the Shorebased IFQ Program, 16.0 mt for the MS sector, and 22.7 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

e/ Consistent with regulations at §660.55(c), 17 percent (679.4 mt) of the total trawl allocation for Pacific ocean perch is allocated to the Pacific whiting fishery, as follows: 285.3 mt for the Shorebased IFQ Program, 163.0 mt for the MS sector, and 231.0 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(c), 10 percent (996.5 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 418.5 mt for the shorebased IFQ fishery, 239.2 mt for the mothership fishery, and 338.8 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

Table 2c. to Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2020 and Beyond

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research				Percent	mt	Percent	mt b/
2020	5,723	572	30.68	6	1.1	5,113	90.6	4,632	9.4	481

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		All Trawl	At-sea Whiting	Shorebased IFQ	All FG	Primary	DTL
2020	4,632	2,687	50	2,637	1,946	1,654	292

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 563 mt in 2020.

b/ The open access HG is taken by the incidental OA fishery and the directed OA fishery.

c/ The trawl allocation is 58 percent of the limited entry HG

d/ The limited entry fixed gear allocation is 42 percent of the limited entry HG

Table 2d. to Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2020 and Beyond

Stock or Stock Complex	Area	Set Aside (mt)
COWCOD	S. of 40°10 N. lat.	NA
YELLOWEYE ROCKFISH	Coastwide	0
Arrowtooth flounder	Coastwide	70
Bocaccio	S. of 40°10 N. lat.	NA
Canary rockfish a/	Coastwide	Allocation
Chilipepper rockfish	S. of 40°10 N. lat.	NA
Darkblotched rockfish b/	Coastwide	38.7
Dover sole	Coastwide	5
English sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose skate	Coastwide	5
Longspine thornyhead	N. of 34°27 N. lat.	5
Longspine thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific cod	Coastwide	5
Pacific Halibut c/	Coastwide	10
Pacific ocean perch d/	N. of 40°10 N. lat.	394
Pacific Whiting	Coastwide	Allocation
Petrale sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine thornyhead	N. of 34°27 N. lat.	30
Shortspine thornyhead	S. of 34°27 N. lat.	NA
Starry flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
Yellowtail rockfish	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

b/ Darkblotched rockfish will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at § 660.55(c)(1)(i)(A), resulting in a set-aside of 16.0 mt for the MS sector, and a set-aside of 22.7 mt for the C/P sector.

c/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to be approximately 5 mt each).

d/ Pacific ocean perch will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at § 660.55(c)(1)(i)(B), resulting in a set-aside of 163 mt for the MS sector, and a set-aside of 231 mt for the C/P sector.

■ 12. In § 660.130, add paragraph (c)(2)(ii), revise paragraphs (d)(1)(ii) and (e)(6), and add paragraph (e)(8) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(ii) The use of selective flatfish trawl gear is required inside the Klamath River Salmon Conservation Zone (defined at § 660.131(c)(1)) and the Columbia River Salmon Conservation Zone (defined at § 660.131(c)(2)).

* * * * *

(d) * * *

(1) * * *

(ii) *North of 40°10′ N lat.* POP, yellowtail rockfish, Washington cabezon/kelp greenling complex, Oregon cabezon/kelp greenling complex, cabezon off California;

* * * * *

(e) * * *

(6) *Bycatch reduction areas (BRAs).* Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward of a boundary line approximating the 75 fm (137 m), 100 fm (183 m), 150 fm (274 m), or 200 fm (366 m) depth contours.

* * * * *

(8) *Salmon conservation zones.* Fishing with midwater trawl gear and bottom trawl gear, other than selective flatfish trawl gear, is prohibited in the following areas:

(i) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80′ N lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W long. (approximately 12 nm from shore), and on the south by 41°26.80′ N lat. (approximately 6 nm south of the Klamath River mouth).

(ii) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N lat. to 124°13.30′ W long., then southerly along a line of 167 True to 46°11.10′ N lat. and 124°11′ W long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

* * * * *

■ 13. In § 660.131, remove and reserve paragraph (c)(3) and add paragraph (i).

The addition reads as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(i) *Salmon bycatch.* This fishery may be closed through automatic action at § 660.60(d)(1)(v) and (vi).

■ 14. In § 660.140, revise paragraphs (d)(1)(ii)(D), (e)(4)(i), (g)(1), (h)(1)(i)(A)(*3*), and (l)(2) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Arrowtooth flounder	Coastwide	12,735.1	10,052.3
Bocaccio	South of 40°10′ N lat.	800.7	767.1
Canary rockfish	Coastwide	946.9	887.8
Chilipepper	South of 40°10′ N lat.	1,838.3	1,743.8
COWCOD	South of 40°10′ N lat.	2.2	2.2
Darkblotched rockfish	Coastwide	658.4	703.4
Dover sole	Coastwide	45,979.2	45,979.2
English sole	Coastwide	9,375.1	9,417.9
Lingcod	North of 40°10′ N lat.	2,051.9	1,903.4
Lingcod	South of 40°10′ N lat.	462.5	386.0
Longspine thornyhead	North of 34°27′ N lat.	2,420.0	2,293.6
Minor Shelf Rockfish complex	North of 40°10′ N lat.	1,155.2	1,151.6
Minor Shelf Rockfish complex	South of 40°10′ N lat.	188.6	188.6
Minor Slope Rockfish complex	North of 40°10′ N lat.	1,248.8	1,237.5
Minor Slope Rockfish complex	South of 40°10′ N lat.	1,049.1	455.4
Other Flatfish complex	Coastwide	5,603.7	5,192.4
Pacific cod	Coastwide	1,034.1	1,034.1
Pacific ocean perch	North of 40°10′ N lat.	3,697.3	3,602.2
Pacific whiting	Coastwide	TBD	TBD
Petrale sole	Coastwide	2,453.0	2,393.2
Sablefish	North of 36° N lat.	2,581.3	2,636.8
Sablefish	South of 36° N lat.	834.0	851.7
Shortspine thornyhead	North of 34°27′ N lat.	1,511.8	1,498.5
Shortspine thornyhead	South of 34°27′ N lat	50.0	50.0
Splitnose rockfish	South of 40°10′ N lat.	1,646.7	1,628.7

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Starry flounder	Coastwide	211.6	211.6
Widow rockfish	Coastwide	9,928.8	9,387.1
YELLOWEYE ROCKFISH	Coastwide	3.4	3.4
Yellowtail rockfish	North of 40°10′ N lat	4,057.7	3,810.4

* * * * *

(e) * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the annual QP vessel limit in any year. The annual QP vessel limit is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

Species category	Annual QP vessel limit (in percent)
Arrowtooth flounder	20
Bocaccio S of 40°10′ N lat	15.4
Canary rockfish	10
Chilipepper S of 40°10′ N lat	15
Cowcod S of 40°10′ N lat	17.7
Darkblotched rockfish	6.8
Dover sole	3.9
English sole	7.5
Lingcod:	
N of 40°10′ N lat	5.3
S of 40°10′ N lat	13.3
Longspine thornyhead:	
N of 34°27′ N lat	9
Minor rockfish complex N of 40°10′ N lat:	
Shelf species	7.5
Slope species	7.5
Minor rockfish complex S of 40°10′ N lat:	
Shelf species	13.5
Slope species	9
Other Flatfish complex	15
Pacific cod	20
Pacific halibut (IBQ) N of 40°10′ N lat	14.4
Pacific ocean perch N of 40°10′ N lat	6
Pacific whiting (shoreside)	15
Petrale sole	4.5
Sablefish:	
N of 36° N lat (Monterey north)	4.5
S of 36° N lat (Conception area)	15
Shortspine thornyhead:	
N of 34°27′ N lat	9
S of 34°27′ N lat	9
Splitnose rockfish S of 40°10′ N lat	15
Starry flounder	20
Widow rockfish	8.5
Yelloweye rockfish	11.4
Yellowtail rockfish N of 40°10′ N lat	7.5
Non-whiting groundfish species	3.2

* * * * *

(g) * * *

(1) *General.* Shorebased IFQ Program vessels may discard IFQ species/species groups, and the discard mortality must be accounted for and deducted from QP in the vessel account. With the exception of vessels on Pacific whiting IFQ trips engaged in maximized retention, prohibited and protected species must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A) * * *

(*3*) Is exempt from the requirement to maintain observer coverage as specified in this paragraph while remaining docked in port when the observer makes available to the catch monitor an Observer Program reporting form documenting the weight and number of any overfished species listed under a rebuilding plan at § 660.40 retained during that trip and which documents any discrepancy the vessel operator and observer may have in the weights and number of the overfished species, unless modified inseason under routine management measures at § 660.60(c)(1).

* * * * *

(l) * * *

(2) *AMP QP pass through.* The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS until an alternative use of AMP QP is implemented.

■ 15. In § 660.150, revise paragraph (c)(1)(ii) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) * * *

(1) * * *

(ii) Species with set-asides for the MS and C/P Coop Programs, as described in Table 1d and Table 2d, subpart C.

* * * * *

■ 16. In § 660.160, revise paragraph (c)(1)(ii) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(c) * * *

(1) * * *

(ii) Species with set-asides for the MS and C/P Programs, as described in Table 1d and 2d, subpart C.

* * * * *

■ 17. Revise Tables 1 (North) and 1 (South) to part 660, subpart D to read as follows:

Table 1 (North) to Part 660, Subpart D—Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10′ N Lat.

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07/09/2018

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 45°46' N. lat.	100 fm line[1/] - 150 fm line[1/]					
2	45°46' N. lat. - 40°10' N. lat.	100 fm line[1/] - modified[2/] 200 fm line[1/]					

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted for vessels targeting whiting and non-whiting during the days open to the primary whiting season.

Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70 660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

3	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**	300 lb/ month					
4	**Whiting[3/]**						
5	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
6	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
7	**Oregon Cabezon/Kelp Greenling complex**	50 lb/ month					
8	**Cabezon in California**	50 lb/ month					
9	**Shortbelly rockfish**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Big skate**	5,000 lb/ 2 months	25,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	10,000 lb/ 2 months	5,000 lb/ 2 months
12	**Longnose skate**	Unlimited					
13	**Other Fish [4/]**	Unlimited					

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ As specified at §660.131(d), when fishing in the Eureka Area, no more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour.

4/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D—Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10′ N Lat.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07/09/2018

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/ 2/]					

Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70 660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly rockfish**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Big skate**	5,000 lb/ 2 months	25,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	10,000 lb/ 2 months	5,000 lb/ 2 months
12	**Longnose skate**	Unlimited					
13	**California scorpionfish**	Unlimited					
14	**Other Fish [3/]**	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 18. In § 660.230, revise paragraphs (c)(2)(ii) and (d)(10)(ii) and add paragraph (f) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(ii) North of 40°10′ N lat.—POP, yellowtail rockfish, cabezon (California), Washington cabezon/kelp greenling complex, Oregon cabezon/kelp greenling complex;

* * * * *

(d) * * *

(10) * * *

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 40 fm (73 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

* * * * *

(f) *Salmon bycatch.* This fishery may be closed through automatic action at § 660.60(d)(1)(v) and (vi).

■ 19. In § 660.231, revise paragraph (b)(3)(i) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2019, the following annual limits are in effect: Tier 1 at 47,637 lb (21,608 kg), Tier 2 at 21,653 lb (9,822 kg), and Tier 3 at 12,373 lb (5,612 kg). In 2020 and beyond, the following annual limits are in effect: Tier 1 at 48,642 lb (22,064 kg), Tier 2 at 22,110 lb (10,029 kg), and Tier 3 at 12,634 lb (5,731 kg).

* * * * *

■ 20. Revise Tables 2 (North) and 2 (South) to part 660, subpart E, to read as follows:

Table 2 (North) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10′ N Lat.

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

07/09/2018

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	500 lb/ month					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,200 lb/week, not to exceed 3,600 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9							
10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
11							
12							
13							
14							
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	1,000 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**						
24	North of 42°00' N. lat.	2,000 lb/ 2 months					
25	42°00' N. lat. - 40°10' N. lat.	1,400 lb/2 months					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Other Fish[6/] & Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10′ N Lat.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

07/09/2018

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.		40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.		75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**		40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish			40,000 lb/ 2 months, of which no more than 1,600 lb may be blackgill rockfish		
4	**Splitnose rockfish**		40,000 lb/ 2 months					
5	**Sablefish**							
6		40°10' N. lat. - 36°00' N. lat.	1,200 lb/week, not to exceed 3,600 lb/ 2 months					
7		South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**		10,000 lb/ 2 months					
9	**Shortspine thornyhead**							
10		40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11		South of 34°27' N. lat.	3,000 lb/ 2 months					
12 13 14 15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**		5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
18	**Whiting**		10,000 lb/ trip					
19	**Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)**							
20		40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21		South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	4,000 lb/ 2 months			
22	**Chilipepper**							
23		40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits -- See above					
24		South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**							
26		40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months					
27		South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			
28	**Yelloweye rockfish**		CLOSED					
29	**Cowcod**		CLOSED					
30	**Bronzespotted rockfish**		CLOSED					
31	**Bocaccio**							
32		40°10' N. lat. - 34°27' N. lat.	1,000 lb/ 2 months					
33		South of 34°27' N. lat.	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
34	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**							
35	Shallow nearshore[4/]		1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	Deeper nearshore[5/]		1,000 lb/ 2 months	CLOSED	1,000 lb/ 2 months			
37	**California Scorpionfish**		1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
38	**Lingcod[6/]**		200 lb/ 2 months	CLOSED	800 lb/ 2 months	1,200 lb/ 2 months	600 lb/ month	300 lb/ month
39	**Pacific cod**		1,000 lb/ 2 months					
40	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
41	**Longnose skate**		Unlimited					
42	**Other Fish[7/] & Cabezon in California**		Unlimited					
43	**Big Skate**		Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 21. In § 660.330, revise paragraphs (c)(2)(ii) and (d)(11)(ii) and add paragraph (f) to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(ii) North of 40°10′ N lat.—POP, yellowtail rockfish, cabezon (California), Washington cabezon/kelp greenling complex, Oregon cabezon/kelp greenling complex;

* * * * *

(d) * * *

(11) * * *

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 40 fm (73 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), has been filed with NMFS OLE.

* * * * *

(f) *Salmon bycatch.* This fishery may be closed through automatic action at § 660.60(d)(1)(v) and (d)(1)(vi).

■ 22. In § 660.333, revise paragraph (c)(3) to read as follows:

§ 660.333 Open access non-groundfish trawl fishery—management measures.

* * * * *

(c) * * *

(3) The landing includes California halibut of a size required by California Fish and Game Code section 8392, which states: ''No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.''

* * * * *

■ 23. Revise Tables 3 (North) and 3 (South) in part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N Lat.

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 07/09/2018

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.		shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.		30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.		30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		500 pounds/month					
5	**Pacific ocean perch**		100 lb/ month					
6	**Sablefish**		300 lb/ day; or one landing per week up to 1,000 lb, not to exceed 2,000 lb/ 2 months					
7	**Shortpine thornyheads**		50 lb/ month					
8	**Longspine thornyheads**		50 lb/ month					
9 10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**		3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
11 12 13 14			South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
15	**Whiting**		300 lb/ month					
16	**Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish**		200 lb/ month					
17	**Yellowtail rockfish**		500 lb/ month					
18	**Canary rockfish**		150 lb/ 2 months					
19	**Yelloweye rockfish**		CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish, & Oregon Black/Blue/Deacon rockfish**							
21		North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish					
22		42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**							
24		North of 42°00' N. lat.	900 lb/ month					
25		42°00' N. lat. - 40°10' N. lat.	600 lb/ month					
26	**Pacific cod**		1,000 lb/ 2 months					
27	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**		Unlimited					
29	**Big skate**		Unlimited					
30	**Other Fish[6/] & Cabezon in California**		Unlimited					
31	**Oregon Cabezon/Kelp Greenling**		Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

TABLE 3 (North) cont'd

32	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*	
33	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 5 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.
34	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
35	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10′ N Lat.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 07/09/2018

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.		40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.		75 fm line[1/] - 150 fm line[1/](also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish			10,000 lb/ 2 months, of which no more than 550 lb may be blackgill rockfish		
4	**Splitnose rockfish**		200 lb/ month					
5	**Sablefish**							
6		40°10' N. lat. - 36°00' N. lat.	300 lb/ day or one landing per week up to 1,000 lb, not to exceed 2,000 lb/ 2 months					
7		South of 36°00' N. lat.	300 lb/ day, or one landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Shortpine thornyheads and longspine thornyheads**							
9		40°10' N. lat. - 34°27' N. lat.	CLOSED					
10		South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11 12 13 14 15 16	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**		3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
17	**Whiting**		300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**							
19		40°10' N. lat. - 34°27' N. lat.	400 lb/ 2 months	CLOSED	400 lb/ 2 months			
20		South of 34°27' N. lat.	1,500 lb/ 2 months		1,500 lb/ 2 months			
21	**Canary rockfish**		150 lb/ 2 months	CLOSED	150 lb/ 2 months			
22	**Yelloweye rockfish**		CLOSED					
23	**Cowcod**		CLOSED					
24	**Bronzespotted rockfish**		CLOSED					
25	**Bocaccio**		500 lb/ 2 months	CLOSED	500 lb/ 2 months			
26	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**							
27	Shallow nearshore[4/]		1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
28	Deeper nearshore[5/]		1,000 lb/ 2 months	CLOSED	1,000 lb/ 2 months			
29	**California scorpionfish**		1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
30	**Lingcod[6/]**		300 lb/ month	CLOSED	300 lb/ month			
31	**Pacific cod**		1,000 lb/ 2 months					
32	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
33	**Longnose skate**		Unlimited					
34	**Big skate**		Unlimited					
35	**Other Fish[7/] & Cabezon in California**		Unlimited					

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) cont'd

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
36	RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL							
37	NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:							
38		*40°10' N. lat. - 38°00' N. lat.*	*100 fm line 1/ - 200 fm line 1/*	*100 fm line 1/ - 150 fm line 1/*				*100 fm line 1/ - 200 fm line 1/*
39		*38°00' N. lat. - 34°27' N. lat.*	*100 fm line 1/ - 150 fm line 1/*					
40		*South of 34°27' N. lat.*	*100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands*					
41			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
42	PINK SHRIMP NON-GROUNDFISH TRAWL GEAR *(not subject to RCAs)*							
43		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

■ 24. Amend § 660.360 as follows:

■ a. Revise paragraphs (c)(1) introductory text, (c)(1)(i)(D)(*1*) through (*3*), (c)(1)(ii) through (iv), (c)(2)(i)(B), (c)(3)(i)(A) through (C), (c)(3)(ii)(D), (c)(3)(iii)(B), (c)(3)(iii)(D), (c)(3)(iv), and (c)(3)(v)(A) and (B); and

■ b. Add paragraph (d).

The revisions and addition read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 9 groundfish per day, including rockfish, cabezon and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. In addition to the groundfish bag limit of 9, there will be a flatfish limit of 3 fish, not to be counted towards the groundfish bag limit but in addition to it. The recreational groundfish fishery will open the second Saturday in March through the third Saturday in October for all species. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. The following seasons, closed areas, sub-limits and size limits apply:

* * * * *

(i) * * *

(D) * * *

(*1*) West of the Bonilla-Tatoosh line between the U.S. border with Canada and the Queets River (Washington state Marine Area 3 and 4), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20 fm (37 m) depth contour from June 1 through Labor Day, except on days when the Pacific halibut fishery is open in this area it is lawful to retain lingcod, Pacific cod, and sablefish seaward of the 20 fm (37 m) boundary. Yellowtail and widow rockfish can be retained seaward of 20 fm (37 m) in the months of July and August on days open to the recreational salmon fishery. Days open to Pacific halibut recreational fishing off Washington and days open to recreational fishing for salmon are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20 fm (37 m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River (47°31.70′ N lat.) and Leadbetter Point (46°38.17′ N lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from the second

Saturday in March through May 31 with the following exceptions: Recreational fishing for lingcod is permitted within the RCA on days that the primary halibut fishery is open; recreational fishing for lingcod is allowed on Sundays in May, but only if the Pacific halibut recreational fishery in this area is scheduled to be open for less than four days. In addition to the RCA described above, between the Queets River (47°31.70′ N lat.) and Leadbetter Point (46°38.17′ N lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited January 1 through May 31, June 16 through August 31, and September 16 through December 31 seaward of a straight line connecting all of the following points in the order stated: 47°31.70′ N lat., 124°45.00′ W long.; 46°38.17′ N lat., 124°30.00′ W long. with the following exceptions: On days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the lingcod area closure; if the Pacific halibut recreational fishery is scheduled to be open less than four days, lingcod may be taken, retained, and possessed within the lingcod area closure on Sundays in May. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*3*) Between Leadbetter Point (46°38.17′ N lat.) and the Columbia River (46°16.00′ N lat.) (Marine Area 1), when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish, flatfish species (except halibut), Pacific cod, and lingcod from May 1 through September 30. Except that taking, retaining, possessing or landing incidental halibut with groundfish on board is allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries in the area shoreward of the boundary line approximating the 30 fathom (55 m) depth contour extending from Leadbetter Point, WA (46°38.17′ N lat., 124°15.88′ W long.) to the Columbia River (46°16.00′ N lat., 124°15.88′ W long.) and from there, connecting to the boundary line approximating the 40 fathom (73 m) depth contour in Oregon. Nearshore season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. Between Leadbetter Point (46°38.17′ N lat. 124°21.00′ W long.) and 46°33.00′ N lat. 124°21.00′ W long., recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 46°38.17′ N lat., 124°21.00′ W long.; and 46°33.00′ N lat., 124°21.00′ W long.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a 7 rockfish per day bag limit. Taking and retaining yelloweye rockfish is prohibited in all Marine areas.

(iii) *Cabezon.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a 1 cabezon per day bag limit.

(iv) *Lingcod.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day. The recreational fishing season for lingcod is open from the second Saturday in March through the third Saturday in October.

(2) * * *

(i) * * *

(B) *Recreational rockfish conservation area (RCA).* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or groundfish conservation area, except with long-leader gear (as defined at § 660.351). It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, except with long-leader gear (as defined at § 660.351). A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while within the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from June 1 through August 31, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour, except that fishing for flatfish (other than Pacific halibut) is allowed seaward of the 40 fm (73 m) depth contour when recreational fishing for groundfish is permitted. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.71.

* * * * *

(3) * * *

(i) * * *

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.] If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the recreational RCA and shoreward of the recreational RCA, unless otherwise authorized in this section.

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for all groundfish (except petrale sole, starry flounder, and ''Other Flatfish'' as specified in paragraph (c)(3)(iv) of this section) is closed from January 1 through April 30; is prohibited seaward of the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through October 31 (shoreward of 30 fm is open); and is open at all depths from November 1 through December 31. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for all groundfish (except petrale sole, starry flounder, and ''Other Flatfish'' as specified in paragraph (c)(3)(iv) of this section) is closed from January 1 through April 30; prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through October 31 (shoreward of 20 fm is open), and is open at all depths from November 1 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing

for all groundfish (except petrale sole, starry flounder, and ''Other Flatfish'' as specified in paragraph (c)(3)(iv) of this section) is closed from January 1 through April 1; is prohibited seaward of the boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through December 31. Closures around Cordell Banks (see paragraph (c)(3)(i)(C) of this section) also apply in this area. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for all groundfish (except petrale sole, starry flounder, and ''Other Flatfish'' as specified in paragraph (c)(3)(iv) of this section) is closed from January 1 through March 31; and is prohibited seaward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through December 31. Coordinates for the boundary line approximating the 50 fm (91 m) depth contour are specified in § 660.72.

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish, ''Other Flatfish,'' petrale sole, and starry flounder) is closed entirely from January 1 through February 28. Recreational fishing for all groundfish (except ''Other Flatfish,'' petrale sole, and starry flounder, as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 75 fm (137 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 40 fm (73 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Coordinates for the boundary lines approximating the depth contours are specified at §§ 660.71 through 660.74.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for petrale sole, starry flounder, and ''Other Flatfish'' is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is prohibited seaward of the 40 fm (37 m) depth contour when the season for those species is open south of 34°27′ N lat.: Minor Nearshore Rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and shelf rockfish. Retention of yelloweye rockfish, bronzespotted rockfish and cowcod is prohibited within the CCA. [*Note:* California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward-of the 40 fm (73 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N lat.] It is unlawful to take and retain, possess, or land groundfish taken within the CCAs, except for species authorized in this section.

(C) *Cordell Banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C, except that recreational fishing for petrale sole, starry flounder, and ''Other Flatfish'' is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section.

* * * * *

(ii) * * *

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery.

* * * * *

(iii) * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(*1*) The bag limit between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area) is 2 lingcod per day.

(*2*) The bag limit between 40°10′ N lat. and the U.S. border with Mexico (Mendocino Management Area, San Francisco Management Area, Central Management Area, and Southern Management Area) is 1 lingcod per day.

* * * * *

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 14 in (36 cm) in length. Each fillet shall bear an intact 1 in (2.6 cm) square patch of skin.

(iv) ''*Other Flatfish,*'' *petrale sole, and starry flounder.* Coastwide off California, recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder, is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. ''Other Flatfish'' are defined at § 660.11, subpart C, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. ''Other Flatfish,'' are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species; there is no daily bag limit for petrale sole, starry flounder and Pacific sanddab. There are no size limits for ''Other Flatfish,'' petrale sole, and starry flounder. ''Other Flatfish'', petrale sole, and starry flounder may be filleted at sea. Fillets may be of any size, but must bear intact a one-inch square patch of skin.

(v) * * *

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for California scorpionfish is open from May 1 through December 31 (*i.e.,* it's closed from January 1 through April 30).

(*2*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for California scorpionfish is open from April 15 through December 31 (*i.e.,* it's closed from January 1 through April 14).

(*3*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for California scorpionfish is open from April 1 through December 31 (*i.e.,* it's closed from January 1 through March 31).

(*4*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for California scorpionfish is open from January 1 through December 31.

(B) *Bag limits, hook limits.* South of 40°10.00′ N lat., in times and areas where the recreational season for California scorpionfish is open there is a limit of 2 hooks and 1 line, the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(d) *Salmon bycatch.* Recreational fisheries that are not accounted for within pre-season salmon modeling may be closed through automatic action at 660.60(d)(1)(v) and (d)(1)(vi).

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Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 391
Qualifications of Drivers; Diabetes Standard; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2005–23151]

RIN 2126–AA95

Qualifications of Drivers; Diabetes Standard

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA revises its regulations to permit individuals with a stable insulin regimen and properly controlled insulin-treated diabetes mellitus (ITDM) to be qualified to operate commercial motor vehicles (CMVs) in interstate commerce. Previously, ITDM individuals were prohibited from driving CMVs in interstate commerce unless they obtained an exemption from FMCSA. This rule enables a certified medical examiner (ME) to grant an ITDM individual a Medical Examiner's Certificate (MEC), MCSA–5876, for up to a maximum of 12 months. To do so, the treating clinician (TC), the healthcare professional who manages, and prescribes insulin for, the treatment of the individual's diabetes, provides the Insulin-Treated Diabetes Mellitus Assessment Form (ITDM Assessment Form), MCSA–5870, to the certified ME indicating that the individual maintains a stable insulin regimen and proper control of his or her diabetes. The certified ME then determines that the individual meets FMCSA's physical qualification standards and can operate CMVs in interstate commerce.

DATES: This final rule is effective November 19, 2018, except for amendatory instruction 5.b. which is effective November 19, 2019. Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before November 19, 2018.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than October 19, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–4001, or by email at *fmcsamedical@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2005–23151 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), the Department of Transportation (DOT) solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Amendments

This final rule amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow individuals with stable insulin regimens and properly controlled ITDM to drive CMVs in interstate commerce if they meet the physical qualification standards in §§ 391.41, 391.45, and 391.46. The final rule eliminates the diabetes grandfather provision under § 391.64(a) 1 year after the effective date of this rule and also eliminates the need for the Federal diabetes exemption program.

B. Summary of Major Provisions

This final rule allows individuals with stable insulin regimens and properly controlled ITDM to drive CMVs in interstate commerce if they have an annual or more frequent examination by a certified ME who is listed on the National Registry of Certified Medical Examiners (National Registry), are found physically qualified to operate a CMV, and are issued an

MEC, MCSA–5876, from a certified ME. Prior to the annual or more frequent examination by the certified ME, the individual must have an evaluation by his or her TC. The final rule defines a TC as the healthcare professional who manages, and prescribes insulin for, the treatment of the individual's diabetes as authorized by the healthcare professional's State licensing authority.

The TC provides information to the certified ME via the ITDM Assessment Form, MCSA–5870, on which the TC attests that the individual maintains a stable insulin regimen and proper control of his or her diabetes. The certified ME must receive the ITDM Assessment Form, MCSA–5870, no later than 45 days after the individual's TC has completed and signed it for each medical examination. Upon receipt of a valid form, the certified ME will perform an examination, consider the information provided by the TC, and determine whether the individual meets FMCSA's physical qualification standards to operate a CMV safely. If so, the certified ME may issue an MEC, MCSA–5876, for up to a maximum of 12 months.

The final rule requires that all ITDM individuals must provide to the TC at least the preceding 3 months of blood glucose self-monitoring records while being treated with insulin to be eligible for up to the maximum 12-month MEC, MCSA–5876. If an individual does not provide the 3 months of records, the certified ME has discretion to grant the individual up to but not more than a 3-month MEC, MCSA–5876, to allow time for the individual to collect the necessary records. Once the individual has 3 months of blood glucose self-monitoring records, the individual is treated the same as an ITDM individual with 3 months of records. The individual must first go to the TC for evaluation and then to the certified ME, who must exercise independent medical judgment, to determine if the individual is eligible for up to the maximum 12-month MEC, MCSA–5876.

If an ITDM individual has had a severe hypoglycemic episode, the individual is prohibited from operating a CMV and must report the episode to and be evaluated by a TC as soon as is reasonably practicable. The prohibition from operating a CMV continues until the ITDM individual has been evaluated by a TC and the TC determines that the cause of the severe hypoglycemic episode has been addressed and that the individual again has a stable insulin regimen and properly controlled ITDM. Once a TC completes a new ITDM Assessment Form, MCSA–5870, following the episode, the individual may resume operating a CMV. This rule defines a severe hypoglycemic episode as one requiring the assistance of others, or resulting in loss of consciousness, seizure, or coma.

ITDM individuals who have been diagnosed with severe non-proliferative diabetic retinopathy or proliferative diabetic retinopathy are disqualified permanently from operating a CMV in interstate commerce. These advanced stages of diabetic retinopathy present a serious risk to visual function, the safe operation of a CMV, and public safety.

The fewer than 100 ITDM individuals currently certified under the diabetes grandfather provision in § 391.64(a) will have 1 year after the effective date of this final rule to comply with the provisions of this rule. During that year, grandfathered individuals may elect to seek medical certification through the provisions of the final rule or § 391.64. However, 1 year after the effective date of this final rule, all grandfathered MECs, MCSA–5876, will become void. FMCSA anticipates that individuals certified previously under § 391.64(a) will find it advantageous to transition to certification under this rule as soon as possible because costs potentially may be reduced and the requirements of this rule are no more stringent than those of § 391.64(a).

FMCSA has determined that this rule will ensure that ITDM individuals can operate a CMV safely. This final rule also creates a clearer, equally effective, and more consistent framework to certify ITDM individuals than a program based entirely on granting exemptions under 49 U.S.C. 31315(b).

C. Benefits and Costs

This rule revises the FMCSRs to permit individuals with a stable insulin regimen and properly controlled ITDM to be qualified to operate CMVs in interstate commerce. Previously, ITDM individuals were prohibited from driving CMVs in interstate commerce unless they obtained an exemption from FMCSA. Revising the regulations will reduce the regulatory burden and result in a $6.21 million cost savings per year—the aggregate of cost savings to ITDM individuals, motor carriers that hire ITDM individuals, and FMCSA.

The notice of proposed rulemaking (NPRM) stage of this rulemaking action predates the January 30, 2017, Executive Order (E.O.) 13771 titled ''Reducing Regulation and Controlling Regulatory Costs'' (82 FR 9339, Feb. 3, 2017). As such, the analysis of this final rule introduces several changes necessary to clarify that the final rule will result in total costs less than zero. The Agency presents the following comparison of the NRPM and final rule analyses.

The Preliminary Regulatory Impact Analysis (RIA) published with the NPRM estimated that existing exemption holders would realize $0.76 million in cost savings attributable to the rule.[1] It also estimated there to be 209,664 ITDM individuals operating CMVs in interstate and intrastate commerce—a group that the NPRM estimated would incur costs ranging from $7.96 million to $23.90 million depending on the share of that group that would be medically qualified to receive an MEC, MCSA–5876.[2] That range of costs reflected *gross* compliance costs to those individuals; however, on a *relative* basis, the Agency estimated that compliance costs per individual under the proposed rule would decrease by $441 versus the cost to comply with the exemption program.

By reducing compliance costs per ITDM individual, the rule is a deregulatory action both as proposed in the NPRM and again with this final rule. The Agency concludes that an ITDM individual not currently participating in the exemption program will bear the compliance costs of the final rule only if he or she considers the cost to comply to be equal to or lesser than his or her perceived cost of non-compliance. As a result, ITDM individuals not currently participating in the exemption program will incur no new net costs from this rule, while existing exemption holders will (in aggregate) receive a savings of $5.09 million in compliance costs per year. On a per-individual basis, the compliance cost of the final rule is less than the baseline ($332 versus $5,585) during the first year an ITDM individual comes into compliance and is 75.4 percent less than the baseline ($332 versus $1,350) in each year thereafter.

The Final RIA estimates a greater amount of cost savings than in the Preliminary RIA as a result of several changes and updates. First, the Final RIA accounts for new ITDM individuals' opportunity costs of income forgone, as well as corresponding motor carriers' opportunity costs of labor hours forgone, during the period FMCSA processes an exemption program application. These costs were not considered in the Preliminary RIA; the Agency made these changes during the development of the Final RIA in response to comments received on the NPRM. Second, the final analysis has

[1] FMCSA Preliminary Regulatory Evaluation of Qualification of Drivers: Diabetes Standard Notice of Proposed Rulemaking, pp. 11–12, which is available in the docket for this rulemaking.

[2] *Id.* at 12–13.

been adjusted to correct the number of endocrinologist visits per year required by the exemption program, as these visits were not fully accounted for in the Preliminary RIA. Third, the Final RIA updates inputs used to estimate the costs of the rule. Medical fees for the various healthcare professionals' services, driver wage and benefits values, and the population of drivers were updated using 2016 values.

Table 1 summarizes the key requirements of the exemption program and compares them to the final rule. These requirements are reflected in the cost estimates of the exemption program and the final rule.

TABLE 1—REQUIREMENTS OF THE EXEMPTION PROGRAM VS. THE FINAL RULE

Exemption program (baseline)	Final rule
• The average processing time for a new exemption application is 77 days, during which applicants cannot drive CMVs in interstate commerce [3].	• No exemption needed, therefore no processing wait time.
• Annual examination by a certified ME	• Annual examination by a certified ME.
• Annual vision examination performed by an optometrist or ophthalmologist for evidence of diabetic retinopathy (if retinopathy is present, an ophthalmologist report on stability of disease).	• No annual vision examination is required.
• Annual examination by an endocrinologist and three quarterly visits ..	• No annual examination or quarterly evaluations by an endocrinologist are required. • Annual evaluation by the TC who completes an ITDM Assessment Form, MCSA–5870, that is provided to the certified ME.

As shown in Table 2, the annualized cost of the baseline (the exemption program) is estimated at $8.02 million, while the annualized cost of the final rule is estimated at $1.67 million. The annualized cost savings of the rule are therefore $6.35 million, a 79 percent decrease. These cost savings are distributed among certain groups of ITDM individuals, motor carriers, and FMCSA.

TABLE 2—TOTAL COSTS OF THE FINAL RULE

[Annualized in millions of 2016$]

Entities potentially impacted	Baseline cost	Final Rule cost	Total cost
Currently Compliant ITDM Individuals	$6.75	$1.66	($5.09)
Future Compliant ITDM Individuals	0.17	0.01	(0.16)
Non-Participating ITDM Individuals	0.00	0.00	0.00
Motor Carriers	0.07	0.00	(0.07)
FMCSA	1.03	0.00	(1.03)
Total	8.02	1.67	(6.35)

FMCSA estimates that currently compliant ITDM individuals (that is, individuals that currently have exemptions) will realize $5.09 million of annualized costs savings because of the rule. These ITDM individuals' costs to comply with the exemption program are estimated at $6.75 million, versus $1.66 million to comply with the final rule. This group of ITDM individuals consists of 3,945 FMCSA exemption holders and an estimated 930 ITDM individuals with intrastate commercial driver's licenses (CDLs) issued exemptions in accordance with State exemption programs.

The Agency estimates that the number of future compliant ITDM individuals that would obtain exemptions in the absence of the rule would increase annually by 27. Under the rule, the annualized cost savings realized by these 27 individuals are estimated at $0.16 million ($0.17 million to comply with the exemption program versus $0.01 million to comply with the final rule). The difference between the two cost estimates is due primarily to the elimination of the opportunity costs associated with the wait for FMCSA to process exemption program applications. Motor carriers are estimated to realize $0.07 million in cost savings due to the elimination of the application processing wait time.

As discussed earlier, ITDM individuals not currently participating in the exemption program (referred to as ''Non-Participating ITDM Individuals'' in Table 2) incur no new net costs from this rule.

Lastly, the rule will eliminate contractor costs that FMCSA incurs for the administration of the exemption program. The average cost of the remaining 3 option years of the contract is $1.03 million, which the Agency relies on to estimate FMCSA's annual cost savings resulting from the rule.

III. Abbreviations and Acronyms

AAFP American Academy of Family Physicians
AAPA American Academy of Physician Assistants
AAPA–OM American Academy of Physician Assistants in Occupational Medicine
ABA American Bus Association
ACOEM American College of Occupational and Environmental Medicine
ADA American Diabetes Association
Advocates Advocates for Highway and Auto Safety
ANPRM Advance Notice of Proposed Rulemaking
AOA American Optometric Association
APN Advanced Practice Nurse
ATA American Trucking Associations, Inc.
BLS Bureau of Labor Statistics
CAA Clean Air Act
CDC Centers for Disease Control and Prevention
CDL Commercial Driver's License
CE Categorical Exclusion
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
DC Doctor of Chiropractic
DO Doctor of Osteopathy
DOT Department of Transportation
E.O. Executive Order
FAA Federal Aviation Administration
FHWA Federal Highway Administration

[3] The 77 days represents the average processing time for 3,674 exemption applications accepted between 2012 and 2016 in the exemption program database maintained by the contractor that assists FMCSA with the administration of the diabetes exemption program.

FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
HIPAA Health Insurance Portability and Accountability Act
H&SW Health and Safety Works, LLC
IBT International Brotherhood of Teamsters
ICR Information Collection Request
ITDM Insulin-Treated Diabetes Mellitus
LFC Licencia Federal de Conductor
MD Doctor of Medicine
ME Medical Examiner
MEC Medical Examiner's Certificate, MCSA–5876
MRB Medical Review Board
National Registry National Registry of Certified Medical Examiners
NEPA National Environmental Policy Act
NP Nurse Practitioner
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Driver Association
PA Physician Assistant
PIA Privacy Impact Assessment
RIA Regulatory Impact Analysis
RN Registered Nurse
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
§ Section symbol
SOCO Southern Company Entities
SORN System of Records Notice
TC Treating Clinician
TEA–21 Transportation Equity Act for the 21st Century
TFAC Truckers for a Cause
TTD Transportation Trades Department, AFL–CIO
U.S.C. United States Code
University of Utah University of Utah School of Medicine
UMA United Motorcoach Association

IV. Legal Basis for the Rulemaking

FMCSA has authority under 49 U.S.C. 31136(a) and 31502(b)—delegated to the Agency by 49 CFR 1.87(f) and (i), respectively—to establish minimum qualifications, including medical and physical qualifications, for individuals operating CMVs in interstate commerce. Section 31136(a)(3) requires specifically that the Agency's safety regulations ensure that the physical conditions of CMV drivers enable them to operate their vehicles safely and that certified MEs trained in physical and medical examination standards perform the physical examinations required of such operators.

Additionally, in 2005, Congress authorized the creation of the Medical Review Board (MRB) composed of experts ''in a variety of medical specialties relevant to the driver fitness requirements'' to provide medical advice and recommendations on qualification standards (49 U.S.C. 31149(a)). The position of Chief Medical Examiner was authorized at the same time (49 U.S.C. 31149(b)). Under section 31149(c)(1), the Agency, with the advice of the MRB and Chief Medical Examiner, is directed to ''establish, review, and revise . . . medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' As discussed in the NPRM (80 FR 25260, May 4, 2015), the Agency asked the MRB to review and report on the current diabetes standard. More recently, the Agency directed the MRB to review and analyze all comments to the NPRM submitted from medical professionals and associations, and identify factors the Agency should consider in this rulemaking. The MRB's recommendations and the Agency's responses are described elsewhere in this final rule.

In addition to the statutory requirements specific to the physical qualifications of CMV drivers (49 U.S.C. 31136(a)(3)), FMCSA's regulations must also ensure that CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); that the responsibilities imposed on CMV drivers do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); that the operation of CMVs does not have a deleterious effect on the physical condition of the drivers (49 U.S.C. 31136(a)(4)); and that drivers are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a vehicle in violation of a regulation promulgated under 49 U.S.C. 31136 (which is the basis for much of the FMCSRs), 49 U.S.C. chapter 51 (which authorizes the hazardous materials regulations), or 49 U.S.C. chapter 313 (which is the authority for the CDL regulations and the related drug and alcohol testing requirements) (49 U.S.C. 31136(a)(5)).

This rule is based primarily on 49 U.S.C. 31136(a)(3) and 31149(c) and does not concern the requirements in 49 U.S.C. 31136(a)(1), (2), or (4). FMCSA believes that coercion of drivers with ITDM to violate the current rule preventing them from operating in interstate commerce, which is prohibited by 49 U.S.C. 31136(a)(5), does not and will not occur. On the contrary, motor carriers have been reluctant generally to employ such drivers at all. The original exemption program developed in the 1990s by the Federal Highway Administration (FHWA) and FMCSA's subsequent program under 49 U.S.C. 31315(b) allowed selected ITDM individuals to drive legally for the first time, while also generating data showing that their safety records were at least as good as those of all other drivers.

Section 4129 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, 1742, Aug. 10, 2005), in paragraphs (a) through (c), directed the Agency to relax certain requirements of its exemption program for ITDM individuals. Paragraph (d) of section 4129 provides that ITDM individuals may not be held by the Secretary of Transportation to a higher standard of physical qualification to operate a CMV in interstate commerce than other individuals applying to operate, or operating, a CMV in interstate commerce; except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations issued by the Secretary. FMCSA has determined that this final rule satisfies the purposes of section 4129(d) by imposing appropriate requirements on such individuals as contemplated by that provision and maintaining current levels of highway safety.

Finally, prior to prescribing any regulations, FMCSA must consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this final rule.

V. Background

A. Brief History of Physical Qualification Standards for CMV Drivers With ITDM

In 1939, one of FMCSA's predecessors recommended that CMV drivers have urine glucose tests as part of medical examinations for determining whether they were physically qualified to drive CMVs in interstate or foreign commerce (4 FR 2296, June 7, 1939). That recommendation remained in effect from January 1, 1940, until a replacement standard established by FHWA went into effect on January 1, 1971. In 1970, FHWA established the current standard for ITDM individuals (35 FR 6463, 6464, April 22, 1970), which also includes testing urine for glucose. That standard states that a ''person is physically qualified to drive a commercial motor vehicle if that person . . . [h]as no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)). Beginning in 1993, however, CMV drivers with ITDM had the opportunity to apply to FHWA for a waiver (57 FR 40690, July 29, 1993), until a 1994 Federal court decision invalidated the

waiver program. *See Advocates for Highway and Auto Safety* v. *FHWA,* 28 F.3d 1288 (D.C. Cir. 1994).

In 1998, section 4018 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, 413, June 9, 1998 (set out as a note to 49 U.S.C. 31305)) directed the Secretary to determine the feasibility of developing ''a practicable and cost-effective screening, operating, and monitoring protocol'' for allowing ITDM individuals to operate CMVs in interstate commerce. This protocol ''would ensure a level of safety equal to or greater than that achieved with the current prohibition on individuals with insulin treated diabetes mellitus driving such vehicles'' (section 4018(a)).

As also directed by section 4018, FHWA compiled and evaluated the available research and information. It assembled a panel of medical experts in the treatment of diabetes to investigate and report on issues concerned with the treatment, medical screening, and monitoring of ITDM individuals in the context of operating CMVs. In July 2000, FMCSA submitted a report to Congress titled, ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century'' (TEA–21 Report to Congress). This report concluded that it was feasible to establish a safe and practicable protocol containing three components allowing some ITDM individuals to operate CMVs. The three components were as follows: (1) Screening of qualified commercial drivers with ITDM; (2) establishing operational requirements to ensure proper disease management by such drivers; and (3) monitoring safe driving behavior and proper disease management.

On July 31, 2001, as a result of the conclusions found in the TEA–21 Report to Congress, FMCSA published a notice proposing to issue exemptions from the FMCSRs allowing ITDM individuals to operate CMVs in interstate commerce (66 FR 39548). After receiving and considering comments, FMCSA issued a notice of final disposition (''2003 Notice'') establishing the procedures and protocols for implementing the exemptions for ITDM individuals (68 FR 52441, Sept. 3, 2003). In conformity with the conclusions of the TEA–21 Report to Congress, the 2003 Notice implemented the three protocol components recommended in the report, with a few modifications. Beginning in 2003, ITDM individuals could apply to FMCSA for an exemption from the prohibition of operating CMVs in interstate commerce.

B. Exemption Program

FMCSA administers an exemption program for ITDM individuals who wish to become qualified or maintain their physical qualifications as CMV drivers. The Agency administers this exemption program under 49 CFR part 381, subpart C, according to directives in the 2003 Notice and a notice of revised final disposition published in 2005 (70 FR 67777, Nov. 8, 2005).

To apply for an exemption under the program administered by FMCSA, the individual must submit a letter application with medical documentation showing the following:[4]

(1) The ITDM individual has been examined by a board-certified or board-eligible endocrinologist who has (i) conducted a comprehensive evaluation including one glycosylated hemoglobin test (HbA1C) with a result within a range of 7 to 10 percent, inclusive,[5] and (ii) signed a statement regarding his or her determinations;

(2) The ITDM individual has obtained a signed statement from an ophthalmologist or optometrist indicating that the individual has been examined, has no unstable proliferative diabetic retinopathy, and meets the vision standard in § 391.41(b)(10); and

(3) The ITDM individual has obtained a signed copy of both a certified ME's Medical Examination Report Form, MCSA–5875, and an MEC, MCSA–5876, showing that the individual meets all physical qualification standards in § 391.41(b) other than the diabetes standard.

FMCSA does not conduct medical examinations of any individuals in the exemption program. Instead, it makes its decision whether to grant the exemption based on individual applications and supporting documentation from healthcare professionals. FMCSA cannot grant an exemption unless it is likely that a level of safety would be achieved that is equivalent to, or greater than, the level that would be achieved without the exemption (49 U.S.C. 31315(b) and 49 CFR 381.305(a)).

Before granting a request for an exemption, FMCSA must publish a notice in the **Federal Register**. The notice explains a request has been filed and provides the public an opportunity to inspect the safety analysis, and any other relevant information known to the Agency, and to comment on the request. The notice must identify: The individual who will receive the exemption; the provision(s) from which the individual will be exempted; the effective period; and all terms and conditions of the exemption. After the conclusion of the comment period, FMCSA must publish a notice of its decision to approve or deny the request.

Once approved, to maintain an exemption, the driver must:

(1) Have annual medical recertification by a certified ME;

(2) Have quarterly evaluations by an endocrinologist;

(3) Have annual comprehensive medical evaluations by an endocrinologist;

(4) Have annual vision evaluations that confirm there is no evidence of unstable proliferative diabetic retinopathy and the driver meets the vision standard for CMV drivers;

(5) Maintain appropriate medical supplies for glucose management, including a monitor, insulin, and an amount of rapidly-absorbable glucose, in the vehicle to be used as necessary;

(6) Follow a protocol to monitor and maintain blood glucose levels; and

(7) Report to the Agency all episodes of severe hypoglycemia, any significant complications relating to diabetes, the inability to manage his or her diabetes, and any involvement in a crash or other adverse event.

A driver must reapply for an exemption every 2 years. FMCSA may revoke an exemption immediately under standards established in § 381.330.

C. May 4, 2015, NPRM: Qualifications of Drivers; Diabetes Standard

In the May 2015 NPRM, FMCSA proposed to amend its physical qualification standards in § 391.41 to allow ITDM individuals to operate CMVs (80 FR 25272). Proposed paragraph (b)(3) provided that an individual was physically qualified to drive a CMV either by having no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, or by meeting the requirements in new § 391.46.

The NPRM also proposed to reorganize § 391.45, which provides when individuals must be medically examined and certified, and to add a new paragraph (e). That proposed paragraph required any ITDM individual who had been qualified for an MEC, MCSA–5876, under the standards in § 391.46 to be medically examined and certified as qualified to drive at least every 12 months.

[4] The requirements to apply for and maintain an exemption are not exhaustive.

[5] FMCSA subsequently removed the requirement to include one HbA1C result on the application itself.

Proposed § 391.46 provided that an ITDM individual was physically qualified to operate a CMV if the individual otherwise met the physical qualification standards in § 391.41, or had the exemption or skill performance evaluation certificate, if required, and had the medical evaluations required by § 391.46.

Prior to the annual or more frequent examination by a certified ME, the ITDM individual would have to be evaluated by the TC. The TC was defined in the proposed rule as a physician or health care professional who manages and prescribes insulin for the treatment of individuals with diabetes mellitus. The TC would have to determine that within the previous 12 months the individual: Had no severe hypoglycemic reaction resulting in a loss of consciousness or seizure, or requiring the assistance of another person, or resulting in impaired cognitive function; and had properly managed his or her diabetes. During the period of medical certification, the individual was required to monitor and maintain blood glucose records as determined by the TC and submit those blood glucose records to the TC at the time of the evaluation.

At least annually, the ITDM individual would have to be medically examined and certified by a certified ME as physically qualified in accordance with § 391.43 and as free of complications that might impair the individual's ability to operate a CMV. The certified ME would be required to obtain written notification from the individual's TC that the individual's diabetes was being properly managed. The certified ME also would have to evaluate whether the individual was physically qualified to operate a CMV.

Although not part of the proposed regulation, FMCSA requested comments on whether it should prohibit drivers with ITDM from being medically qualified to operate CMVs carrying passengers and hazardous materials, and whether removing the grandfather provision would affect any driver adversely who is operating currently under § 391.64. Finally, the Agency also requested comment on the need for an ITDM individual to be examined by an optometrist or ophthalmologist as a condition of passing the medical examination.

D. September 9, 2016, Notice of Availability; Request for Comments: Medical Review Board Task Report on Insulin-Treated Diabetes Mellitus and Commercial Motor Vehicle Drivers

The NPRM's comment period closed on July 6, 2015. In that same month, FMCSA directed the MRB to review and analyze all comments to the NPRM from medical professionals and associations, and to identify factors the Agency should consider when making decisions about the next steps in the diabetes rulemaking (MRB Task 15–1). In response, the Agency received MRB Task 15–1 Report (2015 MRB report) dated September 1, 2015. FMCSA published a **Federal Register** notice on September 9, 2016, announcing the availability of the 2015 MRB report and requesting comments on the MRB recommendations (81 FR 62448). The MRB's recommendations are considered in the Discussion of Comments and Responses section below. The full report is available in the docket for this rulemaking, in addition to being available on the Agency's website at *https://www.fmcsa.dot.gov/advisory-committees/mrb/mrb-task-15-01-report.*

E. July 27, 2017, Notice and Request for Comments: Agency Information Collection Activities; Information Collection Revision Request—Medical Qualification Requirements, OMB Control Number 2126–0006 (Proposed ITDM Assessment Form)

On July 27, 2017, FMCSA published a 60-day notice announcing that it was considering submitting an Information Collection Request (ICR) to OMB for its review and approval (82 FR 35041). In anticipation of this final rule, the notice invited public comment on a revision to an information collection titled *Medical Qualification Requirements,* covered by OMB Control Number 2126–0006, which is currently due to expire on August 31, 2018. Based on the MRB's 2015 analysis of the comments and its recommendations, as well as public comments to the NPRM, FMCSA announced that it was considering replacing the previously proposed written notification from the TC with the ITDM Assessment Form. The form would be completed by the TC and provided to the certified ME. The 60-day notice, draft supporting statement, and proposed form are available in the docket for this rulemaking. The comment period closed on September 25, 2017. The comments are addressed in the Discussion of Comments and Responses section below.

VI. Discussion of Comments and Responses

A. Comment Overview

In this rule, FMCSA responds to public comments to the following *Federal Register* documents.

NPRM: In response to the May 2015 NPRM (80 FR 25260), FMCSA received 1,281 submissions between May 4, 2015, and February 16, 2016.[6] Based on a review of those submissions, 114 submissions were identified as non-germane and four submissions were duplicates. Almost all commenters expressed general support for the proposed rule, though many asked for more detail about the proposal. These commenters include CMV drivers, individuals diagnosed with diabetes, relatives of individuals diagnosed with diabetes, diabetes educators, health care professionals, and medical associations. General opposition to the proposed rule cited a risk to public safety as the basis for opposition contending that insulin-controlled diabetes is not a condition well-suited to the demands of operating CMVs. These commenters included two individuals diagnosed with diabetes, a physician, and a diabetes educator. Of the generally-supportive submissions, 561 were form letters. The common reasons cited for general support of the proposal include the following: It would treat ITDM individuals fairly by assessing how diabetes affects each individual rather than focusing on the diagnosis of diabetes or use of insulin alone; it would simplify the qualification procedures for ITDM CMV drivers and focus on their operational safety by requiring that they be evaluated by healthcare professionals; it would improve safety by encouraging ITDM CMV drivers to properly manage their condition rather than to hide it in an effort to keep their jobs; and this action would enable CMV drivers newly diagnosed with ITDM to keep their jobs and encourage more individuals to enter the workforce, thereby reducing the driver shortage.

Approximately a dozen commenters expressed general opposition to the proposed diabetes standard. Most of these commenters cited the risk to public safety for their opposition to the proposed rule and contended that insulin-controlled diabetes is not a condition well-suited to the demands of operating CMVs.

2015 MRB Report: In response to the September 2016 notice of availability and request for comments on the 2015 MRB report (81 FR 62448), FMCSA received 41 comments, one of which was a duplicate. Commenters focused

[6] FMCSA stated in the NPRM, at 80 FR 25261, that it would not respond to comments made in response to the March 17, 2006, advance notice of proposed rulemaking (ANPRM) (71 FR 13801). The Agency requested that commenters reference any previous relevant comments in their comments to the NPRM. Therefore, this final rule does not respond to the comments submitted in response to the ANPRM.

on specific recommendations within the 2015 MRB report.

ITDM Assessment Form: In response to the request for comments on the ICR and the ITDM Assessment Form (82 FR 35041), FMCSA received 44 comments. Rather than providing substantive comments on the content or structure of the ITDM Assessment Form, 39 commenters discussed the issue of allowing ITDM individuals to operate CMVs. None of these commenters presented new issues that were not raised in the comments submitted in response to the NPRM or the 2015 MRB report. Five substantive comments related to the ITDM Assessment Form are discussed in the appropriate section below (TC Written Notification (ITDM Assessment Form)).

B. Qualifications of a Certified ME To Examine an ITDM Individual

NPRM: FMCSA proposed that ITDM individuals be medically examined and certified by a certified ME listed on the National Registry as provided in § 391.43.[7]

Comments on the Qualifications of a Certified ME to Examine an ITDM Individual: Both the American Academy of Physician Assistants (AAPA) and the American Academy of Physician Assistants in Occupational Medicine (AAPA–OM) supported FMCSA's proposal and noted that PAs are qualified to examine and certify any individual who operates a CMV. These commenters stated that the certified ME does not need to be a specialist to examine an individual.

The National Transportation Safety Board (NTSB) noted that some certified MEs have no experience prescribing medications or managing the effects of insulin; thus, they would have to accept the TC's assessment without further evaluation. The American College of Occupational and Environmental Medicine (ACOEM) stated the certified ME should be an MD or DO experienced with the treatment and evaluation of diabetes and diabetes treated with insulin to medically qualify individuals using insulin; therefore, there should be designated certified MEs who review and medically qualify individuals using insulin. The ACOEM stated further that some certified MEs are making certification determinations pertaining to individuals with medical conditions that they are unable to independently diagnose or treat.

A number of commenters stated that the certified ME should be a physician (either an MD or DO) or have other professional qualifications. For example, individuals who identified themselves as the first five members appointed to the MRB (herein after ''former MRB members'') [8] wrote in their comment that there are now thousands of certified MEs who have no significant medical training. These former MRB members also stated that the primary care and tertiary care providers for individuals with diabetes often do not understand the specific demands on CMV drivers. Based on these considerations, the former MRB members wrote that FMCSA cannot meet the statutory requirement under 49 U.S.C. 31136(a)(3) for periodic physical examinations of individuals by having the TC work in conjunction with the certified ME.

Unless TCs are required to have appropriate additional training, experience, and certification, Truckers for a Cause (TFAC) suggested that FMCSA require that ITDM individuals get their MECs, MCSA–5876, from a certified ME who is an MD, DO, NP, or PA. TFAC was concerned that not all certified MEs, *e.g.,* DCs, will have the medical expertise to evaluate the information from a TC. TFAC wrote that in some States, for example Illinois, it would be a violation of State law for a DC to render an expert medical opinion on an individual meeting a diabetes treatment requirement. An individual commenter wanted to delay a rulemaking until there is assurance that the certified MEs can safely screen ITDM individuals.

2015 MRB Report: The 2015 MRB report did not change the qualifications of certified MEs for conducting medical certification examinations on ITDM individuals.

Comments on the MRB Report Regarding the Qualifications of a Certified ME: The University of Utah School of Medicine (University of Utah) stated that, unless the form proposed by the MRB clearly specifies what the outcome of a particular response is, the only alternative is to have diabetes examinations done by those with medical backgrounds, which is ''particularly mandatory because of the large number of non-medically trained examiners.'' An NP who is a certified ME hoped that NPs and PAs certified in primary care and experienced in managing patients with ITDM would not be excluded from certifying ITDM individuals. The NP stated that numerous studies have demonstrated that APNs in primary care settings perform as well as physicians in terms of clinical outcomes and patient satisfaction. The ACOEM stated that the certified ME must have the training and knowledge to evaluate whether the documentation provided is sufficient. Concentra commented that certified MEs who are not licensed to prescribe insulin should not be allowed to certify an individual with ITDM.

FMCSA Response: In this final rule, the Agency continues to provide that ITDM individuals may be examined and medically certified by any certified ME on the National Registry. As such, the categories of healthcare professionals eligible to become certified MEs remain unchanged from when the National Registry was established (77 FR 24104; April 20, 2012). All certified MEs are required to be licensed, registered, or certified by their States to perform physical examinations. FMCSA will continue to rely on State determinations regarding which categories of healthcare professionals have sufficient education and training to qualify them to perform physical examinations.

To become a certified ME and be listed on the National Registry, healthcare professionals are required to receive training on the Agency's physical qualification standards and the demands of driving a CMV, complete a certification test, and receive a certificate evidencing that they are qualified to perform medical certification examinations and determine who is qualified to safely operate a CMV. A State has found certified MEs to possess sufficient medical training to perform a physical examination and the Agency has found them to be proficient in the use of the medical protocols necessary to perform the medical certification examination in accordance with the FMCSRs. As such, the Agency's certified MEs have a significant training on performing medical certification examinations. Moreover, the National Registry allows FMCSA to monitor and audit certified MEs and to provide periodic training to its certified MEs.

[7] The Agency notes that the categories of healthcare professionals eligible to be listed on the National Registry are advanced practice nurses (APNs), doctors of chiropractic (DCs), doctors of medicine (MDs), doctors of osteopathy (DOs), physician assistants (PAs), and other healthcare professionals authorized by applicable State laws and regulations to perform physical examinations (49 CFR 390.103). APNs, also referred to as advanced practice registered nurses (APRNs), are registered nurses (RNs) educated at the masters or post masters level who have passed a national certification test in a specific role and patient population. The types of APNs are certified nurse practitioners (CNPs or NPs), clinical nurse specialists (CNSs), certified registered nurse anesthetists (CRNAs), and certified nurse-midwifes (CNMs). *See https://www.ncsbn.org/aprn.htm* (Accessed May 25, 2018).

[8] The Agency notes that the comments expressed by the former MRB members in their letter were received in the docket in response to the Agency's request for public comments.

The current categories of certified MEs have been evaluating individuals with diabetes and have been making qualification determinations based on the existing physical qualification standards in § 391.41(b) for many years. In addition, conditions that may result from complications of diabetes may also result from medical conditions other than diabetes. The Agency has no data that suggests MEs have had difficulty applying the physical qualification standards to individuals with diabetes or to any specific conditions. If a certified ME encounters a condition that is outside his or her scope of practice or requires evaluation by a specialist, FMCSA expects the certified ME to make any appropriate referral and to confer with the specialist as necessary.

FMCSA emphasizes that the role of the certified ME is to conduct a medical certification examination to determine if the individual meets the physical qualification standards and to evaluate the safety impact of any medical conditions; it is not to diagnose or treat individuals. As such, FMCSA has concluded that it is not necessary for a certified ME to be licensed or certified to diagnose and treat every condition that is addressed by the physical qualifications standards. FMCSA has no data that suggests that this longstanding conclusion is flawed.

The Agency has determined that its certified MEs are qualified to examine and medically certify that ITDM individuals are physically qualified to drive a CMV in accordance with § 391.43 and new § 391.46, and are free of complications that may impair an individual's ability to safely operate a CMV. The Agency finds that this medical certification approach through certified MEs is consistent with congressional intent to have certified MEs make an individualized assessment of an individual's health status and ability to safely operate a CMV.

C. Definition and Qualifications of a TC

NPRM: The NPRM defined a TC as a physician or healthcare professional who manages and prescribes insulin for the treatment of diabetes mellitus.

Comments on the Definition and Qualifications of a TC: Because of the TC's personal knowledge of the driver's medical history and condition, both the Illinois Office of the Secretary of State and the Owner-Operator Independent Driver Association (OOIDA) stated that the TC would be able to make an accurate determination of a driver's condition. The Illinois Office of the Secretary of State agreed with FMCSA's proposal to use the TC, working with a certified ME to complete the physical examination of drivers.

Some commenters, including AAPA, AAPA–OM, and TFAC, stated that a TC should be a physician, PA, or NP who manages and prescribes insulin for the treatment of individuals with diabetes mellitus. AAPA and AAPA–OM noted these represent the three types of healthcare professionals in the United States who provide primary medical care. In rural and other medically-underserved communities, a PA may be the only healthcare professional.

The AAPA–OM noted further that PAs are trained in primary care and complete board certification every 10 years in primary care. The AAPA–OM commented that PAs have been treating patients with complicated medical conditions for over 40 years and should be allowed to continue the evaluations of commercial drivers with ITDM.

The American Trucking Associations, Inc. (ATA) requested that FMCSA further define the term TC to reduce ambiguity and ensure the person making the recommendation is properly certified and knowledgeable about ITDM. Health & Safety Works, LLC (H&SW) was concerned FMCSA did not address drivers who receive insulin without a prescription and therefore would not have a TC. This commenter recommended FMCSA should state that ''anyone without a prescription or a treating clinician may not be qualified to operate a CMV in interstate commerce.''

Some commenters agreed with FMCSA that TCs do not need to be licensed physicians or specialists in diabetes treatment and management, but could be other types of healthcare professionals. Commenters, including the ATA, the American Diabetes Association (ADA), the International Brotherhood of Teamsters (IBT), and TFAC, supported allowing the certified ME to consult with the TC instead of requiring approval from an endocrinologist, noting that driver access to board-certified endocrinologists may be limited. The IBT wrote that the TC, rather than an endocrinologist, would be a more suitable medical provider to monitor any of the progressive conditions associated with diabetes (*e.g.,* nerve damage to the extremities and diabetic retinopathy).

The American Academy of Family Physicians (AAFP) urged FMCSA to allow applicants to be examined by their family physicians, rather than endocrinologists. This commenter noted that not all applicants have access to an endocrinologist, and the family physician is more than capable of managing and treating patients with diabetes, as well as completing the forms needed by CMV drivers.

Some commenters, including the American Bus Association (ABA), two diabetes educators, a physician, an NP, and the Southern Company Entities (SOCO), disagreed with the proposal and wanted ITDM individuals to continue to be evaluated by endocrinologists. While ABA appreciated the interest in simplifying the process or putting fewer restrictions on the medical professionals available to drivers with ITDM, it could not support this proposed provision because in its opinion endocrinologists are the best qualified individuals to be engaged in the process. SOCO would require a note from the treating physician with a specialty in diabetes, such as an endocrinologist, who is also familiar with the essential job functions of a commercial driver. The note would document that the driver is stable and not experiencing hypoglycemic episodes.

The NP objected to removing an endocrinologist from the process of certifying drivers with ITDM because it significantly limits objective, specialized medical assessment of the disease. This commenter indicated that primary care providers are sometimes too lenient.

While they did not indicate that evaluation by an endocrinologist is necessary, some commenters stated that the TC should be a licensed physician or other medical professional with appropriate training. In order to address sufficient training in diabetes, the complications of diabetes, and interactions among diabetic medications, the former MRB members stated that an MD or DO should, at a minimum, oversee a mid-level provider and this physician should countersign the forms approving the ITDM driver as safe to drive. An RN stated that drivers should be followed by a primary care physician. A physician commented that a diabetologist—not an endocrinologist—should evaluate patients for safety because they are better equipped to determine whether a patient with type 1 diabetes might be a low-risk driver. Advocates for Highway and Auto Safety (Advocates) stated that the Agency should require the TC to be a physician and establish penalties for both drivers and TCs who submit falsified reports, specifically concerning diabetes management and severe hypoglycemic reactions.

The ADA agreed that requiring a specialist to perform evaluations of drivers with ITDM is unnecessary. It stated that internists or primary care

physicians—not endocrinologists—treat many individuals with diabetes and that there are parts of the country where no endocrinologists are available. The ADA commented that the important qualification is that the TC must have knowledge of the disease and treatment regimens in order to assess an individual's diabetes management and determine whether CMV operation is safe and practicable in accordance with the revised standard and accompanying diabetes guidelines.

TFAC agreed that requiring an evaluation by a board-certified endocrinologist places an undue burden on a driver, due to the lack of these specialists nationwide. However, TFAC did not think that FMCSA's qualifications for a TC specified enough medical training and certification to evaluate properly a CMV operator with ITDM. TFAC recommended that the TC have completed appropriate additional training and have the experience to hold a certification in Advanced Diabetes Care and Management.

A physician wrote that FMCSA is putting the TC, whose duty is to his or her patient, in the position of losing patients who will doctor shop until they find a TC to sign off on their condition.

2015 MRB Report: The 2015 MRB report recommended that a TC be defined as the MD, DO, NP, or PA who prescribes insulin to the driver and is knowledgeable regarding the treatment of diabetes.

Comments on the MRB's Report on the Definition and Qualifications of a TC: The AAPA stated that allowing PAs who have clinical experience with diabetes to act as TCs will ensure that drivers who are under the care of a PA can remain in compliance with FMCSA regulations, while continuing to see their current healthcare provider. It commented that this is particularly important in medically-underserved areas, where there may be less access to specialists. The AAPA described the breadth of PA education, testing, and experience, particularly as it applies to diabetes.

OOIDA agreed that letting an MD, DO, NP, or PA who has prescribed insulin to the driver perform the assessment will provide a better way to determine if the driver's condition is well-controlled. It would reduce the costs and treatment delays caused by the requirement for an evaluation by a board-certified or board-eligible endocrinologist.

A certified ME, who is an NP, commented that there is a shortage of MD and DO primary care providers in her region; therefore, the use of NPs and PAs improves access to needed care. She also stated that access to endocrinologists is limited in her area, so most ITDM individuals are managed by their primary care providers.

The ADA stated that an appropriate TC, including endocrinologists, physicians, PAs, NPs, and diabetes educators, is one who is knowledgeable and experienced in the management of diabetes, not necessarily a specialist.

A driver, a certified ME, and SOCO stated that a TC, as defined by the MRB, is not qualified to properly assess drivers with ITDM. These commenters indicated that only an endocrinologist should assess such drivers. The certified ME stated that the rulemaking will increase the burden on the certified ME and affect the certified ME's willingness to accept a ''clinician'' statement about a driver's control of diabetes mellitus.

H&SW, the University of Utah, AAFP, Concentra, and an individual were not satisfied with the definition and qualifications of a TC in the 2015 MRB report and indicated that the TC should meet additional requirements. Some commenters stated that many TCs are not familiar with the requirements of commercial driving. For example, H&SW noted that the total reliance on the TC to evaluate a driver's management of his or her diabetes was a flaw in the proposal. H&SW pointed out that FMCSA has no authority over the TC. It did not agree that the Agency should assign responsibility to the TC, who is not certified to perform CMV physical examinations.

The University of Utah wanted the TC to have knowledge of at least 3 years of the driver's treatment—either through direct knowledge or from medical records. The commenter added that there also had to be a mechanism to stop drivers with ITDM from doctor shopping for a favorable opinion. Concentra stated that the TC should have treated the driver for the preceding 12 months, so the TC can attest to the lack of hypoglycemic reactions and to the driver having properly managed the diabetes.

While the AAFP urged FMCSA to allow drivers to be examined by their primary care physicians, rather than to require examination by an endocrinologist, it asked FMCSA to allow only a DO or MD to perform these services. Both Concentra and the individual indicated that the non-physician healthcare professional should qualify as a TC only if under the supervision of an endocrinologist or other physician.

The individual commenter warned that the TC must be held to high standards, and any TC who submitted a falsified or disingenuous report should be penalized. This commenter also wrote that FMCSA should require the TC to notify the Agency if the driver becomes noncompliant or if the driver discharges the TC.

FMCSA Response: The final rule does not limit the TC to a specific discipline or require the TC to be an endocrinologist. The Agency agrees with commenters who stated that an appropriate TC is one who is knowledgeable and experienced in the management of diabetes and is not necessarily a specialist.

FMCSA defines the TC in the final rule as a healthcare professional who manages, and prescribes insulin for, the treatment of the individual's diabetes mellitus as authorized by the healthcare professional's State licensing authority. The final rule establishes that the ITDM individual must have a prescription from his or her TC for treatment with insulin. FMCSA adds this requirement because prescriptive authority for some healthcare disciplines may be limited by the State's scope of practice. This requirement ensures that the healthcare professional who routinely treats the ITDM individual is the one who prescribes the individual's insulin for treatment.

The Agency declines to specify disciplines that may serve as the TC for purposes of this rulemaking due to the differences in scopes of practice among States. Some areas of the country may be underserved in some disciplines and have greater access to other disciplines. FMCSA finds that identifying specific disciplines disadvantages individuals who may not have access to those healthcare professionals. The Agency's definition allows for maximum flexibility in addressing issues related to shortages in various categories of licensed healthcare professionals in all States.

FMCSA agrees with the commenters who stated that requiring evaluation by an endocrinologist is burdensome to ITDM individuals seeking certification because of the scarcity of endocrinologists in many regions of our country. A June 2014 Endocrine Society white paper states that there were approximately 4,841 adult endocrinologists engaged in clinical practice in 2011, and it projected a shortage of 1,484 adult endocrinologists by 2015.[9] The paper also shows that 85 percent of office visits for diabetes were with physicians other than

[9] ''Endocrine Clinical Workforce: Supply and Demand Projections'' prepared for the Endocrine Society by the Lewin Group, 2014, pp. 1–2. Available at *https://www.endocrine.org/~/media/endosociety/files/advocacy-and-outreach/important-documents/white-paper-endocrinology-workforce-final-white-paper.pdf* (May 25, 2018).

endocrinologists.[10] As stated in the NPRM, a requirement to be evaluated by an endocrinologist seems impracticable for most drivers with ITDM (80 FR 25266). The frequent monitoring by a specialist as required by the exemption program was a financial burden for many individuals, many of whom have primary care providers who are capable of prescribing and managing insulin treatment for their patients. The Agency has concluded that the higher cost of an endocrinologist evaluation is not justified given that a TC can determine that the individual has a stable insulin regimen and properly controlled ITDM.

The requirement that the TC must be the healthcare professional who manages, and prescribes insulin for, the treatment of the individual who is being evaluated makes it likely that the TC will be the individual's primary care provider. As the commenters indicate, primary care providers are well trained and experienced in managing diabetes and provide most care for diabetes in many areas. As such, FMCSA is not requiring that a qualified TC hold any specific certification or have any specialized training with respect to diabetes. The Agency agrees with commenters that TCs who have personal knowledge of an individual's medical history and treatment regimens will be able to make an accurate determination as to whether an individual maintains a stable insulin regimen and proper control of his or her ITDM. As such TCs managing, and prescribing insulin for, the treatment of ITDM individuals are well-suited to monitor for complications related to diabetes. FMCSA is confident that when necessary, TCs will refer the ITDM individual to appropriate specialists for any additional medical evaluations for diabetes-related co-morbid conditions requiring specialized diagnosis and treatment.

FMCSA anticipates that the TC would have an ongoing relationship with the individual being evaluated, but is not requiring that the TC treat the individual for any specific period. If the TC is newly establishing a relationship with an individual seeking evaluation, the TC may exercise his or her independent medical judgment with respect to the need to obtain and review prior medical records and whether the TC has sufficient information to complete the ITDM Assessment Form, MCSA–5870, and to attest the information provided is true and correct to the best of the TC's knowledge. Similarly, FMCSA declines to require the TC to notify the Agency if a driver becomes noncompliant or discharges the TC. The need to obtain the required information from a TC who is prescribing insulin for the treatment of the individual's ITDM should discourage noncompliance and doctor shopping for a favorable attestation.

FMCSA emphasizes that it is not relying on the TCs to make the medical qualification determination. FMCSA is implementing the ITDM Assessment Form, MCSA–5870, as recommended by the 2015 MRB report, that asks specific questions of the TC and provides information needed for medical certification determinations by the certified ME. Evaluation by the TC in this collaborative manner is consistent with current certified ME practice during the medical certification process. Certified MEs confer routinely with and obtain the treating providers' opinions concerning the stability of individuals' underlying medical conditions and how the medical conditions may impact safety. This process minimizes the concern that TCs who are primary care providers may be lenient because certified MEs make the determination regarding physical qualification.

D. Role and Relationship of the TC and Certified ME

NPRM: FMCSA proposed that, prior to the annual or more frequent examination by the certified ME, the ITDM individual would have to be evaluated by the TC. The TC would determine that within the previous 12 months the individual had no severe hypoglycemic reaction and had properly managed his or her diabetes. The certified ME had to obtain written notification from the individual's TC that the individual's diabetes was being properly managed and had to evaluate whether the individual was physically qualified to operate a CMV.

Comments on the Role and Relationship of the TC and Certified ME: The IBT supported the Agency's proposal. It stated that, although the TC may not be thoroughly familiar with FMCSA regulations or tasks performed by a CMV driver, subsequent evaluation by a certified ME would complement the role of the TC in the certification process. The ADA noted that the NPRM had not made completely clear the role of the certified ME in evaluating the applicant's diabetes. However, the ADA supported a two-step certification process where the TC certifies that the individual with ITDM meets the revised diabetes standard and the certified ME completes the certification process with regard to all other aspects not related to diabetes. If the certified ME had concerns about an individual's diabetes, the ADA recommended that the certified ME should consult the TC or an independent diabetes healthcare professional for verification.

A number of commenters wanted certified MEs and TCs to work directly together. For example, given that certified MEs are ultimately responsible for certifying individuals, the Transportation Trades Department, AFL–CIO (TTD) and the Amalgamated Transit Union wanted FMCSA to encourage certified MEs and TCs to work closely together so that fit individuals may work.

The ACOEM added that allowing the certified ME, who has the training and understanding of the role of the CMV operator, to obtain and review additional medical information would increase the margin of safety in the determination, while lessening the certified ME's liability in relying on a TC who might not fully understand the safety concern. The ACOEM commented that FMCSA should require the TC to sign a statement saying that the ITDM individual can manage his or her health condition.

A physician/certified ME, who is also board-certified in occupational medicine, questioned the value of having certified MEs for ITDM individuals, if the certified MEs simply defer to the TC. This commenter wanted FMCSA to clarify that a certified ME can request whatever medical information is necessary to make a sound determination. He also stated that the increased cost and responsibility for the certified ME would be reflected in higher fees.

The NTSB noted that FMCSA allows healthcare professionals who are not licensed to prescribe medication to medically-certify individuals who operate CMVs. Because these certified MEs have no experience prescribing medications or managing the effects of insulin or other diabetic medications, the NTSB indicated that these certified MEs must accept a TC's assurance of ''proper management'' without further evaluation. The NTSB commented that a TC's interpretation of proper management, as well as the individual's compliance with recommendations, might vary considerably.

TFAC noted that the certified ME is required to certify the ITDM individual is free of complications, while the written notification from the TC gives the certified ME no information about how the TC made that determination. This commenter proposed that ''the statement required from the TC make[s] it clear in the area of diabetes management it is the TC who is rendering the expert medical opinion that the driver is 'safe' therefore

[10] *Id.* at 40.

relieving the medical examiner from concerns about potential liability.''

H&SW disagreed with FMCSA relying solely on the TC for information about the ITDM individual's management of his or her diabetes. It recommended that FMCSA require the collection of documentation by the TC as only one piece of the data gathered by the certified ME. It further suggested that FMCSA should also require the certified ME to obtain additional test and laboratory results, review glucose logs, and ensure the ITDM individual has received hypoglycemic awareness training. If documentation from a TC is the only tool the certified ME has, H&SW indicated the Agency is permitting the TC to make the medical certification decision even though he or she is not listed on the National Registry. A physician questioned how the certified MEs will protect themselves from discrimination lawsuits when they do not approve every individual recommended by the TCs.

Some commenters were concerned that the NPRM did not provide the certified ME with sufficient specific criteria to determine if the individual's diabetes was properly managed or if he or she was physically qualified to operate a CMV. H&SW indicated that the certified ME needs to see the blood sugar logs and the results of the eye examination; ensure the driver has had hypoglycemic awareness training; and check the blood levels for glucose to make an evidence-based decision regarding whether the driver is physically qualified to operate a CMV.

2015 MRB Report: The 2015 MRB report recommended that a questionnaire be developed for the TC to complete and send to the certified ME. Based on the responses to the questionnaire, the TC was to indicate whether the individual had stable, well-controlled diabetes and had no severe hypoglycemic episodes over the past year, and to state that neither the individual's diabetes nor diabetes-related medical conditions would impair the ability to operate a CMV safely. The MRB recommended specifically that the final determination as to whether the ITDM individual was physically qualified to drive a CMV was to be made by the certified ME.

Comments on the MRB's Report on the Role and Relationship of the TC and Certified ME: In response to this recommendation, OOIDA, Concentra, H&SW, and the ACOEM commented on the appropriate relationship between certified MEs and TCs. Concentra commented that certified MEs should be able to review a TC's records of an ITDM individual for at least the preceding year. OOIDA had concerns that the certified ME could override the TC's determinations. It suggested that certified MEs should provide ''sound medical evidence'' before challenging the TCs findings or requiring individuals to undergo more testing. H&SW added that the certified ME should be given the tools that the TC has and should ask for detailed tests and laboratory reports from the TC, if needed. H&SW also wrote that FMCSA should put the TC in a consultation position, especially because the certified MEs will be held responsible should the ITDM individual have a crash. The ACOEM stated that certified MEs must review at least 3–5 years of medical records so the certified ME can evaluate the individual's condition independently.

FMCSA Response: This final rule continues the two-step process for medical certification in which the TC evaluates the individual's insulin regimen and control of his or her ITDM, then a certified ME performs an examination and determines whether the individual is physically qualified under all medical standards to operate a CMV. FMCSA agrees with commenters that the medical information provided by the TC to the certified ME should be relevant and useful and allow a certified ME to make an appropriate medical certification determination on an ITDM individual. As such, FMCSA is adding a requirement in this final rule that the TC complete an ITDM Assessment Form, MCSA–5870, rather than simply provide written notification that the individual's diabetes was being properly managed.

As discussed above, the Agency relies on State licensing authorities to make scope of practice determinations and has found that the TCs and certified MEs are qualified to perform their respective roles in this collaborative certification process. The role of the individual's TC, who is experienced in the management of diabetes, is to attest on the ITDM Assessment Form, MCSA–5870, that the individual maintains a stable insulin regimen and proper control of his or her ITDM. The role and responsibility of the certified ME, who is trained in FMCSA's physical qualification standards and the demands of operating a CMV, is to medically certify that the ITDM individual can safely operate a CMV. In making the qualification determination, the certified ME is to consider the attestation and information provided by the TC, but the certified ME does not automatically defer to the TC's attestation or rely solely on it. Consistent with current practice for any medical condition, the certified ME may confer with the TC concerning an individual's medical history and status, make appropriate referrals, or request medical records, all with appropriate consent.

The final rule relies on the TC's knowledge of an individual and understanding of the treatment of ITDM and the certified ME's knowledge of the requirements to operate a CMV and FMCSA regulations. FMCSA agrees with commenters and the MRB, as discussed more fully below, that the certified ME must be provided with more information regarding how the TC made his or her determinations. This rule adopts the ITDM Assessment Form, MCSA–5870, as the way to communicate that information.

The form requests specific information to assist both the TC and the certified ME in evaluating and assessing whether an ITDM individual maintains a stable insulin regimen and proper control of his or her diabetes. The TC will have the relevant and current information on the individual's medical history needed to complete and sign the ITDM Assessment Form, MCSA–5870.

FMCSA notes that, if a certified ME also meets the qualifications to be an individual's TC, the certified ME may perform the TC evaluation and medical certification examination contemporaneously. The certified ME who also acts as the TC must still complete the ITDM Assessment Form, MCSA–5870.

E. TC Written Notification (ITDM Assessment Form)

NPRM: FMCSA proposed that the certified ME must obtain written notification from the individual's TC that the individual's diabetes is being managed properly.

Comments on TC Written Notification: Some commenters stated that FMCSA should develop a comprehensive form to organize the certification criteria, thus ensuring that the information was complete and providing the certified ME the information necessary to determine that the individual is physically qualified. The former MRB members suggested a form that includes sections completed by the driver, the TC, and an ophthalmologist or optometrist. Some commenters, like the ADA, OOIDA, the IBT, and the ACOEM, recommended the use of specific forms or checklists that they suggested be adopted. Several commenters had extensive lists of documentation they suggested the TC should provide to the certified ME

including: Properly-maintained glucose logs; proof of proper diabetes management and compliance; records related to any hypoglycemic episodes; HbA1C testing results; and proof of yearly preventive care to screen for the long-term side effects of diabetes, such as retinopathy. Some commenters, like the ACOEM, requested a full packet of documentation be submitted to the certified ME.

Many commenters said the requirements of the proposed rule needed clarity or more specific guidance for the TC or certified ME to use to decide whether an ITDM individual may operate a CMV in interstate commerce. Concentra suggested that the Agency review the criteria with leading endocrinologists who specialize in diabetes.

Other commenters suggested adoption of best practices. The NTSB suggested that FMCSA emulate the Federal Aviation Administration (FAA) and the United States Coast Guard, which require operators with ITDM to be evaluated using published or scientifically-based standards. An individual commenter suggested that FMCSA model the requirements after FAA requirements, adjusted to allow ITDM individuals to take insulin by pump or manual injection. H&SW provided specific recommendations, some based on requirements cited by the ADA and Canada's qualifications for ITDM individuals.

TFAC understood FMCSA's reluctance to make very specific medical requirements, as the science of treatment options changes; yet, it noted there is a need for specificity in medical requirements to ensure there is consistency in how certified MEs handle situations. TFAC stated that without clear criteria, normal practice standards would be established by individual certified MEs and litigators, rather than by FMCSA through rulemaking. A physician who had experience with a discrimination lawsuit stated that, unless FMCSA provides specific certification guidance, the TC and the certified ME will avoid the risk of litigation by allowing individuals who should not be driving to get an MEC, MCSA–5876.

2015 MRB Report: The 2015 MRB report recommended that FMCSA develop a questionnaire for the TC to provide to the certified ME and provided an outline of specific information to obtain. The TC would complete, sign, and send the form to the certified ME. The form would also be signed by the ITDM individual. The report also recommended specific criteria in several areas including severe hypoglycemic episodes, glucose logs and self-monitoring blood glucose, HbA1C results, eye examinations, and diabetic complications.

Comments on the General MRB Recommendation to Develop a Form: The AAPA supported using the MRB recommended form as proposed. It stated that the degree of uniformity provided by the form would ensure that all TCs are assessing commercial drivers in the same way and using the same metrics when evaluating a driver's health. Additionally, a certified ME commended inclusion of the TC's signature and stated that the form would facilitate communication between the certified ME and TC. The ADA appreciated the efforts of the MRB to provide instruction to the TC regarding clinical indicators for evaluation but indicated the criteria were medically inappropriate in several places. An endocrinologist provided a sample of an assessment form used by the Pennsylvania DOT in the evaluation of ITDM drivers.

Concentra stated that the MRB-proposed form was lengthy, complex, and lacked specific direction, particularly in identifying serious co-morbid diseases. The University of Utah stated that the form was just an outline and needed exact requirements and consequences. It wanted a place for the ITDM individual to sign to attest to its truthfulness and to include a penalty for that individual not being truthful. It also stated that the final draft form should be made available to the public for comment. The ADA stated that having an ITDM individual sign the form would be inappropriate because FMCSA does not have the legal authority to require the TC to report any information to a certified ME unless the patient provides express permission for such reporting.

Proposed ITDM Assessment Form: FMCSA agreed with commenters that a form would enhance communication between the TC and certified ME and provide consistent information to certified MEs. Accordingly, FMCSA prepared a proposed ITDM Assessment Form and published a 60-day notice on July 27, 2017, announcing that it was considering replacing the previously proposed written notification from the TC with the ITDM Assessment Form (82 FR 35041). The Agency sought comment on the form, which is available in the docket for this rulemaking.

Comments on the ITDM Assessment Form: Five commenters provided substantive comments specific to the ITDM Assessment Form in response to the 60-day notice. An endocrinologist wholeheartedly agreed with the proposed approach of the form. A certified ME supported the use of the form and stated that it should be passed along to the treating primary care physician for completion and then should be reviewed by a certified ME who is knowledgeable about the challenges of driving a CMV. Another certified ME was concerned that the form requests information on severe hypoglycemic events for only the past 3 months. This commenter stated that he ''would want to know of any severe hypoglycemic events over the past 5 years, as previous guidance from the FMCSA Examiner's Handbook for diabetics not on insulin, was not to certify if there had been a severe hypoglycemic event within the past 12 months, or 2 within the last 5 years.'' The commenter also wanted to know the lowest recorded finger-stick blood glucose over the preceding 3 months and all HbA1c results for the preceding year. An MD stated that the form should include questions about co-morbid conditions such as peripheral neuropathy, sleep apnea, uncontrolled hyperlipidemia, or hypertension being treated by the TC.

The ADA was concerned about the requirement that a driver be on a stable insulin regimen for the prior 3 months. The ADA also stated that the Agency requires the driver to have his or her HbA1C measured intermittently over the last 12 months with the most recent measure within the preceding 3 months and noted that newly-diagnosed individuals will not have that data.

FMCSA Response: The Agency agrees with commenters that more than written notification from the individual's TC that the individual's diabetes is being managed properly should be provided by the TC to the certified ME. The final rule requires that the TC complete the ITDM Assessment Form, MCSA–5870, to provide additional information for the certified ME about the ITDM individual's medical history. The Agency has considered the forms and checklists provided by commenters, and has determined that the ITDM Assessment Form, MCSA–5870, collects the appropriate information to enable the certified ME to make his or her certification determination. Comments on specific criteria are discussed below by substantive area.

With respect to the comment that the form should be completed by the treating primary care physician, FMCSA is not limiting the TC role to physicians. As discussed above, FMCSA expects that the TC will be the individual's primary care provider for diabetes treatment.

A certified ME determines whether an individual meets FMCSA's physical qualification standards as of the time of the medical certification examination. Therefore, FMCSA has determined that providing information to the certified ME regarding whether an ITDM individual has had a severe hypoglycemic episode in the prior 3 months is generally sufficient. As discussed elsewhere in this preamble, that time frame coincides with the Agency's requirement that an ITDM individual provide the TC with 3 months of blood glucose self-monitoring records to be eligible for up to the maximum 12-month MEC, MCSA–5876. The Agency finds that this is a balanced approach for ITDM individuals that allows time to demonstrate a stable insulin regimen and proper control of ITDM, while providing enough information for the certified ME to determine whether the individual can safely operate a CMV. In any event, an ITDM individual is also required to provide the certified ME with a completed ITDM Assessment Form, MCSA–5870, for any severe hypoglycemic episodes that may have occurred since any previous medical certification examination, so the certified ME will be aware of such episodes. With respect to comments suggesting that the form be consistent with guidelines provided in the Medical Examiner Handbook, FMCSA notes that the Handbook, a tool certified MEs could consider during the medical certification process, has now been withdrawn.

The ITDM Assessment Form, MCSA–5870, already includes questions about co-morbid medical conditions as suggested by a commenter. It also provides an area for additional comments by the TC where other relevant conditions may be referenced.

The final rule requires that, to be eligible for up to the maximum 12-month MEC, MCSA–5876, all ITDM individuals must provide to the TC at least the preceding 3 months of blood glucose self-monitoring records while being treated with insulin. If an individual does not provide the 3 months of records, the certified ME has discretion to grant the individual up to but not more than a 3-month MEC, to allow time for the individual to collect the necessary records. Once the individual has 3 months of blood glucose self-monitoring records, the individual is treated the same as an ITDM individual with 3 months of records. The individual must first go to the TC for evaluation and then to the certified ME, who must exercise independent medical judgment, to determine if the individual is eligible for up to the maximum 12-month MEC.

The form asks has the individual had HbA1C measured intermittently over the last 12 months, with the most recent measure within the preceding 3 months, and, if so, to attach the most recent result. The Agency notes that the lack of HbA1C data does not automatically disqualify an individual from being medically certified.

In the final form, FMCSA made changes to be consistent with the terminology, definitions, and requirements in the final rule. The Agency also made minor changes to improve clarity and organization. More specifically, a sentence was added to specify that the certified ME must receive the form and begin the medical examination no later than 45 days after the date on the signed form; however, FMCSA notes that the medical certification determination does not need to be completed within 45 days. The Agency also added a provision that an ITDM individual who is being evaluated after a severe hypoglycemic episode must retain the form and give it to the certified ME at the next medical certification examination. FMCSA removed the question that asked whether the individual experienced any severe hypoglycemic episodes in the absence of warning symptoms in the preceding 3 months. The Agency found the question was redundant of the general request for information about severe hypoglycemic episodes. The Agency added a request for the individual's driver's license number and issuing State, but agrees with the ADA that it is not appropriate for the form to require the individual's signature. The Agency also added a request for the TC's medical credential, as well as professional license number and the issuing State, to be able to identify these individuals. Finally, FMCSA modified the TC's attestation on the form.

The Agency notes that the ITDM Assessment Form, MCSA–5870, is available on FMCSA's Medical Programs and National Registry websites. Additionally, once the TC has signed and dated the form as required, the form is provided to the certified ME by either the ITDM individual or the TC.

F. Certified ME Certification and TC Evaluation Frequency

NPRM: In the NPRM, FMCSA proposed that at least annually, a certified ME listed on the National Registry must examine and certify that the ITDM individual is physically qualified and free of complications that would impair the individual's ability to operate a CMV. Prior to the annual or more frequent certified ME's examination, the individual would have to be evaluated by the TC.

Comments on Certified ME Certification and TC Evaluation Frequency: While some commenters wanted an interval of 2 years between medical certification of drivers, others stated the ITDM individual should be examined more frequently. For example, the ADA, SOCO, Advocates, and H&SW agreed with the proposed interval of at least annual examination. The ATA and AAPA–OM suggested a graduated approach whereby certified MEs would issue shorter-term medical certifications initially and longer-term certifications after the initial period during which the ITDM individual demonstrated his or her condition was stable and properly controlled. The ATA recommended that the longest term of certification should not exceed a year. A physician/certified ME wrote that the endocrinologist is responsible for stating that the ITDM individual is well controlled throughout the year; this commenter stated that the NPRM took a step back from the effort to improve medical examinations.

2015 MRB Report: The 2015 MRB report recommended that a certified ME could certify an ITDM individual as medically qualified for no more than 1 year if the individual had no disqualifying factors. The MRB did not make a specific recommendation regarding the frequency of the TC evaluation. No comments were received concerning the MRB report in this regard.

FMCSA Response: FMCSA agrees with commenters who stated that ITDM individuals should not be granted medical certification for a period longer than 12 months. Annual or more frequent recertification by the certified ME allows for earlier detection and consideration of any changes or complications that may impact an ITDM individual's ability to safely operate a CMV. If a certified ME determines an individual should not be qualified for the maximum 12 months, the certified ME may certify that individual for a shorter period. FMCSA finds that this approach allows for the application of individualized medical certification determinations based on the certified ME's medical discretion. ITDM individuals must see their TC prior to every medical certification examination to ensure they maintain a stable insulin regimen and proper control of their ITDM as the rule requires.

G. Annual Certification of Individuals With Diabetes Mellitus Not Treated With Insulin

NPRM: In the NPRM, the Agency did not propose that individuals with diabetes mellitus not treated with insulin (non-ITDM individuals) be recertified at least annually. However, FMCSA cited the 2007 MRB recommendation to require annual or more frequent medical recertification for *all* individuals with diabetes mellitus, and requested comment on the recommendation.

Comments on Annual Certification of Non-ITDM Individuals: The IBT, Illinois Office of the Secretary of State, and the ADA said the Agency should not require that non-ITDM individuals obtain recertification at least annually because a change to the current procedure for qualifying these individuals is not warranted. The ADA commented that non-ITDM individuals should be able to hold a medical certificate for up to 24 months like other individuals, unless their healthcare provider or the certified ME determines otherwise. In contrast, Advocates recommended that the Agency should establish more frequent medical certification for all individuals with diabetes.

2015 MRB Report: The 2015 MRB report did not address the requirement that non-ITDM individuals be recertified at least annually; no comments were received concerning the MRB report in this regard.

FMCSA Response: FMCSA agrees with commenters that a 2-year recertification period for non-ITDM individuals is appropriate and will not adopt the MRB's 2007 recommendation. FMCSA finds that is not necessary to impose a requirement for annual certification of these individuals because certified MEs have a long history with certification of non-ITDM individuals. Certified MEs have been trained that they may issue short duration MECs, MCSA–5876, for medical conditions that require frequent monitoring or where additional medical information is needed. Moreover, the commenters provided no data that suggests annual medical certification of non-ITDM individuals is warranted.

H. Eye Examinations

NPRM: The NPRM did not propose any changes to the existing vision standards. The Agency requested comments on the need for an ITDM individual to be examined by an optometrist or ophthalmologist as a condition of passing the physical examination.

Comments on Eye Examinations: The ADA commented that it should be left to the judgment of the TC to refer the individual to an optometrist or ophthalmologist, as needed, based on clinical indicators that a screening by an eye specialist is necessary. The ADA's Standards of Medical Care recommend that individuals with type 1 diabetes be screened for retinopathy within 5 years of diagnosis because retinopathy is estimated to take at least 5 years to develop following hyperglycemia. The Standards of Care recommend that patients with type 2 diabetes be screened shortly after diagnosis. The ADA further commented that after one or more normal eye examinations, individuals with well-controlled type 2 diabetes had essentially no risk of developing significant retinopathy within 3 years of a normal examination. According to the ADA's comments, ''[n]ot all individuals with diabetes will develop vision complications, and among those that do, not all will interfere with safe driving ability. As such, only those CMV drivers who pose a high risk—because of the presence of complications that interfere with driving, such as impaired vision—should be further assessed by a specialist to determine if the risk is too high.'' OOIDA endorsed the comments submitted by the ADA.

The Illinois Office of the Secretary of State agreed with the proposal, provided that the ITDM individual can meet the vision standards in § 391.41(b)(10). It stated that the process will provide a reasonable certainty that any ITDM individual who cannot meet the standards will be discovered by the certified ME during the annual examination and the process will not present any threat to general traffic safety. The IBT also agreed with the proposal and FMCSA that meeting the vision acuity standard provides '' 'reasonable certainty of discovering and mitigating risks associated with any safety-related condition that would interfere with meeting the standard, including diabetic retinopathy.' ''

Some commenters, including H&SW and the ACOEM, stated that FMCSA should require an annual evaluation from an ophthalmologist or optometrist. SOCO suggested that FMCSA should require a note from an ophthalmologist or optometrist stating that the individual is free of diabetic-related retinal disease and vision impairing cataracts and has good field of vision in both eyes. The NTSB stated that diabetic retinopathy can cause loss of areas of vision without affecting acuity; therefore, a dilated retinal eye examination is an annual standard of care for most ITDM individuals. It indicated that eliminating the annual ophthalmological examination will increase the likelihood of ITDM individuals driving CMVs with significant diabetic retinopathy and degraded visual performance, which will pose a hazard to public safety. A physician/certified ME stated that if the exemption program is eliminated he will continue to expect at least annual assessment from an ophthalmologist.

Several commenters that were in favor of requiring annual eye examinations, including the American Optometric Association (AOA) and the former MRB members, noted that the certified ME may not have the experience and training to perform dilated eye examinations or have the specialized equipment necessary to do so. The former MRB members noted that by the time an ITDM individual experiences reduced visual acuity that is captured by the relatively crude examination performed by a certified ME, it is often too late to avoid complications. Thus, the former MRB members stated there is further need for mandatory, annual eye examinations for retinopathy by ophthalmologists or optometrists.

The AOA noted it is important to understand that the entire range of diabetic retinopathy complications are predominantly asymptomatic and can occur without any deterioration in visual acuity. It stated that a visual acuity test is not a substitute for a dilated eye examination, which is the only appropriate method for evaluating the eye health of ITDM individuals and for predicting with high confidence which individuals will retain adequate visual function in the interim between eye examinations. It was concerned that the current proposal could put drivers and the public at serious risk. The AOA suggested, rather than requiring evaluation by an ophthalmologist, FMCSA could reduce the cost and burden to ITDM individuals, while maintaining quality of evaluation, by allowing a doctor of optometry to evaluate those applicants.

TFAC suggested FMCSA require a vision examination by a qualified eye specialist when the individual goes on insulin treatment and every 2 years thereafter. It suggested that the eye specialist complete a form acknowledging familiarity with the requirements of 49 CFR and the physical demands of a CMV operator.

2015 MRB Report: The 2015 MRB report included the recommendation that ITDM individuals receive a complete eye examination by a qualified ophthalmologist or optometrist, including a dilated retinal examination, at least every 2 years. This examination should document the presence or

absence of retinopathy and macular edema, and, if present, the degree using the International Classification of Diabetic Retinopathy and Diabetic Macular Edema. The MRB advised increasing the frequency of these examinations based on the ophthalmological findings.

Comments on the MRB's Report on Eye Examinations: HS&W concurred with the MRB's recommendation. The National Rural Electric Cooperative Association commented that it was not opposed to a comprehensive eye examination [11] every 2 years, but having the TC attest that the TC reviewed the results of the report was ''duplicative at best and onerous at worst.''

The AOA, the ACOEM, and several individuals suggested a comprehensive eye examination should be conducted on an annual basis. The AOA stated that its evidence-based guidelines explain that the clinical signs of diabetic retinopathy can appear early in the disease process; however, individuals many not experience symptoms until relatively late, at which time treatment may be less effective. The AOA noted that ''[t]he success of appropriate intervention and management strategies depends upon accurate and timely detection of diabetic eye disease.'' The University of Utah stated that individuals with non-proliferative retinopathy should be required to have annual comprehensive eye examinations.

The ADA repeated its prior comments to the NPRM that an annual comprehensive eye examination is not required by its Standards of Care. It again concluded that it should be left to the judgment of the TC to refer the ITDM individual to an ophthalmologist or optometrist as needed.

FMCSA Response: This rule does not include a mandatory requirement or specify the frequency for comprehensive eye examinations for ITDM individuals. FMCSA finds the Standards of Care and comments presented by the ADA to be persuasive and reasonable. Given that not all individuals with diabetes will develop vision complications, FMCSA has determined that it would be inconsistent with the rule's emphasis on individualized assessment to impose a required frequency for a separate comprehensive eye examination by an ophthalmologist or optometrist as a condition of passing the medical certification examination for all ITDM individuals. FMCSA also finds that to do so is inconsistent with Congress' instruction that the Agency may not hold ITDM individuals to a higher standard than other individuals unless it is medically necessary. The Agency's determination that annual comprehensive eye examinations should not be required also is supported by the MRB's recommendation that ITDM individuals undergo such examinations every 2 years, unless clinical indicators suggest otherwise.

The Agency finds that the TC is in the best position to determine for each ITDM individual when a comprehensive eye examination is necessary and, when warranted, to make a referral to an ophthalmologist or optometrist. If any eye condition that may impact an ITDM individual's ability to safely operate a CMV is present, it is reasonable for the Agency to expect that the ITDM individual's TC will ensure that proper comprehensive eye examinations are obtained to appropriately monitor any progressive vision impairment. As with all medical certification examinations, with the ITDM individual's consent, the certified ME may confer as needed with the TC or an eye specialist to determine whether additional information or evaluation is necessary prior to the medical certification decision.

The final rule does not change the existing requirement that all individuals must meet the vision standard in § 391.41(b)(10) to operate a CMV. The Agency continues to find that meeting the vision standard provides reasonable certainty of discovering and mitigating risks associated with any safety-related condition that would interfere with meeting the standard. As such, this rule does not include a mandatory requirement or specify the frequency for comprehensive eye examinations for ITDM individuals.

I. Disqualification for Vision Impairment

NPRM: The NPRM did not propose that any specific visual complications associated with diabetes would disqualify an ITDM individual from being medically qualified.

Comments on Disqualification for Vision Impairment: Commenters stated that no diabetic retinopathy above stage 1 is acceptable. The risks of progression, which may occur very suddenly, are too high. No laser treatments or intraocular injections for retinopathy should be allowed. Additionally, vision exemptions should not be acceptable in this context.

2015 MRB Report: If ITDM individuals had stage 3 or 4 of diabetic retinopathy, the MRB recommended that such individuals be disqualified permanently from medical certification.[12]

Comments on the MRB's Report on Disqualification for Vision Impairment: Commenters agreed that stage 3 or 4 retinopathy should be a permanent disqualification because of the significant risk of sudden vision compromise from bleeding or retinal detachment. In addition, the ADA noted that the standard treatment for this stage is pan-retinal photocoagulation, which cuts down night vision and peripheral vision that are important to CMV operation.

The University of Utah stated that anything beyond non-proliferative retinopathy should be disqualifying because epidemiological studies suggest sudden onset of vision impairment is too common. This commenter also stated that it should be made clear that any laser treatments or intraocular injections for treatment of retinopathy would preclude driving. Additionally, monocular driving in combination with any degree of retinopathy, not just stage 3 or 4 retinopathy, should be clearly disqualifying due to the inability to have a compensatory eye combined with the potential suddenness of onset of vision impairments.

In contrast, an endocrinologist stated the 2015 MRB recommendation is relatively arbitrary. Proliferative retinopathy, even after laser therapy, affects vision variably. Thus, not all individuals in these categories will have significant vision impairment. The endocrinologist commented that the criterion should be based on function, such as acuity, night vision, and response times to stimuli in the periphery of visual fields. An individual wrote that, if an ITDM individual receives treatment for the diabetic retinopathy and an ophthalmologist states that the individual can operate a CMV safely, the retinopathy should not be a disqualifying factor.

FMCSA Response: This final rule requires that the certified ME disqualify permanently from medical certification any ITDM individual who is diagnosed with severe non-proliferative diabetic retinopathy or proliferative diabetic retinopathy.

The Agency agrees with the 2015 MRB report and commenters that ITDM individuals with advanced stages of diabetic retinopathy pose a safety risk while operating a CMV. ITDM individuals whose diabetic retinopathy has reached the advanced stages of

[11] The AOA commented that ''comprehensive eye examination'' is the proper terminology to describe the general evaluation of the complete visual system, including a dilated retinal examination, rather than ''an ophthalmology or optometry exam.''

[12] The Agency sought clarification from the MRB and was informed that stage 3 diabetic retinopathy could be termed severe non-proliferative diabetic retinopathy and stage 4 diabetic retinopathy could be termed severe proliferative diabetic retinopathy.

severe non-proliferative or proliferative diabetic retinopathy are at risk of sudden incapacitation from a detached retina or bleeding. FMCSA agrees, therefore, that ITDM individuals with severe non-proliferative or proliferative diabetic retinopathy should be disqualified permanently from operating a CMV. Given that treatment for advanced diabetic retinopathy impacts night and peripheral vision adversely, which are important for operating a CMV, the Agency has determined that there is a rational basis to find that ITDM individuals with severe non-proliferative or proliferative diabetic retinopathy should be permanently disqualified from being medically certified, despite treatment.

The Agency declines to incorporate any specific definition of severe non-proliferative or proliferative diabetic retinopathy in either the ITDM Assessment Form, MCSA–5870, or the regulation. Instead, the Agency refers to classification categories created by eye specialists, such as the National Eye Institute [13] and the International Clinical Diabetic Retinopathy Disease Severity Scale,[14] with which eye specialists are familiar and well versed for the definitions. Adding a specific definition would not assist the trained eyecare specialist in making a clinical determination.

With respect to the disqualification determination process, the ITDM Assessment Form, MCSA–5870, asks the TC whether the ITDM individual has been diagnosed with severe non-proliferative diabetic retinopathy or proliferative diabetic retinopathy. If it is noted on the form that the ITDM individual has been diagnosed as such, the certified ME may rely on that representation and disqualify the individual permanently from medical certification. Alternatively, the certified ME may exercise his or her independent medical judgment and refer the individual for further evaluation prior to making a certification determination.

J. HbA1C Levels

NPRM: The NPRM did not propose a standard for HbA1C levels for medical qualification of ITDM individuals.[15]

Comments on HbA1C: The former MRB members wanted FMCSA to state its position on acceptable HbA1C levels, and recommended that driving be allowed when the HbA1C is below 10 percent. A physician indicated that FMCSA needs to establish specific guidance regarding what HbA1C level would enable an individual to operate a CMV safely and asked whether a level of 12 percent is satisfactory. The commenter stated that FMCSA will need to provide a table as it does for blood pressure. An RN stated that ITDM individuals should be required to have an HbA1C test every 3 months. Another commenter stated that an individual should check his or her HbA1C every 6 months.

The ACOEM and TFAC would require the TC to send the certified ME the current HbA1C results. TFAC stated that this should be done within 30 days of certification. TFAC commented further that the HbA1C test provides the best information available on long-term control and cannot be falsified as a daily blood glucose log can. The NTSB suggested that FMCSA could require clinical information, including HbA1C levels, from the TC to demonstrate that the individual meets specified criteria.

The ADA, on the other hand, opposed requiring a specific HbA1C range when licensing ITDM individuals, and recommended that FMCSA not use this ''medically unjustified criterion'' in any form. The ADA noted that, taken alone, an HbA1C above 7 percent in no way indicates the individual cannot operate a CMV safely. The ADA, along with the ACOEM, maintained that an HbA1C test is a useful indicator of diabetes management when used in conjunction with other assessment tools to assess an individual's ability to drive safely. The ADA wrote that diabetes management decisions should be made by an individual and his or her physician based on how diabetes affects that person.

2015 MRB Report: The 2015 MRB report recommended that an ITDM individual with uncontrolled diabetes be disqualified from operating CMVs. The evidence for uncontrolled diabetes would be an HbA1C level greater than 10 percent. The ITDM individual could be reinstated when his or her HbA1C level is less than or equal to 10 percent.

Comments on the MRB's Report on HbA1C: The ACOEM was the sole commenter who supported this recommendation. It added that the ITDM individual could be reinstated only when the recommended HbA1C level is maintained for at least 3 months.

Some commenters objected to a threshold of 10 percent. An MD commented that this level does not take into consideration individual variability in glycation rate and that the criterion could be tighter. An individual wrote that HbA1C is not clearly defined as a range as it is in Canadian and European regulations nor is the level in the healthy or controlled range.

Other commenters, including H&SW, an MD, the ADA, and the ATA, objected to the use of HbA1C altogether to determine whether an individual is safe to drive. H&SW wrote that the HbA1C test measures average blood sugar over 3 months, and does not give information about hypoglycemic episodes. An MD commented that he is not aware of any evidence that a high HbA1C renders an individual unfit to drive. The MD added that, while a high HbA1C may result in neuropathy, retinopathy, and other end organ damage that could lead to unsafe driving, these conditions take many years to develop and an HbA1C greater than 10 percent does not mean that an individual has these conditions. Because individuals on oral medications would be allowed to drive with HbA1C levels higher than 10 percent, the MD indicated that this rule would discriminate against ITDM individuals and create a disincentive for individuals to seek appropriate treatment with insulin. The MD recommended either removing this recommendation or increasing the HbA1C threshold to 12 percent.

The ADA and the ATA wrote that the HbA1C test is a useful indicator of poor diabetes management when used with other assessment tools. The ADA highlighted that the HbA1C measure does not predict hypoglycemia. Additionally, a high HbA1C does not impair driving, and evaluation of end organ damage will identify individuals whose diabetes leads to complications that impact safe driving. The ATA stated that disqualifying an individual for an HbA1C level greater than 10 percent may be somewhat arbitrary. This recommendation could create a disparity between individuals who are managing their diabetes with and without insulin. The ATA suggested that the certified ME should work with the TC to determine whether a high HbA1C presents a danger. It recommended further that FMCSA should consider other factors, in addition to a high HbA1C level, for determining whether an individual's diabetes is well-controlled and maintained.

FMCSA Response: FMCSA agrees with comments that HbA1C values should not be relied upon as a sole measure of an ITDM individual's ability to safely operate a CMV. The final rule allows the TC to evaluate all relevant clinical factors to determine whether an individual maintains proper control of

[13] *See https://nei.nih.gov/diabetes/content/english/know* (Accessed May 25, 2018).

[14] *See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3874488/* (Accessed May 25, 2018).

[15] The A1C blood test is often referred to as the hemoglobin A1C, HbA1C, or glycohemoglobin test. *See https://www.niddk.nih.gov/health-information/diabetes/overview/tests-diagnosis/a1c-test#1* (Accessed Sept. 13, 2017).

his or her ITDM. HbA1C levels are one factor the TC may consider in making that determination.

FMCSA agrees further that making a medical qualification determination based solely on a specific HbA1C level is inconsistent with the rule's emphasis on individualized assessment. In addition, the National Institute of Diabetes and Digestive and Kidney Disease states that HbA1C test results can be up to 0.5 percent higher or lower than the reported actual percentage; can be unreliable for people of African, Mediterranean, or Southeast Asian heritage; and can be altered by diseases that affect blood or hemoglobin.[16] While a high HbA1C level may suggest that complications from diabetes might develop in the future, it does not mean that an individual presently has complications or is unsafe to drive a CMV.

The ITDM Assessment Form, MCSA–5870, asks the TC to report whether the individual has had HbA1C measured intermittently over the past 12 months, with the most recent measure within the preceding 3 months. If so, a copy of the most recent laboratory result is to be attached to the form so that it is available to the certified ME.

K. Specific Blood Glucose Limits

NPRM: The NPRM did not propose a specific range for blood glucose readings.

Comments on Establishing Specific Glucose Limits: The NTSB suggested FMCSA require ITDM individuals meet specified criteria to demonstrate that their diabetes is properly managed, including an acceptable range for blood glucose. Some commenters, including a retired FAA safety inspector, the former MRB members, an RN, the ACOEM, and H&SW, recommended specific acceptable blood glucose limits. The retired FAA safety inspector stated that a reading lower than 80 mg/dL should be flagged, which would give the individual time to correct blood glucose. The former MRB members said ITDM individuals should maintain blood glucose levels of at least 100 mg/dL while driving. If a blood glucose value is less than 60 mg/dL, the ACOEM would require the individual to repeat the test at least every 30 minutes until 90 mg/dL is reached. During this time, the individual would have to document that he or she was not driving and provide additional documentation on the low reading. H&SW stated that a blood glucose level within the normal range of 80 to 140 mg/dL would be appropriate.

The ADA wrote that it is appropriate to evaluate blood glucose readings. However, there is no legitimate medical reason to automatically disqualify individuals whose blood glucose logs show some readings below 100 mg/dL or above 400 mg/dL, as stipulated in the current exemption program.

2015 MRB Report: The MRB recommended that if an ITDM individual had a blood glucose measure of less than 60 mg/dL, as demonstrated in the current glucose logs, the individual would be disqualified for at least 6 months.

Comments on the MRB's Report on Establishing Specific Blood Glucose Limits: Many commenters objected to the disqualification of an ITDM individual for having a single reading below 60 mg/dL. Several commenters stated that it was not appropriate to set a blood glucose standard for when an individual is not on duty. They, along with the ATA and ADA, discussed that a single reading of a blood glucose level below 60 mg/dL should not be sufficient to disqualify an ITDM individual. They stated that the Agency should consider whether a low blood glucose recording was an isolated incident or part of an overall pattern of poorly-controlled diabetes.

The ADA stated that the recommendation is ''an extreme overreaction to the potential risk of hypoglycemia, and does not provide for individualized assessment of a specific driver's diabetes risk.'' It continued that a blood glucose level less than 60 mg/dL is dangerous only if it is not treated. The ADA commented that, instead of disqualifying the individual, it is important to determine the cause of the low blood glucose level. The ADA strongly urged the Agency to eliminate all categorical glucose levels from the list of disqualifying factors.

An endocrinologist stated that all ITDM individuals will have some blood glucose readings below 60 mg/dL, perhaps once a week. In the endocrinologist's opinion, disqualifying individuals for a blood glucose level any time it was under 60 mg/dL would be ''unreasonable/discriminatory.'' A different MD stated that disqualification based on a onetime reading of less than 60 mg/dL ''seems arbitrary.'' The MD continued that ''[t]his rare low blood glucose reading does not imply the driver's diabetes is uncontrolled or that the driver has a problem with hypoglycemic unawareness.''

The ATA noted that there are several factors that can cause blood glucose to drop low, including titration following a new treatment. For this reason, the ATA stated that the TC and certified ME should review blood glucose logs to determine whether the low blood glucose level was an isolated incident.

The ACOEM stated that a blood glucose level of less than 60 mg/dL is probably too low, as once the blood glucose is at 60 mg/dL the individual is likely to already be having symptoms. If the blood glucose is below 70 mg/dL, the ACOEM recommended that the ITDM individual should not be permitted to drive until all blood glucose logs show levels above 70 mg/dL for at least 6 months, with recurrent episodes triggering progressive duration of out of service periods.

FMCSA Response: The Agency agrees with commenters that an ITDM individual should not be disqualified for a single blood glucose reading that falls below or above a specific limit. The intent of the final rule is for an individualized assessment of the stability of the individual's insulin regimen and control of his or her ITDM, as determined by the TC, and of whether the individual satisfies the physical qualification standards, as determined by the certified ME. Therefore, FMCSA finds it is appropriate for TCs to set individualized, clinically-based parameters for blood glucose limits for ITDM individuals rather than establishing a regulatory requirement. TCs should look for frequent occurrences of low blood glucose levels and determine the cause. For example, frequent low blood glucose levels may indicate potential improper diabetes management or other underlying medical issues. While the certified ME considers the TC's input on whether the ITDM individual maintains a stable insulin regimen and proper control of his or her ITDM, it is the certified ME's responsibility to consider safety and make a physical qualification determination.

L. Severe Hypoglycemic Episodes

NPRM: FMCSA proposed to allow ITDM individuals to drive CMVs if they were free of severe hypoglycemic reactions in the 12 months prior to the TC evaluation. A severe hypoglycemic reaction was described as one that results in loss of consciousness or seizure, requires the assistance of another person, or results in impaired cognitive function.

Comments on Severe Hypoglycemic Episodes: The former MRB members, Concentra, the NTSB, and the ACOEM recommended that FMCSA establish specific, measurable standards to define a severe hypoglycemic episode.

[16] *See https://www.niddk.nih.gov/health-information/diabetes/overview/tests-diagnosis/a1c-test#1* (Accessed Sept. 13, 2017).

Comments included concerns regarding ways of reporting severe hypoglycemic episodes and the length of time between episodes. Advocates supported the proposed rulemaking, but was concerned that the reporting requirement may be too lax and open to potential abuse. SOCO recommended a note from the TC stating that the ITDM individual is stable on current therapy and is not experiencing hypoglycemic episodes. This commenter would require immediate reporting to the certified ME and the TC of new or recurring hypoglycemia. Instead of the proposed 12 months, a diabetes educator stated that ITDM individuals should have to follow-up at least every 6 months with an endocrinologist and diabetes educator to make sure that the individuals are not having multiple episodes of hypoglycemia or hyperglycemia.

The former MRB members, Advocates, the ATA, and AAPA–OM agreed that FMCSA should remove any ITDM individual who has a severe hypoglycemic episode within a year from work for at least 1 year. AAPA–OM stated that there should not be recurrent (two or more) severe hypoglycemic episodes in the last 5 years. The former MRB members recommended periods of longer than 12 months for not allowing ITDM individuals to operate CMVs if they had more than two episodes in the last 5 years. Concentra commented that the safety risks from acute hypoglycemia are too great not to be defined and that FMCSA should review the criteria with leading endocrinologists who specialize in diabetes. The NTSB was concerned that the NPRM required only that the TC determine that an individual has had no severe hypoglycemic episodes and that the diabetes is properly managed, rather than providing clinical information to demonstrate that the individual meets specified criteria.

2015 MRB Report: The 2015 MRB report defined a severe hypoglycemic episode as loss of consciousness, seizures or coma, requiring the assistance of others, or needing urgent treatment (glucagon injection or intravenous glucose). If an ITDM individual had an episode of severe hypoglycemia within the previous 6 months, the MRB recommended that the individual be disqualified from operating a CMV for at least 6 months.

Comments on the MRB's Report on Severe Hypoglycemic Episodes: The ADA, the ACOEM, and the University of Utah stated that the recommended definition needs to be clarified. For example, the ADA stated that urgent treatment is too broad a term and could include self-treatment by an individual who recognizes dropping blood glucose. The University of Utah commented that a glucose level below 60 mg/dL is the same as severe hypoglycemia. This commenter also suggested that there should be a requirement for the ITDM individual who experienced an episode to make some adjustment to prevent another episode from occurring. H&SW recommended that moderate hypoglycemia should be addressed in the rulemaking because it can pose a serious concern.

Some commenters supported the recommendation that an ITDM individual who experienced a hypoglycemic episode be disqualified for 6 months, while others who disagreed with it, including an endocrinologist, stated the disqualification was unreasonable and discriminatory to ITDM individuals. Commenters who opposed this recommendation, again including the endocrinologist, stated that episodes that occurred off duty should not count against the ITDM individual, as they have no safety implications. They noted that there are many reasons for low blood glucose, such as acute illness, infections, or medication. Commenters, including OOIDA, stated that disqualifying ITDM individuals for 6 months would be financially burdensome on these individuals and may even lead to job losses. Rather than having FMCSA set a specific timeframe for disqualification, commenters, such as the ADA, stated that the TC should determine the length of the disqualification period, or determine that the disqualification has been lifted as a result of corrective measures or lapse in time since the disqualifying event(s). Concentra noted generally that the 6-month disqualification period may be difficult for the certified ME to track and that it is conceivable the individual could be seen by another certified ME who would be unaware of the disqualification.

Some commenters stated that a single episode of severe hypoglycemia should not be disqualifying and that the issue needs to be recurring. For example, the ADA stated that ''any policy that disqualifies a driver on the basis of a single episode of severe hypoglycemia is misguided.'' Instead, the ADA maintained, the TC should determine the cause of the low blood glucose, whether it was an isolated incident, and the likelihood of such an episode recurring. In contrast, the University of Utah and the ACOEM stated that the Agency should consider progressively longer periods of disqualification based on the frequency of these episodes. The University of Utah indicated that there must be a limit to the number of severe hypoglycemia episodes.

FMCSA Response: In the final rule, FMCSA has revised the NPRM and 2015 MRB definitions of a severe hypoglycemic episode to eliminate ambiguity and potential redundancy. FMCSA also has clarified that the scope of the definition is *severe* episodes by eliminating from the definitions that the episode results in impaired cognitive function or requires urgent treatment. The revised definition provides a more objective standard that allows for more consistent determinations regarding what constitutes a severe hypoglycemic episode. A severe hypoglycemic episode is defined as an episode requiring the assistance of others, or resulting in a seizure, coma, or the loss of consciousness.

In view of the potential impact on safety, FMCSA is clarifying in the final rule that an ITDM individual certified as physically qualified to operate a CMV who experiences a severe hypoglycemic episode is prohibited from operating a CMV. The Agency is adding a requirement in the rule that such an individual must report the episode to and be evaluated by a treating clinician as soon as is reasonably practicable.

The driving prohibition continues until the ITDM individual has been evaluated by a TC (who meets the specifications in the rule), and a TC determines that the cause of the severe hypoglycemic episode has been addressed and that the individual again has a stable insulin regimen and properly controlled ITDM. Once a TC completes a new ITDM Assessment Form, MCSA–5870, following the episode, the individual may resume operating a CMV. The rule requires the ITDM individual to retain the form and to provide it to the certified ME at the individual's next medical certification examination so the certified ME will be aware of the prior episode.

The Agency agrees with commenters that after an ITDM individual experiences a severe hypoglycemic episode the individual must demonstrate that the cause of the episode has been addressed and that a future episode is not likely to recur. However, the Agency also agrees with some commenters that prohibiting an individual from driving for 6 to 12 months after a severe hypoglycemic episode is onerous for both ITDM individuals and employers. In addition, a period of 6 to 12 months is not necessary medically to determine stability in most instances because severe hypoglycemic episodes are often the result of short-term causes. For

example, in certain circumstances, the cause of an episode might be able to be addressed while an individual is in an emergency room or other medical facility, and a TC could complete a new ITDM Assessment Form, MCSA–5870, at that time. Moreover, the Agency lacks data that suggest an ITDM individual who has experienced a severe hypoglycemic episode is likely to experience another episode within any specific timeframe, and commenters, as well as the MRB, have not provided any relevant data.

Accordingly, the final rule does not establish a specific timeframe that an ITDM individual is prohibited from operating a CMV following a severe hypoglycemic episode. Rather, the rule defers to a TC to make an individualized assessment as to when the cause of the episode has been addressed and the individual again has a stable insulin regimen and properly controlled ITDM. A TC is in a good position to obtain and take in to account an ITDM individual's medical history. Therefore, a TC is also in a good position to determine and treat the cause of a severe hypoglycemic episode, assess the response to treatment, determine when the cause has been addressed, and, then, complete an ITDM Assessment Form, MCSA–5870.

FMCSA finds that any regulatory requirement that specifies a timeframe that an ITDM individual is prohibited from operating a CMV is not consistent with the intent of this rule to provide for individualized assessment. The individualized approach the Agency has adopted appropriately balances the safety of the motoring public with encouraging ITDM individuals to seek proper treatment and to comply with the rule's requirements.

The Agency emphasizes that a TC is not determining whether the ITDM individual is qualified to operate a CMV following a severe hypoglycemic episode. Rather, a TC's role continues to be limited to determining whether the ITDM individual has a stable insulin regimen and properly controlled ITDM.

FMCSA has considered the comments to the effect that severe hypoglycemic episodes that occur when an ITDM individual is off duty have no effect on safety. The Agency has revised the definition to clarify that the episodes of hypoglycemia that trigger the prohibition from operating a CMV and the reporting requirement are only those that are *severe.* FMCSA has concluded that it is in the interest of safety to require that ITDM individuals seek treatment after having experienced any severe hypoglycemic episode to ensure that the cause of the episode has been addressed.

FMCSA also declines to establish by regulation that any particular number of severe hypoglycemic episodes automatically disqualifies an ITDM individual from operating a CMV. Such a requirement would be contrary to the individualized assessment approach adopted in this rule. Instead, TCs will consider prior episodes of severe hypoglycemic episodes in determining whether an individual has a stable insulin regimen and properly controlled ITDM. Additionally, certified MEs will be aware of prior episodes via the ITDM Assessment Form, MCSA–5870, provided at any subsequent medical qualification examination.

FMCSA notes that the existing requirement that a new medical examination and certification must be obtained when an individual has a physical or mental injury or disease that impairs the individual's ability to perform his or her normal duties [17] could, depending on the circumstances, be applicable to the ITDM individual who experiences a severe hypoglycemic episode. Such ITDM individuals would be subject to a new evaluation by the TC, including completion of a new ITDM Assessment Form, MCSA–5870, and subsequent medical examination by the certified ME.

FMCSA declines to define or establish by regulation a moderate hypoglycemic episode as a disqualifying event. FMCSA expects the TC to evaluate a moderate hypoglycemic episode and any other diabetic complications in determining whether the individual maintains a stable insulin regimen and proper control of his or her ITDM.

The Agency developed the ITDM Assessment Form, MCSA–5870, that gathers information about an individual's diabetes and addresses many of the commenters' concerns. The Agency has concluded, through the completion of the form and evaluation of available subjective and objective clinical data, such as interviewing the individual and reviewing blood glucose records for fluctuations over time, that the TC is equipped to provide an appropriate assessment for the certified ME to review.

M. Hypoglycemia Unawareness

NPRM: The proposed rule did not address hypoglycemic events occurring without prior warning, also known as hypoglycemia unawareness.

Comments on Hypoglycemia Unawareness and Hypoglycemia Unawareness Training: The former MRB members commented that, to be qualified to drive, the ITDM individual should not experience hypoglycemia unawareness. The ATA added that the certified ME or TC should evaluate whether the individual has experienced any episodes of hypoglycemia unawareness. In terms of hypoglycemia awareness training, several commenters recommended that FMCSA require this training as a part of the diabetes qualification process to prevent an ITDM individual from experiencing a hypoglycemic episode while operating a CMV. Commenters who supported this requirement include Advocates, H&SW, the ACOEM, and TFAC. Comments on this topic included how often ITDM individuals should attend training sessions and how they should provide documentation to prove their attendance.

2015 MRB Report: The MRB recommended in its report that an ITDM individual who had hypoglycemia unawareness within the previous 6 months be disqualified from operating a CMV for at least 6 months.

Comments on the MRB's Report on Hypoglycemia Unawareness: Commenters generally agreed that impaired awareness of hypoglycemia is incompatible with driving and asked FMCSA to clarify the definition of hypoglycemia unawareness. For example, an MD suggested defining hypoglycemia unawareness as hypoglycemia under 50 ml/dL appearing in the absence of warning symptoms. The MD noted that symptoms of hypoglycemia in many well-controlled ITDM individuals without hypoglycemia unawareness do not arise until the glucose level is under 50, so clinicians may mistakenly label individuals as having hypoglycemia unawareness. The MD agreed, however, that an episode of hypoglycemia unawareness, as he defined it, should result in disqualification for 6 months.

On the other hand, most commenters indicated that a 6-month disqualification period is too long. An endocrinologist stated that the period of 6 months is arbitrary, and, in her opinion, unreasonable and discriminatory. Comments included the view that a single episode of hypoglycemia unawareness should not be disqualifying, and that such episodes need to be recurring or ongoing. The ADA and an endocrinologist indicated that ITDM individuals should be allowed to return to driving once the appropriate measures to avoid hypoglycemia and create awareness have been established.

[17] Now recodified without change in 49 CFR 391.45(f) by this final rule.

While some commenters indicated that an ITDM individual should be reinstated once the hypoglycemic unawareness issue is resolved, the University of Utah stated that there should be a minimum, perhaps 6 months, of blood glucose logs and symptom reviews to ascertain that the individual had regained awareness of hypoglycemia. The ACOEM stated that if an ITDM individual with hypoglycemia unawareness is later able to demonstrate hypoglycemia awareness and is certified, but hypoglycemia unawareness recurs, that individual should be permanently disqualified. The ACOEM commented further that, if an ITDM individual is not experiencing awareness of a blood glucose level below 60 mg/dL, the individual should be permanently barred from operating a CMV.

FMCSA Response: FMCSA has determined that hypoglycemia unawareness on its own should not be considered for medical qualification. Hypoglycemia unawareness would be considered by the TC in determining whether the individual has a stable insulin regimen and proper control of his or her ITDM. Due to the individualized effect of occurrences of hypoglycemia unawareness, the assessment, evaluation, and treatment for this condition should be a component of the TC's individualized management for a stable insulin regimen and proper control of the ITDM individual's diabetes. To assist the TC in educating ITDM individuals regarding hypoglycemic unawareness, FMCSA is planning to develop education and outreach information to promote recognition of hypoglycemia unawareness.

N. Blood Glucose Self-Monitoring

NPRM: During the period of medical certification, the NPRM required the ITDM individual to monitor and maintain blood glucose records as determined by the TC. The ITDM individual would submit those records to the TC at the time of evaluation. The NPRM did not propose a minimum insulin use period for new or established ITDM individuals to be eligible for medical certification.

Comments on Blood Glucose Self-Monitoring: Some commenters, including a retired FAA safety inspector, the former MRB members, an RN, the ACOEM, and H&SW, recommended a specific schedule for blood glucose monitoring. Commenters generally suggested testing prior to driving and then every 4 to 6 hours while driving. The retired FAA safety inspector recommended the most frequent monitoring, with testing 1 hour before driving and at least every 2 hours while driving.

The ACOEM recommended that a log be required consisting of at least 2 weeks of testing four times per day (before meals and at bedtime). It would require the blood glucose log to be downloaded and printed directly from the glucometer—no typed or handwritten logs—and to have a time stamp for each blood glucose value.

Concentra stated that FMCSA should discuss the criteria for self-monitoring blood glucose while driving. A diabetes educator stated that ITDM individuals should follow up at least every 6 months with an endocrinologist who would download their blood glucose readings. SOCO also recommended that a glucose log be maintained for review by the treating doctor.

Advocates was concerned about the lack of definitions for ''appropriate ranges'' and ''management.'' To support and document the conclusions of the TC, Advocates recommended that the Agency require ITDM individuals to submit blood glucose records for a specified time prior to the medical evaluation. Advocates indicated that leaving the definition of the appropriate level of reporting to the TC could encourage TC shopping.

The IBT and Concentra asked for clarification on how long insulin must be used before an ITDM individual can be certified to drive. The AAPA–OM commented that an ITDM individual must be on insulin for at least 2 years prior to certification. The ACOEM wrote that FMCSA should require a new insulin user to demonstrate stability, control, and lack of hypoglycemia over a period of time before being medically cleared for driving; this monitoring cycle could be more frequent at the discretion of the TC and the certified ME. The ACOEM commented that the Law Enforcement Officer Medical Guideline requires 3 months of stable insulin regimen for individuals on insulin for treatment of type 2 diabetes mellitus, and 6 months for individuals on insulin for treatment of type 1 diabetes mellitus. If the individual is on an insulin pump, the ACOEM would require the TC to send the certified ME a summary report on the use of the pump.

2015 MRB Report: The MRB report recommended that the suggested ITDM form request information on how many times per day the individual is testing blood glucose. It also suggested that ITDM individuals test blood glucose before driving and every 4 hours while driving.

The MRB recommended that the form request information about whether an individual on insulin with type 2 diabetes has been on a stable medication regimen for 3 months prior to evaluation by the TC. For individuals who have been newly diagnosed with type 1 diabetes, the minimum period of insulin use to establish medication regimen stability would be not less than 2 months. For individuals who have type 2 diabetes and are converting to insulin use, the minimum period of insulin use to establish medication regimen stability would be not less than 1 month.

The MRB specified that all ITDM individuals must have documentation of ongoing self-monitoring of blood glucose; however, established insulin users must have records covering a minimum of the most recent 3 months. This monitoring must be done using a finger stick glucose meter that stores every reading and records date and time of the readings, which the user can download. Handwritten blood glucose records would not be acceptable. The MRB recommended that an ITDM individual be disqualified for an inadequate record of self-monitoring blood glucose, ''*i.e.,* unreliable or absent capillary blood glucose measurements.'' This disqualification would last until the individual could demonstrate adequate evidence of glucose records, and a minimum of 1 month.

Comments on the MRB's Report on Blood Glucose Self-Monitoring: The University of Utah commented that the wording ''[i]nadequate record of self-monitoring of blood glucose'' was ''insufficiently clear.'' It recommended that it be specified how many readings can be missing over what period. It suggested considering blood glucose self-monitoring five times per day on days spent driving and four times per day on other days. The ACOEM asked what would be defined as adequate self-monitoring, which may differ based on the treatment. If left to the examiner to determine, the ACOEM commented that the examiner must be someone who can evaluate and treat individuals who use insulin. The ACOEM asked if the monitoring criteria would mirror the exemption program—prior to driving and every 4 hours while driving.

The ADA agreed with the importance of reviewing blood glucose records as part of an individualized assessment of an ITDM individual. It was concerned that the adequacy of records was referenced, but left undefined. The ADA stated that the adequacy of the records should be determined only by the TC. The ADA stated that it is inappropriate for the certified ME or anyone else to determine how often an ITDM

individual should be testing blood glucose.

The ADA was the only commenter that discussed the length of time an ITDM individual should be on insulin before being eligible to be medically certified. It noted the discrepancy between requiring an individual with type 2 diabetes treated with insulin to be on a stable medication regimen for 3 months, and the recommendation that an individual with type 2 diabetes converting to insulin use be using insulin for not less than 1 month. The ADA commented that these two standards should be the same and follow the criteria of the existing exemption program, which requires that an individual with type 2 diabetes use insulin for 1 month prior to eligibility for medical certification.

In terms of disqualification for inadequate records, the ADA stated that an ITDM individual should never be disqualified on the assumption that the individual's records of blood glucose monitoring are inadequate. An individual stated that the rule should allow for extenuating circumstances beyond the ITDM individual's control, such as difficulties with the blood glucose monitor. In such circumstances, the commenter felt it would be unfair to penalize the individual.

Some commenters wanted the rule to do more to increase the likelihood that an ITDM individual would keep blood glucose records. The University of Utah wanted a mechanism in the rule to assure ongoing compliance with blood glucose monitoring requirements. Concentra was concerned that an ITDM individual who was certified and became non-compliant would be able to continue to drive without FMCSA's knowledge. It stated that there should be a mechanism in place to require the TC to notify FMCSA if the individual becomes non-compliant or discharges the TC. H&SW wrote that the ITDM individual has ''additional impetus to keep blood glucose logs when a regulation requires it.'' A physician recommended that patients who have type 1 diabetes mellitus for over 5 years use continuous glucose sensors to minimize their risk of driving while hypoglycemic to ensure safety for the others on the road.

FMCSA Response: FMCSA agrees with the 2015 MRB recommendations and other commenters that a requirement for a period of blood glucose self-monitoring records should be included in the final rule. The final rule requires that all ITDM individuals must provide at least the preceding 3 months of blood glucose self-monitoring records while being treated with insulin to the TC to be eligible for up to the maximum 12-month MEC, MCSA–5876. If an individual does not provide the 3 months of records, the certified ME has discretion to grant the individual up to but not more than a 3-month MEC, MCSA–5876, to allow time for the individual to collect the necessary records. Once the individual has 3 months of blood glucose self-monitoring records, the individual is treated the same as an ITDM individual with 3 months of records. The individual must first go to the TC for evaluation and then to the certified ME, who must exercise independent medical judgment, to determine if the individual is eligible for up to the maximum 12-month MEC, MCSA–5876.

FMCSA has included the 3-month requirement for blood glucose self-monitoring records while being treated with insulin for all ITDM individuals. FMCSA has determined that there is no basis to differentiate blood glucose self-monitoring record requirements based on whether individuals have been newly diagnosed with type 1 diabetes or have type 2 diabetes and are converting to insulin use because both categories are beginning the use of insulin.

The Agency is requiring 3 months of records because this timeframe provides current blood glucose self-monitoring records to the TC, and is generally consistent with medical practice standards for follow-up visits for ITDM individuals. The Agency finds that this is a balanced approach for ITDM individuals that allows time to demonstrate a stable insulin regimen and proper control of ITDM, while providing enough information for the certified ME to determine whether the individual can safely operate a CMV.

The final rule does not establish the specific frequency of blood glucose monitoring. FMCSA finds that any regulatory requirement that specifies monitoring frequency does not support the intent of the rule for individualized assessment. Rather, the rule provides that ITDM individuals must self-monitor blood glucose in accordance with the specific treatment plan prescribed by the TC.

The TC is most familiar with the ITDM individual's medical history. As such, the TC is in the best position to determine the specific blood glucose monitoring plan, including monitoring requirements while driving a CMV, and whether the submitted blood glucose self-monitoring records are consistent with the plan. The Agency finds that this rule encourages the maintenance of blood glucose records in a manner that is focused on good monitoring practices, as well as maintaining proper control of the individual's diabetes and the overall health of the individual. Because daily testing and recording of results are routine aspects of managing ITDM, the rule's requirements do not impose any additional burden on ITDM individuals.

ITDM individuals must self-monitor blood glucose in accordance with the specific treatment plan prescribed by the TC. They must maintain blood glucose records measured with an electronic glucometer that stores all readings, that records the date and time of readings, and from which data can be electronically downloaded. A printout of the electronic blood glucose records or the glucometer must be provided to the TC at the time of any evaluation. Handwritten blood glucose records are not acceptable. As long as the ITDM individual can satisfy the foregoing requirements, the self-monitoring may be performed by finger stick or continuous glucose sensor.

O. Requirement To Carry Readily-Absorbable Glucose

NPRM: In the NPRM, FMCSA did not propose that ITDM individuals must carry readily-absorbable glucose, which is required under the existing exemption program.

Comments on the Requirement to Carry Readily-Absorbable Glucose: H&SW, Concentra, and a certified ME/physician commented that ITDM individuals should have readily-absorbable glucose within reach while driving to mitigate the risk of severe symptoms developing from a hypoglycemic episode. TFAC, on the other hand, stated that the requirement to carry readily-absorbable glucose is overly burdensome and would not improve safety.

2015 MRB Report: The 2015 MRB report did not address carrying readily-absorbable glucose. No comments were received concerning the MRB report in this regard.

FMCSA Response: The final rule does not require that ITDM individuals carry a readily-absorbable form of glucose. FMCSA finds that treatment for potential hypoglycemia is more appropriately a component of diabetes management as instructed by the TC rather than a mandate by a regulatory agency.

P. Diabetic Complications and Target Organ Damage

NPRM: The NPRM proposed that ITDM individuals must meet the physical qualification standards in § 391.41 and be free of complications that might impair their ability to operate a CMV.

Comments on Diabetic Complications and Target Organ Damage: Several commenters, including SOCO, the ATA, the NTSB, and the ACOEM, indicated that FMCSA should require evaluation of ITDM individuals to make sure that they do not show signs of diabetic complications or target organ damage. Commenters wanted ITDM individuals to be evaluated for complications such as diabetic neuropathy, paresthesia, and proprioception. Commenters also stated that ITDM individuals' kidney function should be evaluated by measuring creatinine. The ACOEM provided that an ITDM individual with kidney function worse that stage 3 should not be qualified. If the ITDM individual had stage 2 kidney function, the individual should be more closely monitored.

The ACOEM added that ITDM individuals have the same cardiovascular risk as someone with established coronary artery disease; thus, cardiovascular risk factors should be evaluated. The ACOEM recommended that ITDM individuals who meet certain Cardiovascular Advisory Panel Guidelines should be subject to the same medical qualifying criteria as those individuals with known coronary heart disease, including an exercise stress test. If there is evidence of ischemia, or the left ventricular ejection fraction is less than 40 percent, then the individual would be deemed ineligible for certification. SOCO also commented that FMCSA should require evaluation and documentation of the presence of coronary atherosclerosis and peripheral or cerebral vascular disease. Concentra commented that the safety risks from long-term co-morbidities are too great not to be defined and that FMCSA should review the criteria with leading endocrinologists who specialize in diabetes. The NTSB wrote that many ITDM complications cannot be identified by a routine physical examination.

2015 MRB Report: The MRB report recommended that, if there were signs of target organ damage, as evidenced by peripheral neuropathy, diabetic nephropathy, or cardiovascular disease, with the risk of impairing the ability to operate a CMV safely, an ITDM individual would be disqualified until the problem was resolved by treatment, if possible.

Comments on the MRB's Report for Diabetic Complications and Target Organ Damage: The ACOEM and the ADA supported the MRB recommendation, but the ACOEM added that there should not be a risk of the target organ damage recurring. An individual commented that the only factor should be whether the complication impairs the individual's ability to safely operate a CMV. An MD commented that the language ''signs of target organ damage'' is not specific and may not be an appropriate disqualifier. The MD recommended that the query should be whether symptomatic target organ damage is present that could render an ITDM individual unsafe to operate a CMV. If so, the ITDM individual should be disqualified until the matter is resolved by treatment.

The University of Utah stated that the phrase ''[d]isqualification until resolved by treatment, if possible'' is unclear. It noted that one could not resolve a heart attack by treatment and generally it is impossible to completely resolve neuropathy. This commenter recommended that those with four or more multiple conditions should be precluded from driving. For nephropathy, the prior Renal Medical Expert Panel and MRB recommendations should be applied, including staging of the nephropathy.

Concentra asked for specific direction regarding the diagnostic tests, including their frequency, that should be used to evaluate cardiovascular disease and diabetic nephropathy in ITDM individuals. It also asked that FMCSA clearly define the severity of diabetic nephropathy that would warrant disqualification.

FMCSA Response: In the final rule, the Agency continues to require that an ITDM individual must meet the physical qualification standards in § 391.41, have an exemption unrelated to diabetes, or have a Skill Performance Evaluation Certificate, if required. With the exception of diabetic retinopathy, the Agency declines to establish specific regulatory requirements pertaining to complications that may arise from diabetes.

The TC for the ITDM individual is best suited to provide information regarding diabetes complications. Moreover, the ITDM Assessment Form, MCSA–5870, adopted in this rule includes specific questions for the TC to identify diabetes complications and possible target organ damage. In making the final medical certification decision, the certified ME will consider the TC's information provided on the form in determining whether the individual meets the physical qualification standards to safely operate a CMV. FMCSA notes that the target organ complications associated with diabetes can result from any number of other medical conditions that certified MEs evaluate. Therefore, certified MEs should be familiar with the medical certification process involving such conditions.

FMCSA agrees with the MRB that an individual who has a complication from diabetes that interferes with safely operating a CMV should not be medically qualified to operate a CMV. The Agency finds, however, that diabetes complications should not automatically preclude medical certification. Such determinations should be based on an individualized assessment and the severity of symptoms. A complication becomes a disqualifying factor only if it impairs the ability to operate a CMV safely. As an alternative to disqualification, a certified ME may determine that an ITDM individual is unqualified until treatment is received and appropriate intervention mitigates or addresses the problem.

Q. Motor Carrier Responsibility To Enforce the ITDM Standard

NPRM: FMCSA did not propose any new requirements for motor carriers to enforce the ITDM physical qualification standard.

Comments on Motor Carrier Responsibility to Enforce the ITDM Standard: The ATA stated that no responsibility for monitoring and submitting compliance information should fall on the motor carrier; instead, it wrote this responsibility most appropriately resides with the certified MEs, TCs, and the ITDM individuals. However, the ATA did want motor carriers to retain access to the health information available on the ''medical long form'' and other sources to monitor compliance with § 392.3. ABA stated that passenger carriers should not be ''placed at the risk of assessing the medical condition of a driver or whether the driver is vigilant in maintaining [his or her] condition.''

2015 MRB Report: The MRB did not address the issue of motor carriers enforcing the ITDM standard. No comments were received concerning the MRB report in this regard.

FMCSA Response: The final rule revises the physical qualification standard for ITDM individuals, but does not create any new or additional monitoring or compliance requirements for motor carriers beyond those already set out in general terms in the FMCSRs. *See* 49 CFR 390.11, 391.11(a), and 391.41(a). The provisions of § 392.3 relate only to determining whether to allow an ill or fatigued individual to operate a CMV. The rule does not require access to any medical records, such as an individual's Medical Examination Report Form, MCSA–5875, to make that determination.

R. ITDM Individuals Operating CMVs Transporting Passengers or Hazardous Materials

NPRM: FMCSA did not propose to restrict ITDM individuals from being medically qualified to operate CMVs carrying passengers or hazardous materials but indicated that the MRB recommended in 2007 that ITDM individuals be restricted from passenger and hazardous materials transportation. The Agency requested public comment on this issue.

Comments on ITDM Individuals Operating CMVs Transporting Passengers or Hazardous Materials: The ADA, the IBT, OOIDA, and the Illinois Office of the Secretary of State supported allowing ITDM individuals to continue to operate CMVs carrying passengers or hazardous materials. These commenters agreed with FMCSA that the risk posed by an individual with stable, well-controlled ITDM is very low in general and that there is no medical evidence to support prohibiting ITDM individuals from certain operations. The ADA stated that prohibiting individuals from certain types of operations based on their diagnosis or use of insulin alone is antithetical to the basic premise of individual assessment that Congress required in SAFETEA–LU. OOIDA added that individuals who transport hazardous materials are frequently some of the most experienced and safest operators on our nation's highways and their highway safety performance should be the focus, not an arbitrary condition-based decision.

Commenters that expressed concern about the Agency not restricting ITDM individuals from transporting passengers or hazardous materials include the NTSB, United Motorcoach Association (UMA), ABA, Advocates, and the former MRB members. UMA and ABA, however, supported continuing the current exemption program for drivers transporting passengers.

The NTSB and ABA questioned relying on the ADA study that FMCSA cited in the NPRM [18] to support the Agency's conclusions. For example, the NTSB stated that the ADA report did not address the risks to public safety of ITDM individuals who operate CMVs. The NTSB noted that an individual's risk of becoming impaired from stable, well-controlled ITDM may not be higher among individuals who operate CMVs, but the potential consequences of such an event are significantly greater.

Advocates stated that research has shown individuals with diabetes in the United States have an increased crash risk, as do individuals treated with insulin. Advocates recommended that the Agency restrict ITDM individuals from transporting passengers or hazardous materials for a specified amount of time until they have driven freight under the conditions of the proposed regulations and have a safe driving record.

ABA commented that the 2007 MRB recommendation recognized that drivers of passenger vehicles are not conducting the same operations as cargo carrying CMV drivers, and required a higher medical standard. ABA noted that, although the Agency stated it is impermissible under the law to adopt higher physical standards for ITDM individuals, the law provides for exceptions, as demonstrated by the current exemption process.

UMA noted that over-the-road bus operations may not be conducive to maintaining proper blood glucose levels because schedules often vary and are not flexible, testing and snacking opportunities are limited, and passengers may become alarmed when observing a driver injecting insulin or monitoring blood glucose. UMA recommended that FMCSA study crash rates for ITDM individuals operating CMVs under the NPRM for at least 5 years before considering whether to allow ITDM individuals to obtain a passenger endorsement.

2015 MRB Report: The 2015 MRB report did not mention the 2007 MRB recommendation proposing to restrict ITDM individuals from operating CMVs transporting passengers or hazardous materials cited in the NPRM.

Comment on the MRB's Report on ITDM Individuals Operating CMVs Transporting Passengers or Hazardous Materials: Advocates noted the omission of the 2007 recommended restriction from the 2015 MRB report. It stated that the Agency is obliged to provide a full and complete discussion of the 2007 MRB recommendation, which it characterized as an important safety precaution. Advocates wrote that the revision of the medical requirements for ITDM individuals should ensure that they do not impose any greater risk of crash involvement than non-ITDM individuals operating CMVs that transport either passengers or hazardous materials.

FMCSA Response: The Agency continues to conclude that individuals who maintain a stable insulin regimen and proper control of their ITDM can operate any category of CMV safely. No new information or data was provided by commenters that persuades the Agency to depart from its conclusion. Under section 4129 of SAFETEA–LU, FMCSA may not hold ITDM individuals to a higher standard of physical qualification than other individuals, except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations. The Agency finds that there is no available evidence to support holding ITDM individuals to a higher standard in connection with transporting passengers or hazardous materials. FMCSA addresses the issue of ITDM individuals' ability to safely operate CMVs in a following section.

S. ITDM Individuals With Licenses Issued in Canada or Mexico

NPRM: The NPRM stated that ITDM individuals with licenses issued in Canada or Mexico would not be allowed to operate CMVs in the United States.

Comments on Not Allowing ITDM Individuals with Licenses Issued in Canada or Mexico to Operate CMVs in the United States: FMCSA received two comments addressing this issue. The IBT commented that it supports continuing the current policy applicable to ITDM individuals domiciled in Canada and Mexico. A Canadian ITDM individual noted that Canada requires commercial operators to have a medical examination, monitor HbA1C results, and have a retinopathy examination done annually. Because the United States recognizes Canadian medical evaluations, this commenter suggested that FMCSA allow ITDM individuals with licenses issued by Canada to drive in the United States.

2015 MRB Report: The MRB did not discuss certifying ITDM individuals from Canada or Mexico and no comments were received concerning the MRB report in this regard.

FMCSA Response: FMCSA retains its position that ITDM individuals with licenses issued in Canada or Mexico are prohibited from operating CMVs in the United States. Individuals from Canada with a license issued in conformity with the Canadian National Safety Code and from Mexico with a Licencia Federal de Conductor (LFC) generally may operate CMVs in the United States (49 CFR 383.23(b) n.1 and 391.41(a)(1)(i)). Nonetheless, under the terms of the 1998 reciprocity agreement with Canada, a Canadian ITDM individual is not authorized to operate a CMV in the United States. Mexico does not issue an LFC to any ITDM individual. FMCSA cannot change its current position

[18] ADA, ''Diabetes and Driving,'' *Diabetes Care,* vol. 35, suppl. 1, Jan. 2012, p. S81, which is available in the docket for this rule.

unless the underlying reciprocity agreement with Canada is amended or Mexico changes its policy to allow ITDM individuals to be issued LFCs.

T. The Grandfather Provision for Insulin-Treated Diabetes

NPRM: From 1993 until 1994, ITDM individuals could apply to the FHWA for a waiver that allowed them to drive a CMV in interstate commerce. In 1994, a Federal court decision invalidated the waiver program, but individuals holding waivers were allowed to continue to drive CMVs under the grandfather provision in § 391.64(a). In the NPRM, FMCSA stated that the provisions in § 391.64 might be redundant if the proposed rule was adopted, and asked if removing § 391.64 would affect adversely any individual still operating a CMV under that rule.

Comments on Removing the Grandfather Provision for Insulin-Treated Diabetes: A physician/certified ME concurred with FMCSA that § 391.64 would be redundant if the proposed rule was adopted. He stated that, with the termination of the diabetes exemption program, § 391.64 should be eliminated. This commenter did not see how individuals certified under § 391.64 would be affected adversely by eliminating the grandfather provision.

The Illinois Office of the Secretary of State stated that removing the grandfather provision would not adversely affect individuals currently operating CMVs under § 391.64. This commenter noted that there are currently 10 operators in Illinois who are grandfathered under § 391.64. The commenter wrote that holding these individuals to the approach proposed in the NPRM would not impact their safety or the safety of other motorists adversely.

2015 MRB Report: The 2015 MRB report did not discuss the grandfather provision and no comments were received concerning the MRB report in this regard.

FMCSA Response: In the final rule, FMCSA eliminates the diabetes grandfather provision in § 391.64(a). FMCSA agrees with the commenter that the grandfather provision is redundant of several requirements in new § 391.46. Individuals currently certified under § 391.64 are either already able to meet the requirements of this rule or could meet a less restrictive requirement. FMCSA finds that discontinuing the grandfather provision has no adverse impact on the less than 100 currently grandfathered individuals or on motor carriers. FMCSA provided a year to transition to the new process to avoid any possible hardships for individuals who would need to be certified just after the rule becomes effective. FMCSA is directly contacting the currently grandfathered individuals to further explain the transition process.

The diabetes grandfather provision in § 391.64(a) will sunset and will be removed 1 year after the effective date of this final rule. During that year, individuals certified under the grandfather provision may choose to be certified under § 391.64(a) or this final rule. Within 1 year after the effective date, however, all individuals previously certified under § 391.64(a) must comply with the provisions outlined in §§ 391.41, 391.45, and 391.46 in the final rule. As such, any individual who chooses to be certified under § 391.64(a) must be certified again under this final rule within a year after the effective date, which would mean that the individual would have to undergo a second evaluation by a TC and a medical qualification examination. FMCSA anticipates that it will be advantageous for individuals certified previously under § 391.64(a) to transition to certification under this rule as soon as possible to avoid duplicative examination costs and to potentially reduce costs by being evaluated by a TC, rather than by an endocrinologist. In any event, any waiver and current MEC, MCSA–5876, issued pursuant to § 391.64(a) will automatically become void 1 year after the effective date of the final rule.

U. Safety of ITDM Individuals

NPRM: The NPRM proposed to permit individuals with stable, well-controlled ITDM to be medically qualified to operate CMVs and to eliminate the diabetes exemption program. The Agency determined that ''[t]he risk posed by a driver with stable, well-controlled ITDM is very low in general'' (80 FR 25265). In making this determination, the Agency concurred with a finding of the ADA in its 2012 position statement titled ''Diabetes and Driving'' that ''[M]ost people with diabetes safely operate motor vehicles without creating any meaningful risk of injury to themselves or others.'' [19] *Id.*

Comments on the Safety of ITDM Individuals: Many commenters agreed specifically that ITDM individuals whose condition is stable and well controlled do not pose an unreasonable safety risk. For example, the National School Transportation Association agreed with this conclusion and expressed support for the proposed rule as it applies to CMV operators driving school buses. Additionally, the Transportation Division of the Sheet Metal, Air, Rail Transportation Union pointed out data in the Preliminary RIA published with the NPRM showed that the 1,730 drivers in the exemption program performed much better than the general CMV population in terms of crash rates. Several commenters noted that the rulemaking alleviates the burden of the exemption process, while maintaining safety. OOIDA concurred that the proposed rule would continue to ensure safe operation of CMVs.

Several commenters, including some medical professionals, the ACOEM, ABA, and the NTSB, stated that changing the exemption program would decrease safety. TFAC supported removing the exemption program but stated that the proposed rule went too far in removing requirements and a compromise group of requirements would be appropriate. H&SW also concurred with the proposal to eliminate the diabetes exemption program, but expressed that it is in the best interest of road safety to maintain some of the important provisions of the exemption program. Advocates acknowledged recent advances in medical information regarding ITDM and expressed support for a change to the medical standards to permit ITDM individuals to operate CMVs. Advocates maintains, however, that the requirements for ITDM individuals should incorporate the recommendations of the 2007 MRB that were cited in the NPRM.

The former MRB members disputed FMCSA's conclusions on the safety of ITDM individuals. They cited five studies [20] and FMCSA's 2006 Diabetes Evidence Report [21] that they stated show drivers with diabetes have about a 20 percent increased risk of crash and drivers taking insulin have a 40 to 130 percent increased risk of crash. When parsing the data down to insulin use and studies based in the United States, the former MRB members stated that FMCSA's 2010 Evidence Report Update [22] found that the risk of crash is

[19] ADA, ''Diabetes and Driving,'' *Diabetes Care,* vol. 35, supp1. 1, Jan. 2012 p. S81, which is available in the docket for this rulemaking.

[20] Songer TJ, Lave LB, LaPorte RE. *Risk Anal.* 1993 Jun; 13(3): 319–26. Songer TJ, Dorsey RR. *Annu Proc Assoc Adv Automot Med.* 2006; 50: 335–351. Redelmeier DA, Kenshole AB, Ray JG. *PLoS Med.* 2009 Dec; 6(12): e1000192. Kilpatrick ES, Rigby AS, Warren RE, Atkin SL. *Diabet Med.* 2013 May; 30(5): 616–9. Orriols L, et al. *Accid Anal Prev.* 2014 Oct; 71: 137–43.

[21] ''Evidence Report: Diabetes and Commercial Motor Vehicle Drive Safety,'' Sept. 8, 2006, which is available in the docket for this rulemaking.

[22] ''Evidence Report: 2010 Update: Diabetes and Commercial Motor Vehicle Driver Safety,'' May 27,

Continued

likely doubled, even though the result currently lacks statistical significance. They stated that a study shows that efforts to keep HbA1C below 7 percent ''is a substantial concern for further increasing crash risk.'' [23]

The former MRB members asserted that an implied purpose of eliminating the diabetes exemption program is to increase the number of ITDM individuals operating CMVs. The former MRB members indicated that it is inappropriate to infer from the diabetes waiver program, the diabetes exemption program, and The Large Truck Causation Study what would happen to a larger pool of ITDM individuals.

The NTSB stated that the Agency's justification for the proposed rule is flawed because the ADA position statement does not address the risks to public safety of CMV drivers with ITDM. H&SW also stated the Agency should not apply the ADA information on driving non-CMVs to driving CMVs. In addition, Advocates disagreed with the Agency's safety conclusions and cited FMCSA's 2010 Evidence Report Update, which it quoted as stating that in the United States there is ''approximately a 24 percent increase in crash risk among drivers with diabetes compared with drivers without diabetes,'' and ''a significant increase [175%] in crash risk for individuals treated with insulin compared with drivers treated with oral medication and/or diet alone.'' Based on this information, Advocates urged the Agency to adopt the 2007 MRB recommendations.

2015 MRB Report: The 2015 MRB report did not address the safety of ITDM individuals but stated that the baseline for acceptable risk should be the current diabetes exemption program.

Comments on the MRB's Report on Safety of ITDM Individuals: Few commenters specifically referenced data in connection with evaluating the safety of ITDM individuals. For example, OOIDA commented that, since the implementation of the exemption program in 2003, individuals with a stable history of treating their insulin dependent diabetes have proven to be safe CMV operators. OOIDA was ''unaware of any studies that have been conducted or any serious concerns that have been raised concerning those drivers who have completed the current exemption process.''

In contrast, the University of Utah stated that FMCSA's 2010 Evidence Report Update notes that the risk of crash among ITDM individuals in the United States is now estimated to be a 2.76-fold increased risk. The commenter stated that this risk is so high that it means there may be a very small minority of ITDM individuals who may be reasonably safe, and that ''[i]t demonstrates that the overwhelming majority of insulin using drivers are unsafe for driving commercial vehicles.'' The commenter noted that the United States-based data are naturally the most important to the question of safety, as European countries' populations have comparatively minor needs to drive motor vehicles. Therefore, European populations are arguably not comparable to the United States.

The University of Utah also stated that DOT's insulin waiver program, which had stringent criteria and enrolled 139 drivers in the 1990s, had subsequent crash data that suggested there was not an increased risk of crash for those individuals. The commenter noted that the comparison group of general CMV drivers likely included drivers who should not have been driving; thus, it was likely a biased control group. The University of Utah continued that FMCSA has subsequently had a fairly-stringent diabetes exemption program and it should be mandatory to examine the crash risks from that program prior to consideration of this proposal. While the crash data would still have the problem of a biased control population, the commenter stated that it would provide a somewhat reasonable comparison with the prior waiver program and help to determine whether and the extent to which both driver safety and public safety can be assured. Finally, the commenter recommended that there should be a pilot test with monitoring of crash risks before expanding the medical qualification of ITDM individuals.

FMCSA Response: The Agency continues to conclude that the crash risk posed by ITDM individuals who maintain a stable insulin regimen and proper control of their diabetes is very low in general and that such ITDM individuals do not create any meaningful risk of injury to themselves or others due to their insulin treatment. Although the Agency acknowledges that there is conflicting data regarding the crash risk posed by ITDM individuals, no new data have been presented by commenters to persuade the Agency to depart from its prior conclusions. Moreover, the Agency has determined that this final rule includes sufficient requirements and safeguards to ensure that only individuals who maintain a stable insulin regimen and proper control of their ITDM will receive medical qualification. Therefore, this final rule has no adverse impact on safety.

The Agency acknowledges that the 2012 ADA position statement focused primarily on non-CMV drivers. FMCSA emphasizes, however, that it is not the only source the Agency has considered in making its determination that the risk posed by ITDM individuals who maintain a stable insulin regimen and proper control of their diabetes is very low. The Agency has considered its Evidence Reports, information presented by commenters, and its own experience with CMV drivers.

As a commenter suggested, because there are few studies that evaluate ITDM individuals who operate CMVs, the Agency's actual experience with such individuals is highly relevant. Considering the long period over which the exemption program has operated, the Agency has determined that there is sufficient data to allow generalized conclusions to be reached. FMCSA's experience with the exemption program has demonstrated that the safety performance of ITDM individuals who hold exemptions is as good as that of the general population of CMV drivers. As set forth in the NPRM, on a per-driver, per-year basis, the crash rate for drivers with an exemption was 0.013, as compared to about 0.038 crashes per year per active CMV driver. As is discussed more fully in the RIA, a November 2016 analysis of the safety performance of ITDM individuals who held exemptions for the full period of 2011 through 2015 shows the 755 diabetes exemption holders had 58 crashes that resulted in a crash rate of 0.01536 crashes per driver per year. This compares to a crash rate of 0.03115 crashes per driver per year for a national population of 4,599,623 drivers and 143,289 crashes. These results were deemed to be demonstrative that exemption program crash rates were of the same order of magnitude as the national crash rate derived from the Motor Carrier Management Information System data. The analysis proceeded to determine if the 0.02986 crash rate for treatment group drivers was significantly different than the 0.02627 crash rate for the control group drivers, at a 95 percent confidence level. The analysis indicated that there was no statistical difference between the treatment group and control group crash

2011, which is available in the docket for this rulemaking.

[23] Kilpatrick ES, Rigby AS, Warren RE, Atkin SL. *Diabet Med.* 2013 May; 30(5): 616–9.

rates at the 95 percent confidence level.[24]

Although the Agency fully considered FMCSA's 2006 Diabetes Evidence Report and the 2010 Evidence Report Update at the time of the NPRM, the Agency will briefly address the 2010 Evidence Report Update due to comments regarding the crash risks provided in the report. The report found that the overall quality of the crash risk studies reviewed was low to moderate. Because only a single study compared crash risk among CMV drivers with diabetes against comparable CMV drivers without diabetes, an evidence-based conclusion regarding possible increased crash risk for CMV drivers with diabetes could not be drawn. The strength of evidence for the overall finding that drivers with diabetes are at an increased risk for a crash when compared with comparable drivers who do not have diabetes was determined to be weak. It could not be determined whether drivers with type 1 or type 2 diabetes or ITDM drivers were overrepresented in populations of drivers who have experienced a motor vehicle crash. As such, the report's findings are inconclusive at best.

The report noted that studies conducted in the United States showed approximately a 24 percent increase in crash risk among drivers with diabetes compared with drivers without diabetes. This finding, however, was based on six studies that were published in 1965, 1968, 1973, 1988, 1991, and 2003. The Agency agrees with Advocates that knowledge and treatment of diabetes has increased significantly in recent years. Because the studies reviewed most likely do not reflect current treatment practices and protocols, the Agency has determined that they are of little probative value with respect to the present issue. The report noted that in the United States there was a significant increase in crash risk (2.753) for individuals treated with insulin when compared with drivers treated with oral medication and/or diet alone. It continued that a firm conclusion could not be made with respect to this finding because there were only two studies to review. In addition, those studies, which were published in 1988 and 2003, are too old to provide probative evidence. FMCSA finds that its more recent data that relates directly to ITDM individuals who operate CMVs are more relevant in assessing crash risk in such individuals.

[24] ''Safety Performance of Drivers with Medical Exemptions: How safe are drivers in a medical exemption program compared to those who are not?'' Nov. 2016, which is available at *https://rosap.ntl.bts.gov/view/dot/31521* (June 1, 2018).

The Agency has reviewed the five journal articles referenced by the former MRB members. Three of the articles examine the relationship between diabetes and crash risk for drivers in foreign countries. Because of potential differences in the experience and training of drivers, driving regulations, and the treatment of diabetes, drivers in foreign countries may not be comparable to those in the United States. The Agency agrees, therefore, with the University of Utah that United States-based data are the most important to assessing the safety risk at issue. One of these articles was cited by the former MRB members for the proposition that increased crash risk is associated with efforts to maintain tight blood glucose control with HbA1C below 7 percent. In as much as this rule has not prescribed a specific HbA1C level that must be achieved to be medically qualified, the rule does not provide an incentive to maintain HbA1C levels below 7 percent. This was the only one of the three articles that included CMV operators; however, it also included non-CMV drivers and did not differentiate between the two types of drivers in the statistical analysis.

A fourth article examined the extent to which there is an age-related component to crash risk among individuals with type 1 diabetes. The article concluded that reported crashes decline with age in all persons, but the crash risk remained higher for persons with diabetes throughout the age span. There was no relationship between crashes and diabetes complications, blood glucose control, and diabetes treatment patterns. Severe hypoglycemia was consistently and strongly related to crashes at all ages.[25] However, the authors found that the link between reported hypoglycemia history and reported crashes was indirect, and it was not possible to determine the extent to which hypoglycemia actually contributed to the reported crashes. Additionally, the number of crashes identified was low; therefore, the article concluded further study was necessary to establish the relationship between hypoglycemia and crashes.[26] The article does not identify whether it included CMV operators. It also included drivers under the age of 21, who generally would not qualify to obtain an interstate CDL. Finally, the article included individuals with retinopathy who may not be eligible under this rule to be medically qualified to operate a CMV.

[25] Songer TJ, Dorsey RR. *Annu Proc Assoc Adv Automot Med.* 2006; 50: 348.

[26] *Id.* at 349.

The fifth study presents the results of an analysis in which the number of crashes are estimated for a hypothetical group of ITDM truck drivers with an estimated incidence of mild and severe hypoglycemia, an estimated number of reactions while driving, and an estimated likelihood of a crash during a mild or severe hypoglycemic reaction, as compared to a second hypothetical group of truck drivers who are not insulin dependent. Because the article was not based on actual data and was published in 1993, FMCSA finds that this article is unreliable and is no longer relevant.

For the reasons discussed above, the Agency finds that the five articles cited by the former MRB members are not as persuasive as FMCSA's actual experience with crash risk for ITDM individuals who drive CMVs.

The Agency conducted a review of the literature regarding safety of ITDM individuals to identify studies performed after the 2010 Evidence Report Update. The Agency did not find any literature pertaining to the safety risk of ITDM individuals operating CMVs other than its own studies.

FMCSA declines to pursue a pilot period prior to implementing this rule, as a commenter has suggested. FMCSA finds that the current exemption program has demonstrated that ITDM individuals can drive a CMV in a manner as safe or safer than other CMV drivers.

V. Costs and Benefits of the Proposed Rule

NPRM: The NPRM stated that this rulemaking would not have a significant economic impact. Compared to other CMV drivers, ITDM individuals would incur costs for an additional medical examination of $150 annually; however, they would have the ability to earn a living without the inconvenience and added costs of obtaining and maintaining an exemption.

Comments on Costs and Benefits of the Proposed Rule: FMCSA received comments discussing the costs and benefits associated with the proposed rule. Two commenters provided information about potential cost savings. TFAC noted that FMCSA did not account for cost savings to existing drivers with type 2 diabetes who are trying to avoid insulin treatment. TFAC indicated that enabling ITDM individuals to be qualified to operate CMVs would remove the incentive to avoid insulin treatment and would allow medical professionals to treat their CMV-driver patients with type 2

diabetes in the most appropriate, cost-effective manner. An ITDM individual estimated his costs would decrease by at least $600 annually from eliminating three of his four annual visits to the endocrinologist. The IBT, TTD, and OOIDA commented that the exemption program is a time consuming and financially burdensome process that can result in lost income and possibly job loss while waiting for FMCSA to grant an exemption.

Two commenters said FMCSA underestimated the cost of the proposed rule. A certified ME, who is a physician, stated that because the rule transfers the ''function and responsibilities'' for medically qualifying an ITDM individual from the Agency to the certified ME, as a physician, he would continue to require at least annual assessments from an ophthalmologist and endocrinologist, and increase his charges to compensate for the increased time and risk involved in certifying ITDM individuals. This commenter also indicated that the costs saved by FMCSA will be transferred as costs to ITDM individuals and certified MEs.

A different physician asserted that the Agency did not account for several costs associated with the elimination of the exemption program. The physician stated that ''to avoid hypoglycemia, the CMV driver will not be able to maintain tight control which will accelerate the progression for the [insulin-treated CMV driver] to develop eye, nerve, and kidney complications.'' The physician suggested that FMCSA did not address the increased cost on the medical system of ITDM individuals avoiding hypoglycemia or consider the impact of the proposed rule on the organ systems and lifespan of ITDM individuals. The commenter noted that ''[i]n, 2011, about 282,000 emergency room visits for adults aged 18 years or older had hypoglycemia as the first-listed diagnosis and diabetes as another diagnosis.'' Additionally, in 2011, about 175,000 emergency room visits for people of all ages had hyperglycemic crisis as the first-listed diagnosis.

2015 MRB Report: The 2015 MRB report did not address the costs and benefits of the proposed rule.

Comments on the Costs and Benefits of the MRB's Recommendations: A few commenters discussed the costs and benefits of the 2015 MRB recommendations. For example, OOIDA supported most of the MRB recommendations and noted that the recommendations provide a more efficient and progressive approach than the current exemption process, which is costly and burdensome. OOIDA stated that the exemption process can take 180 days or more, plus a 30-day public comment period, and the costly time off-the-road can put an owner-operator out of business. In addition, the cost of seeing an endocrinologist can easily reach $200 a visit. An individual, however, stated that the 2015 MRB recommendations would increase the burden on the ITDM individual, creating twice the amount of work and expense for the individual and a high risk of suspension or loss of license.

FMCSA Response: The RIA published with this final rule does account for cost savings from replacing four endocrinologist visits with one visit to a TC. FMCSA estimated the average cost of an office visit with an endocrinologist at $280, including $60 for the opportunity cost of an assumed 2 hours for the ITDM individual's time to complete the appointment, versus $223, inclusive of the ITDM individual's time, for a TC evaluation. The annual evaluation and quarterly visits under the exemption program are estimated at $1,120, which compares to the $223 annual cost for the TC evaluation.

The Agency does not have sufficient data, nor did TFAC provide any substantive data, to confirm TFAC's assertion that the rule will provide cost savings because type 2 non-ITDM drivers will no longer have the incentive to continue using oral medication to avoid insulin.

In response to OOIDA, the TTD, and the IBT comments, the Agency finds that it is appropriate to estimate the income forgone by an existing CMV operator who begins treatment with insulin. Thus, in the RIA, the Agency included in the exemption program baseline a nonrecurring cost of $4,235 per ITDM individual for existing CMV operators who begin treatment with insulin.

The Agency disagrees with the certified ME's assertion that the final rule shifts risk to certified MEs and ultimately to individuals in the form of higher fees. FMCSA does not regulate the fees the certified ME charges, but continues to believe fees are established by market forces that will not be altered by this rule. In addition, the final rule does not prevent a certified ME from mitigating the perceived risk of performing medical examinations on ITDM individuals by restricting the certified ME's practice to non-ITDM individuals.

FMCSA disagrees with the commenter who stated that the Agency did not consider that tight control to avoid hypoglycemia will accelerate the progression of diabetic complications. The Agency did not specify ranges for either HbA1C or blood glucose that would apply to all ITDM individuals. By not specifying such ranges, the Agency provides the TC with the flexibility to establish and adjust an ITDM individual's insulin regimen that will minimize the emergence of complications and the occurrence of hypoglycemic episodes. The commenter did not offer sufficient data to support the assertions that in 2011 the number of emergency room visits for hypoglycemia and hyperglycemia demonstrates that FMCSA failed to recognize such costs. Moreover, the data cited was for a subset of individuals with coexisting diabetic complications. Finally, FMCSA does not maintain data on the lifespan of ITDM individuals. Factors other than the impact of diabetes on target organs affect an ITDM individual's lifespan. It is beyond the scope of this rule to determine the cause of death of ITDM individuals that may occur years after they operate a CMV.

W. Privacy Issues

NPRM: In the NPRM, the Agency determined that the privacy risks and effects associated with the proposed rule were not unique and had been addressed in other rules.

Comments Related to Privacy Issues: The IBT expressed its concern about privacy issues related to releasing medical information. According to the IBT, in many instances the certified ME is a ''company doctor'' who requests the entire medical file for individuals as a prerequisite to performing a certification examination. To obtain that information, the certified ME requires individuals to sign a ''blanket authorization,'' which allows the certified ME to release the individual's medical file to insurance companies, the employer, and various other entities. The IBT stated that motor carriers should not be allowed to improperly use the regulations in 49 CFR part 391 as justification to obtain and release to third parties information that is not relevant to determining whether an individual is qualified to operate a CMV.

2015 MRB Report: The 2015 MRB report did not discuss privacy issues and no comments were received concerning the MRB report in this regard.

FMCSA Response: This final rule does not change the laws and regulations applicable to the use or disclosure of an individual's medical information. As such, comments regarding the release of medical information to employers are outside the scope of this rulemaking. Nonetheless, FMCSA notes that TCs and certified MEs are bound by the privacy protections outlined under the Health

Insurance Portability and Accountability Act (HIPAA), which establishes national standards to protect individuals' medical records and other personal health information. HIPAA requires appropriate safeguards to protect the privacy of personal health information and sets limits and conditions on the uses and disclosures of such information that may be made without authorization by an individual. Therefore, an individual would have to provide his or her consent for a TC or certified ME to share medical information with other entities, including the motor carrier. More information on HIPAA and its requirements can be found on the Department of Health and Human Services' website at *https://www.hhs.gov/hipaa/for-professionals/privacy/index.html.*

X. Other Comments

Comments on Procedural and Other Issues in the NPRM: Some commenters expressed concerns about procedural or documentation matters related to the proposed rule. For example, Advocates stated that the Expert Panel Opinion resulting from the MRB review of the 2010 Evidence Update Report had not been published on FMCSA's website or added to the docket for this rulemaking.

H&SW suggested adding a checkbox to the MEC, MCSA–5876, that states the individual is physically qualified to operate a CMV when managing his or her condition so the roadside inspector would know the individual has ITDM. H&SW noted that roadside inspectors are not clinicians; therefore, the requirements must set a blood glucose limit to help them determine whether an ITDM individual should operate a CMV. In contrast, TFAC strongly opposed any requirements that would make information on an individual's ITDM status available to roadside enforcement.

Comments on the Other Issues in the MRB Report: In terms of procedural issues in response to the 2015 MRB report, Advocates stated that the MRB report was sent to the Agency on September 1, 2015, but the Agency took until September 9, 2016, before publishing the report for comment.

FMCSA Response: As explained elsewhere in this final rule, FMCSA is not specifying any blood glucose level that would prevent an ITDM individual from operating a CMV; therefore, there is no need for involvement of enforcement personnel. The final rule does not provide any changes to the MEC, MCSA–5876. As with any other medical condition, if a driver possesses a valid MEC, MCSA–5876, the certified ME has determined that the ITDM individual has met FMCSA's physical qualification requirements. Therefore, adding a separate designation on the MEC, MCSA–5876, would serve no purpose for enforcement personnel.

In response to the two comments from Advocates, the Agency notes that there is no expert panel commentary in response to the 2010 Evidence Update Report. The Meeting Summary for the June 30, 2011, MRB meeting shows that FMCSA's contractor presented a summary of the results of the 2010 Evidence Update Report to the MRB, and the MRB decided not to request another expert panel following the report.[27] To clarify, the MRB recommendations referenced in the NPRM were those provided at the MRB's July 26, 2007, meeting.[28] The 2015 MRB report was available for public viewing on FMCSA's website on September 3, 2015, just 2 days after the date of the report. Although the notice of availability was not published until September 9, 2016, the public was provided a meaningful opportunity to comment on the report. Comments received in response to the 2015 MRB report are addressed in this final rule.

Y. Outside the Scope

Comments Outside the Scope of the NPRM: Several commenters suggested adjustments to the proposed rule such as technological initiatives that are outside the scope of this rule; therefore, a response is not required. For example, one commenter stressed the importance of individuals with diabetes controlling their blood sugar levels, noting both low and high blood glucose index values can impede thinking, and recommended developing technology that would continually monitor the blood glucose index to alert the ITDM individual to highs or lows.

Comments Outside the Scope of the MRB Report: The following commenters offered some observations that fall outside the scope of the recommendations of the 2015 MRB report. An individual recommended Bydureon as an alternative treatment to placing individuals on insulin. An owner-operator commented on being unable to obtain a CDL since he was prescribed insulin. He stated that, even though his diabetes is under control and he does not haul long distance, the current rule disqualifies him from operating CMVs. He requested that the Agency provide an exemption for individuals with controlled diabetes who haul short distances.

VII. Section-by-Section Analysis

This section includes a summary of the regulatory changes in 49 CFR part 391 organized by section number.

§ 391.41 Physical Qualifications for Drivers

In § 391.41, paragraphs (a), (b)(1), and (b)(2) are not altered.

Paragraph (b)(3) adds an exception at the end of the sentence to indicate that there are requirements provided in § 391.46 for individuals who have diabetes mellitus treated with insulin for control.

Paragraphs (b)(4) through (b)(13) are not modified.

§ 391.45 Persons Who Must Be Medically Examined and Certified

Other than deleting ''of this subpart'' from the existing introductory paragraph, the introductory paragraph and paragraph (a) are not altered.

The content from paragraph (b)(1) becomes new paragraph (b) and adds an exception with a reference to the newly created paragraphs (c), (d), (e), (f), and (g) of this section.

Existing paragraph (b)(2) is separated to form new paragraphs (c) and (d) of this section. These new paragraphs are slightly modified for clarity and readability.

New paragraph (e) is inserted to require compliance with new § 391.46.

Content from existing paragraph (c) is moved to new paragraph (f).

Content from existing paragraph (d) is moved to new paragraph (g).

§ 391.46 Physical Qualification Standards for an Individual With Diabetes Mellitus Treated With Insulin for Control

This final rule codifies a new § 391.46.

Paragraph (a), *Diabetes mellitus treated with insulin,* states that ITDM individuals may be physically qualified if they meet certain criteria. Paragraph (a)(1) states that ITDM individuals are required to meet the physical qualification standards or hold an exemption. Paragraph (a)(2) explains that ITDM individuals must have the evaluation and medical examination, as required by paragraphs (b) and (c).

Paragraph (b), *Evaluation by the treating clinician,* states that the ITDM individual must have a TC evaluation completed before any medical examination by the certified ME and defines a TC. Paragraph (b)(1) requires the TC to complete the ITDM Assessment Form, MCSA–5870.

[27] *See https://www.fmcsa.dot.gov/summary-june-30-2011-medical-review-board-public-meeting.*

[28] *See https://www.fmcsa.dot.gov/summary-july-26-2007-medical-review-board-public-meeting.*

Paragraph (b)(2) requires TCs to sign and date the form, and provide their business contact information on the form.

Paragraph (c), *Medical examiner's examination,* sets forth the requirements for the certified ME's examination, including that the examination must begin no later than 45 days after the individual's TC evaluation. Paragraph (c)(1) states that the certified ME must have an ITDM Assessment Form, MCSA–5870, for each examination. Paragraph (c)(2) provides that the certified ME is to make a medical qualification determination by considering the information in the ITDM Assessment Form, MCSA–5870, and, using independent medical judgement, by applying the medical qualification standards in the paragraph. The standards provide that an individual must maintain a stable insulin regimen and proper control of his or her diabetes, and cannot have severe non-proliferative diabetic retinopathy or proliferative diabetic retinopathy. The standards also establish the requirements for blood glucose self-monitoring for ITDM individuals.

New paragraph (d), *Blood glucose self-monitoring records,* discusses the blood glucose record-keeping requirements, including submitting those records to the TC during the evaluation.

New paragraph (e), *Severe hypoglycemic episodes,* provides that an ITDM individual who experiences a severe hypoglycemic episode, which is defined in the paragraph, is prohibited from operating a CMV and must report the episode to and be evaluated by a TC as soon as is reasonably practicable. The prohibition from operating a CMV continues until the ITDM individual has been evaluated by a TC, and the TC determines that the cause of the severe hypoglycemic episode has been addressed and that the individual again has a stable insulin regimen and properly controlled ITDM. Once a TC completes a new ITDM Assessment Form, MCSA–5870, following the episode, the individual may resume operating a CMV. The ITDM individual must retain and provide the form to the certified ME at the individual's next medical certification examination.

§ 391.64 Grandfathering for Certain Drivers Participating in Vision and Diabetes Waiver Study Programs

FMCSA inserts new language at the beginning of existing paragraph (a) that provides this rule will not apply to individuals certified pursuant to § 391.64(a) until 1 year after the effective date of the rule. During that year, individuals certified under the grandfather provision may choose to be certified under § 391.64(a) or this final rule.

FMCSA adds new paragraph (a)(3) to remove and void all of paragraph (a) 1 year after the effective date of this rule; thus, eliminating certification under § 391.64(a). FMCSA also adds an amendatory instruction for the deletion of paragraphs (a) through (a)(3) 1 year after the effective date of this rule. On this date, this language will be stricken from the regulation and paragraph (a) will be reserved.

Updates to Appendix A to Part 391—Medical Advisory Criteria

FMCSA removes paragraph II.C., *Diabetes § 391.41(b)(3),* in its entirety. That paragraph outlines advisory guidelines for the diabetes standard. These guidelines are no longer necessary because this final rule creates a new standard for ITDM individuals.

Updates to Guidance Q&A for § 391.41, Question 3

FMCSA also revises guidance for § 391.41, Question 3. In the answer to Question 3, FMCSA will remove ''four'' and replace it with ''three'' to update and reflect the correct number of medical conditions that are not subject to the certified ME's judgement, and remove ''insulin-using diabetes'' from the list of conditions for which the certified ME has no discretion.

The answer to Question 3 of the guidance for § 391.41 will now read as follows: ''The qualification standards cover 13 areas that directly relate to the driving functions. All but three of the standards require a judgement by the medical examiner. A person's qualification to drive is determined by a medical examiner who is knowledgeable about the driver's functions and whether a particular condition would interfere with the driver's ability to operate a CMV safely. In the case of vision, hearing, and epilepsy, the current standards are absolute, providing no discretion to the medical examiner.''

VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations. As stated previously, ITDM individuals with licenses issued in Canada or Mexico will not be allowed to operate CMVs in the United States.

IX. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, Feb. 26, 1979). The Agency, however, has considered the total costs and benefits of this final rule and determined they are less than $100 million annually.

The objective of the final rule is to replace the exemption program with a less time consuming and less costly process that continues to ensure that ITDM individuals can operate CMVs safely. The final rule also provides a clearer, equally effective, and more consistent framework than a program based entirely on exemptions. In the following sections, the Agency describes the impacts of the rule to the entities listed in Table 2 (above).

Costs to ITDM Individuals Currently Compliant With the Exemption Program

The Agency estimates that there are presently 5,000 ITDM individuals that have exemptions (4,879 = 3,945 FMCSA exemption holders + estimated 930 State exemption holders rounded to the nearest thousand).[29] As the compliance costs of the exemption program are greater than those of the final rule, the Agency assumes that these ITDM individuals will comply with the final rule. Because these ITDM individuals have already obtained an MEC, MCSA–5876, and an exemption, the baseline costs for this group consist of annual recurring medical and associated expenses for examinations necessary to maintain their exemption.

To gauge the final rule's cost impact to these ITDM individuals, it is necessary to compare their compliance costs pre- and post-rule. The Agency

[29] *See* RIA Section 2.5.2 for the detailed development of the estimated number of State exemption holders.

estimates the recurring costs in the baseline for an ITDM individual to maintain an exemption as follows:

- The opportunity cost of 1 hour of time to prepare a renewal application: $30;[30]
- The cost of four endocrinologist office visits, consisting of one annual complete medical examination plus three quarterly office visits. The cost of each endocrinologist office visit is $280 (inclusive of the ITDM individual's time to complete the examination).[31] Therefore, these ITDM individuals would each incur $1,120 ($1,120 = $280 × 4) per year in compliance costs related to this component of the exemption program;
- The cost for an annual comprehensive eye examination: $260 (inclusive of the opportunity cost of the ITDM individual's time to complete the examination).[32] However, Centers for Disease Control and Prevention (CDC) data indicate that approximately 65 percent of individuals with diabetes receive annual dilated vision examinations.[33] Therefore, FMCSA assumes that only 35 percent of the $260 comprehensive eye examination cost is a cost attributable to the exemption program. Thus, the effective average comprehensive eye examination cost is reduced to $91 for this analysis ($91 = $260 × (1 − 65 percent)); and
- The cost of an out-of-period medical qualification examination: $218 (inclusive of the opportunity cost of the ITDM individual's time).[34] However, the out-of-period examination occurs only every other year and therefore is halved to $109 for this analysis.

Altogether, the recurring costs for ITDM individuals to renew and maintain their exemptions total $1,350 each. This is the sum of the costs noted above, specifically the $30 cost of time to prepare a renewal application, the $1,120 endocrinologist examination cost, the $91 vision examination cost, and the $109 out-of-period medical qualification examination cost.[35] The continuation of the exemption program would cost this group of ITDM individuals $6,750,000 ($6,750,000 = 5,000 ITDM individuals × $1,350 per ITDM individual) per year.

Because of the final rule, the exemption program will be eliminated. The compliance cost under the final rule for each of these 5,000 ITDM individuals to obtain their MEC, MCSA–5876, is estimated as follows:

- The cost of an annual evaluation by a TC: $223 (inclusive of the opportunity cost of the ITDM individual's time); [36] and
- The cost of an out-of-period medical qualification examination: $218 (inclusive of the opportunity cost of the ITDM individual's time). However, the out-of-period examination occurs only every other year and therefore is halved to $109 for this analysis.

The annual cost each of these 5,000 ITDM individuals will bear per year to comply with the final rule is therefore $332 ($332 = $223 + $109), a 75.4 percent decrease relative to the $1,350 compliance cost of the exemption program. In total, these 5,000 ITDM individuals will bear a cost of $1,660,000 under the final rule ($1,660,000 = 5,000 ITDM individuals × $332 per ITDM individual), which is $5.09 million less than the cost they would bear under the exemption program ($5.09 million = ($6,750,000 − $1,660,000)/$1,000,000), and which constitutes the largest share of the total cost savings that will result from the final rule.

Costs to Future Compliant ITDM Individuals

In accordance with 49 CFR 391.41(b)(3), an individual subject to FMCSA's physical qualification requirements who begins treatment with insulin for diabetes mellitus cannot be medically qualified to operate a CMV. Consequently, an ITDM individual in this situation is likely to lose income until FMCSA issues an exemption. Motor carriers that would employ these ITDM individuals will also lose income from the productivity that would have resulted from the labor hours forgone. The Agency estimates that 27 ITDM individuals and the carriers that would employ them would continue to bear the burden of obtaining an exemption in the baseline.[37]

FMCSA does not have data on the average length of time it takes for an individual beginning treatment with insulin to complete the daily blood glucose measurements and medical examinations necessary prior to submitting an initial exemption application.[38] However, after receiving an initial exemption application, it takes FMCSA on average 77 days to review a complete application before granting an exemption. This may be a conservative estimate of the length of time that both drivers and their potential employers incur opportunity costs, because the clock for determining the 77-day average waiting period does not start until the application is deemed complete by FMCSA. For these reasons, FMCSA finds that the 77-day estimate of the average waiting period during which drivers beginning treatment with insulin and the motor carriers that employ them incur opportunity costs may be conservatively low.

The Agency assumes that new ITDM drivers will obtain alternative employment while waiting for FMCSA to grant an exemption, and that the alternative employment will produce income (wage and benefits combined) equal to $25 per hour.[39] Based on the

[30] The opportunity cost of drivers' time is estimated in RIA Section 2.6.1.

[31] This cost is estimated in RIA Section 2.6.3.

[32] *Id.*

[33] CDC, Division of Diabetes Translation, *Diabetes Report Card* 2014, p. 9. This percentage represents the individuals 18 years and older that have diabetes and who reported receiving an annual dilated eye examination. The *Diabetes Report Card* is published biennially by the CDC. The report provides current information on the status of diabetes in the United States. It includes information and data about diabetes mellitus, gestational diabetes, prediabetes, preventive care practices, risk factors, quality of care, diabetes outcomes, and, National and State trends. The data are from the CDC Behavioral Risk Factor Surveillance System, which is a health-related telephone (landline and cellphone) survey that collects State-level data about health-related risk behaviors, chronic health conditions, and use of preventive services. The survey questions include 11 questions related to diabetes preventative medicine covering the frequency of physicals, dilated vision examinations, blood glucose and HbA1C monitoring, and diabetes education. *See https://www.cdc.gov/diabetes/pdfs/library/diabetesreportcard2014.pdf* (Accessed May 25, 2018).

[34] This cost is estimated in RIA Section 2.6.3.

[35] The Agency assumes that the cost for an ITDM individual to obtain a State exemption or an FMCSA exemption is the same.

[36] This cost is estimated in RIA Section 2.6.3.

[37] The estimate of 27 new ITDM individuals seeking exemptions in the baseline is developed in RIA Section 2.5.2.

[38] The exemption program requires individuals newly diagnosed with diabetes mellitus who are beginning treatment with insulin to provide 60 days of daily blood glucose measurements while being treated with insulin to the endocrinologist. Drivers transitioning from oral medication to insulin are required to provide 30 days of daily blood glucose measurements while being treated with insulin. FMCSA does not have data to determine how many ITDM individuals might fall under either of these reporting requirements. Were such data available, it would likely increase the Agency's estimate of the length of time an ITDM individual would not be able to operate a CMV. The daily blood glucose monitoring requirements are specified in Section 13A of the endocrinologist checklist that is included in the diabetes exemption program application package. *See https://www.fmcsa.dot.gov/medical/driver-medical-requirements/diabetes-exemption-application* (Accessed May 25, 2018).

[39] The $25 per hour wage is an average of the hourly wage for several occupations within North American Industrial Classification System (NAICS) industry 488400 (Support Services Road Transportation). The 2016 average hourly wage for Laborers and Freight, Stock and Materials Movers is $13.85 and is $16.73 for Tank Car, Truck and Shop Loaders. This results in an average wage of $15.29 ($15.29 = ($13.85 + $16.73) ÷ 2) to which is added $9.54 for average hourly benefits (discussed in further detail in the RIA). The Agency used these labor categories because they are representative of non-driving positions that may be

Continued

$30 per hour average wage and benefits per driver,[40] a driver idled while waiting for an exemption to be granted would forgo $5 of income per hour he or she is prohibited from driving. Given the 77-day average wait time for FMCSA to issue an exemption and an 11-hour driving day, a driver filing an initial exemption application would forgo $4,235 ($4,235 = $5 per hour × 11 hours per day × 77 days) of income. The final rule eliminates this cost, resulting in an annual cost savings of $114,345 ($114,345 = $4,235 opportunity cost per new exemption program applicant × 27 new exemption program applicants per year).

The Agency also monetizes the opportunity cost to motor carriers resulting from the loss of available labor inputs during the 77-day average application waiting period. The Agency estimates motor carriers' opportunity cost at $3.20 per hour.[41] At that rate, the opportunity cost to motor carriers per exemption program applicant is estimated at $2,710 ($2,710 = $3.20 per hour × 11 hours per day × 77 days). The final rule will eliminate this cost, resulting in an annual cost savings of $73,170 ($73,170 = $2,710 motor carrier opportunity cost per new exemption program applicant × 27 new exemption program applicants per year).

Together, the driver and motor carrier opportunity costs per new exemption program applicant sum to $6,945 ($6,945 = $4,235 driver opportunity cost + $2,710 carrier opportunity cost). Aggregated over the projected 27 new exemption program applicants per year, this cost totals $187,515 ($187,515 = 27 applicants × $6,945 per applicant), of which $114,345 is borne by new ITDM individuals and $73,170 by motor carriers. In addition to the $114,345 in opportunity costs, ITDM individuals incur $36,450 of annual medical-related compliance costs ($36,450 = $1,350 medical expenses per individual × 27 individuals). In total, the baseline annual cost of the exemption program with respect to new exemption holders and the motor carriers that would employ them is $223,965 ($223,965 = $187,515 + $36,450).

The final rule eliminates the $187,515 opportunity cost of the exemption program's 77-day waiting period. The remaining $36,450 of baseline compliance costs for the 27 new ITDM individuals will be reduced by the final rule to $8,964 per year (that is, $332 per individual per year under the final rule versus $1,350 per individual per year in the baseline). On an annual basis, the cost savings to these individuals and to motor carriers totals $215,001 ($215,001 = $187,515 + $36,450 − $8,964).

Costs to Non-Participating ITDM Individuals

There is good reason to assume that ITDM individuals compliant with the requirements of the exemption program will comply with the less burdensome requirements of the final rule. It is not as simple to estimate the degree to which the estimated ITDM individuals without exemptions (among both CDL and non-CDL interstate drivers as well as intrastate CDL drivers), or intrastate non-CDL holders—also without exemptions—may alter their behavior in response to the final rule.

In the RIA published at the NPRM stage, FMCSA demonstrated a range of *gross* compliance costs that would be incurred by medically qualified ITDM individuals by considering costs as a function of the share of medically qualified ITDM individuals. As the Agency does not know what share of ITDM individuals would be medically qualified, the NPRM analysis assumed three possible representative values: 100 percent, 66.7 percent, and 33.3 percent. The Agency reconsidered and ultimately discontinued the use of this approach for the analysis of the final rule. The Agency concludes that a focus on gross compliance costs fails to properly characterize the deregulatory nature and cost savings of the rule. Therefore, it reassessed its analytical approach from a microeconomic perspective for this analysis of the final rule. Under the revised approach the Agency first divided the group of ''non-participating'' ITDM individuals into three subgroups, then considered each subgroup's pre- and post-rule behavior using rational choice theory.

The first subgroup consists of an estimated 189,363 ITDM individuals operating CMVs in interstate commerce either with or without a CDL, plus those with intrastate CDLs.[42] By definition, these individuals should already be in compliance with the exemption program due to the fact that they either have a CDL, operate a CMV in interstate commerce, or both. The Agency assumes that these individuals have chosen not to participate in either FMCSA or State exemption programs because they perceive the cost of non-compliance to be less than the cost of compliance—making non-compliance their most rational choice in the baseline. The final rule may or may not change their behavior. Each individual will choose between the lesser of the reduced cost of compliance (that is, a $332 final rule compliance cost, as the final rule eliminates nearly all of the $5,585 baseline compliance cost) and his or her perceived cost of non-compliance, which is unaffected by the final rule. Regardless of the individual's chosen behavior under the final rule, he or she will not incur any new net costs, and potentially will incur a cost savings if the $332 compliance cost of the final rule is less than his or her perceived cost of non-compliance. Therefore, this rule imposes no costs to this subgroup.

The second and third subgroups together are composed of ITDM individuals operating as intrastate non-CDL drivers.[43] Subgroup two consists of individuals operating in States that have medical requirements applicable to non-CDL individuals. The Agency assumes that this final rule will indirectly apply to these individuals through State adoption of compatible regulations in order to maintain eligibility for Motor Carrier Safety Assistance Program grants. Therefore, by definition, these individuals should already be in compliance with State exemption programs, but are not. Following the same logic as discussed with respect to subgroup one, these individuals will bear no new net costs under the final rule and could potentially incur a cost savings.

The third subgroup is the complement to the second subgroup but is specific to ITDM individuals operating in States that do not have medical requirements applicable to non-CDL individuals. The Agency assumes that these States will not change their regulations as a result of the final rule; therefore, individuals in this subgroup will be unaffected and will bear no costs.

Costs to the Agency

FMCSA relies on a contractor to assist it to administer the diabetes exemption program. The average annual cost for the 3 remaining option years of the contract is $1,025,474. The final rule eliminates the need for this service, and will therefore produce an annual cost savings of $1,025,474.

available with motor carriers for a driver who begins treatment with insulin until an exemption is granted. The Agency believes that this is a conservative assumption because a motor carrier could terminate the employee, which would increase the opportunity cost to the driver. The Bureau of Labor Statistics (BLS) wage data are available at *https://www.bls.gov/oes/current/naics4_488400.htm#53-0000* (Accessed May 25, 2018).

[40] *See* RIA Section 2.6.1.

[41] *See* RIA Section 2.6.2.

[42] *See* RIA Section 2.5.2 for the Agency's derivation of the size of this subgroup's population.

[43] In Section 2.5.2 of the RIA, the Agency estimates that subgroups two and three together contain a total of 54,000 ITDM individuals, but lacks data to estimate the ratio of the size of subgroup two to subgroup three.

Total Annual Costs of the Rule

Table 3 shows the total costs estimated for the final rule. The Agency based the costs on a representative year approach (using exemption program participation data from December 31, 2016). The relative costs between the baseline and the final rule do not change in future years (save for slight changes due to growth in the baseline of the exemption holder population that are not accounted for as they are minimal). Therefore, this analysis does not present a separate discussion of the annualized costs at either a 3 percent or 7 percent discount rate, as those costs would be nearly identical to the costs shown in Table 3, which the Agency characterizes as annualized costs. The total costs of the final rule are estimated at −$6,347,241, representing a cost savings of $6.35 million annually.

TABLE 3—TOTAL COST OF FINAL RULE

[Annualized in 2016$]

Category	Baseline cost	Final rule cost	Total cost/ (savings)
Current Compliant ITDM Individuals	$6,750,000	$1,660,000	($5,090,000)
Future Compliant ITDM Individuals	167,550	8,964	(158,586)
Non-Participating ITDM Individuals	0	0	0
Motor Carriers	73,170	0	(73,170)
FMCSA	1,025,474	0	(1,025,474)
Total	8,016,205	1,668,694	(6,347,241)

Benefits

The Agency reviewed the literature to identify analyses that quantified health benefits realized by treating diabetes with insulin. These studies quantified the benefits of insulin use; however, none of these analyses were applicable directly to CMV operators. In the absence of such analyses, the Agency did not quantify health benefits associated with the final rule, though considers that the final rule has potential to improve the health of drivers by encouraging that ITDM individuals manage their health with the help of TCs.

The Agency finds that ITDM individuals do not present a safety risk greater than CMV drivers that either treat their diabetes with oral medication or who have not been diagnosed with diabetes. With respect to ITDM individuals' safety performance, the Agency has released a study examining the safety performance of CMV operators diagnosed with diabetes. The study examined whether the crash rate for ITDM individuals in compliance with the FMCSA exemption program was significantly different than a control group of non-ITDM individuals.

In November 2016, FMCSA released an *Analysis Brief* titled ''Safety Performance of Drivers with Medical Exemptions.'' [44] This analysis showed that a 0.02986 crash rate for a treatment group consisting of diabetes exemption holders was not significantly different than a 0.02627 crash rate for a control group of drivers at a 95 percent confidence level.

[44] The *Analysis Brief* is available at *https://rosap.ntl.bts.gov/view/dot/31521* (Accessed May 25, 2018).

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered to be an E.O. 13771 deregulatory action.[45] The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, is $79.2 million. Expressed on an annualized basis, the cost savings are $5.5 million. These values are expressed in 2016 dollars.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.[46] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies shall strive to lessen any adverse effects on these businesses.

Under the standards of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), this final rule does not impose a significant economic impact on a substantial number of small entities because the medical standards apply to individuals seeking to operate a CMV in interstate commerce. Consequently, I certify that the action will not have a significant economic impact on a substantial number of small entities.

[45] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. Feb. 3, 2017.

[46] Regulatory Flexibility Act (5 U.S.C. 601). *See http://uscode.house.gov/browse/prelim@title5/part1/chapter6&edition=prelim.*

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. Christine Hydock, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $156 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. This final rule imposes no new costs on any regulated entities nor upon State, local, or tribal governments. Therefore, no further examination of unfunded mandates is required.

F. Paperwork Reduction Act (Collection of Information)

This final rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The substantive comments in response to the 60-day notice addressing the ITDM Assessment Form are discussed in the TC Written Notification (ITDM Assessment Form) section above. FMCSA did not receive any comments in response to the burden of this information collection.

The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Summary of the Collection of Information: The final rule enables an ITDM individual to obtain an MEC, MCSA–5876, from a certified ME at least annually if the TC attests to the certified ME on the ITDM Assessment Form, MCSA–5879, that the individual maintains a stable insulin regimen and proper control of his or her diabetes, and the certified ME determines that the individual meets FMCSA's physical qualification standards. Certified MEs may certify ITDM individuals for up to 12 months.

Need for Information: This ICR supports the DOT Strategic Goal of Safety by ensuring that CMV drivers are physically qualified to operate trucks and buses on our nation's highways.

Use of Information: The TC completes the ITDM Assessment Form, MCSA–5870, and attests that the ITDM individual maintains a stable insulin regimen and proper control of his or her diabetes. Within 45 days after the form has been completed, it is provided to the certified ME, who performs a physical qualification examination, considers the information provided by the TC, and determines whether the individual meets FMCSA's physical qualifications standards to safely operate a CMV in interstate commerce.

Description of the Respondents: TCs.

Number of Respondents: 4,906.

Frequency of Response: Annually.

Burden of Response: 8 minutes.

Estimate of Total Annual Burden: 654 hours.

TC Annual Burden Hours and Salary Costs To Complete a Form Evaluating the Health of a CMV Driver With ITDM

Hourly wage of TC [47]	Number of forms completed	Time to complete form (minutes)	Annual hours to complete forms	Annual salary costs for TC to complete forms
$92.38	4,906	8 minutes	654	$60,417

As described in the table above, the final rule results in 654 annual burden hours and $60,417 annual salary costs. However, as explained in the supporting statement to the ICR, eliminating the diabetes exemption program results in 2,599 fewer annual burden hours and a $77,749 reduction in annual salary costs. Therefore, the final rule results in a net decrease of 1,945 annual burden hours and a net decrease of $17,332 in salary costs.

As required by the Paperwork Reduction Act, FMCSA will submit a copy of this final rule to OMB for its review of the collection of information.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

[47] Note that the $92.38 TC compensation cost used here differs from the $163.21 value used to represent the cost of an office visit to a TC. For PRA purposes, the $92.38 value—an estimate derived from BLS data to represent the *hourly* wage and benefits of a TC—is appropriate for estimating cost as a function of time to complete the form.

K. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. In accordance with this Act, a privacy impact analysis is warranted to address any privacy implications contemplated in the rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the privacy implications to the DOT Office of the Secretary's Privacy Office to determine whether a PIA is required.

The DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing Personally Identifying Information and has examined protections and alternative information handling processes in developing the proposal in order to mitigate potential privacy risks. The privacy risks and effects associated with this rule are not unique and have previously been addressed by the medical examination/certification requirements in the National Registry of Certified Medical Examiners and the Medical Examiner's Certification Integration PIA published on the DOT Privacy website and the DOT/FMCSA 009—National Registry of Certified Medical Examiners System of Records Notice (SORN) (77 FR 24247), published on April 23, 2012. An additional PIA and SORN for this rulemaking are not required.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

O. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 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.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

Q. Environment (National Environmental Policy Act of 1969 (NEPA), Clean Air Act (CAA), Environmental Justice)

FMCSA analyzed this rule for the purpose of NEPA (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, in paragraphs 6(b) and 6(s)(7). The content in this rule is covered by the Categorical Exclusions (CEs) in paragraphs 6(b) and 6(s)(7) and the final action does not have any effect on the quality of the environment. The CE determination is available for review in the docket.

FMCSA also analyzed this rule under section 176(c) of the CAA, as amended (42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement because it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this final rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec.

32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 2. Revise § 391.41(b)(3) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently treated with insulin for control, unless the person meets the requirements in § 391.46;

* * * * *

■ 3. Revise § 391.45 to read as follows:

§ 391.45 Persons who must be medically examined and certified.

The following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to operate a commercial motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;

(b) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months, unless the driver is required to be examined and certified in accordance with paragraph (c), (d), (e), (f), or (g) of this section;

(c) Any driver authorized to operate a commercial motor vehicle only within an exempt intra-city zone pursuant to § 391.62, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months;

(d) Any driver authorized to operate a commercial motor vehicle only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive during the preceding 12 months;

(e) Any driver who has diabetes mellitus treated with insulin for control and who has obtained a medical examiner's certificate under the standards in § 391.46, if such driver's most recent medical examination and certification as qualified to drive did not occur during the preceding 12 months;

(f) Any driver whose ability to perform his or her normal duties has been impaired by a physical or mental injury or disease; and

(g) Beginning June 22, 2021, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle under the provisions of paragraph (g)(3) of § 391.43.

■ 4. Add § 391.46 to read as follows:

§ 391.46 Physical qualification standards for an individual with diabetes mellitus treated with insulin for control.

(a) *Diabetes mellitus treated with insulin.* An individual with diabetes mellitus treated with insulin for control is physically qualified to operate a commercial motor vehicle provided:

(1) The individual otherwise meets the physical qualification standards in § 391.41 or has an exemption or skill performance evaluation certificate, if required; and

(2) The individual has the evaluation required by paragraph (b) and the medical examination required by paragraph (c) of this section.

(b) *Evaluation by the treating clinician.* Prior to the examination required by § 391.45 or the expiration of a medical examiner's certificate, the individual must be evaluated by his or her ''treating clinician.'' For purposes of this section, ''treating clinician'' means a healthcare professional who manages, and prescribes insulin for, the treatment of the individual's diabetes mellitus as authorized by the healthcare professional's State licensing authority.

(1) During the evaluation of the individual, the treating clinician must complete the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870.

(2) Upon completion of the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, the treating clinician must sign and date the Form and provide his or her full name, office address, and telephone number on the Form.

(c) *Medical examiner's examination.* At least annually, but no later than 45 days after the treating clinician signs and dates the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, an individual with diabetes mellitus treated with insulin for control must be medically examined and certified by a medical examiner as physically qualified in accordance with § 391.43 and as free of complications from diabetes mellitus that might impair his or her ability to operate a commercial motor vehicle safely.

(1) The medical examiner must receive a completed Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, signed and dated by the individual's treating clinician for each required examination. This Form shall be treated and retained as part of the Medical Examination Report Form, MCSA–5875.

(2) The medical examiner must determine whether the individual meets the physical qualification standards in § 391.41 to operate a commercial motor vehicle. In making that determination, the medical examiner must consider the information in the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, signed by the treating clinician and, utilizing independent medical judgment, apply the following qualification standards in determining whether the individual with diabetes mellitus treated with insulin for control may be certified as physically qualified to operate a commercial motor vehicle.

(i) The individual is not physically qualified to operate a commercial motor vehicle if he or she is not maintaining a stable insulin regimen and not properly controlling his or her diabetes mellitus.

(ii) The individual is not physically qualified on a permanent basis to operate a commercial motor vehicle if he or she has either severe non-proliferative diabetic retinopathy or proliferative diabetic retinopathy.

(iii) The individual is not physically qualified to operate a commercial motor vehicle up to the maximum 12-month period under § 391.45(e) until he or she provides the treating clinician with at least the preceding 3 months of electronic blood glucose self-monitoring records while being treated with insulin that are generated in accordance with paragraph (d) of this section.

(iv) The individual who does not provide the treating clinician with at least the preceding 3 months of electronic blood glucose self-monitoring records while being treated with insulin that are generated in accordance with paragraph (d) of this section is not physically qualified to operate a commercial motor vehicle for more than 3 months. If 3 months of compliant electronic blood glucose self-monitoring records are then provided by the individual to the treating clinician and the treating clinician completes a new Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, the medical examiner may issue a medical examiner's certificate that is valid for up to the maximum 12-month period allowed by § 391.45(e) and paragraph (c)(iv) of this section.

(d) *Blood glucose self-monitoring records.* Individuals with diabetes mellitus treated with insulin for control must self-monitor blood glucose in accordance with the specific treatment plan prescribed by the treating clinician. Such individuals must maintain blood glucose records measured with an electronic glucometer that stores all readings, that records the date and time of readings, and from which data can be electronically downloaded. A printout of the electronic blood glucose records

or the glucometer must be provided to the treating clinician at the time of any of the evaluations required by this section.

(e) S*evere hypoglycemic episodes.* (1) An individual with diabetes mellitus treated with insulin for control who experiences a severe hypoglycemic episode after being certified as physically qualified to operate a commercial motor vehicle is prohibited from operating a commercial motor vehicle, and must report such occurrence to and be evaluated by a treating clinician as soon as is reasonably practicable. A severe hypoglycemic episode is one that requires the assistance of others, or results in loss of consciousness, seizure, or coma. The prohibition on operating a commercial motor vehicle continues until a treating clinician:

(i) Has determined that the cause of the severe hypoglycemic episode has been addressed;

(ii) Has determined that the individual is maintaining a stable insulin regimen and proper control of his or her diabetes mellitus; and

(iii) Completes a new Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870.

(2) The individual must retain the Form and provide it to the medical examiner at the individual's next medical examination.

■ 5. Amend § 391.64 as follows:

■ a. Revise paragraph (a) introductory text and add paragraph (a)(3); and

■ b. Effective November 19, 2019, remove and reserve paragraph (a).

The revision and addition read as follows:

§ 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

(a) Until November 19, 2019, the provisions of § 391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers; *provided:*

* * * * *

(3) On November 19, 2019, the provisions of paragraph (a) of this section are removed, and any medical examiner's certificate issued under § 391.43 of this part on the basis that the driver is qualified by operation of the provisions of 49 CFR 391.64(a), related to insulin-controlled diabetic drivers, is void.

* * * * *

Appendix A to Part 391 [Amended]

■ 6. Remove and reserve paragraph II.C. of appendix A to part 391.

Issued under authority delegated in 49 CFR 1.87 on September 11, 2018.

Raymond P. Martinez,

Administrator, FMCSA.

[FR Doc. 2018–20161 Filed 9–18–18; 8:45 am]

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Part IV

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 557

Eligibility of the People's Republic of China, Thailand, and the Socialist Republic of Vietnam To Export Siluriformes Fish and Fish Products to the United States; Proposed Rules

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0030]

RIN [0583–AD73]

Eligibility of the People's Republic of China To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Siluriformes fish inspection regulations to list the People's Republic of China (PRC) as a country eligible to export Siluriformes fish and fish products to the United States. FSIS is proposing this action because the Agency has reviewed the PRC's laws, regulations, and inspection system as implemented and has determined that the PRC's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Under this proposal, only raw Siluriformes fish and fish products produced in certified PRC establishments would be eligible for export to the United States. All such products would continue to be subject to re-inspection at United States points-of-entry by FSIS inspectors.

DATES: Submit comments on or before October 19, 2018.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0030. 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, call (202)720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend its regulations at 9 CFR 557.2(b)(1) to add the PRC as a country eligible to export Siluriformes fish and fish products to the United States (for convenience, in this proposed rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although the PRC has been allowed to export these products to the United States under the conditions described below, the PRC is not currently listed in the Code of Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States.

Transitional Period

On December 2, 2015, FSIS published the final rule, ''Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish'' (80 FR 75590). The final rule established a mandatory FSIS inspection system for fish of the order Siluriformes and products derived from these fish. The final regulations implemented the provisions of the 2008 and 2014 Farm Bills, which amended the FMIA, mandating FSIS inspection of Siluriformes fish.

The final rule provided an 18-month period, from March 1, 2016, to September 1, 2017, for both the U.S. domestic Siluriformes fish industry and international trading partners to transition from the regulatory requirements of the U.S. Food and Drug Administration (FDA), the agency formerly responsible for regulatory oversight of Siluriformes fish, to the regulatory requirements of FSIS. By March 1, 2016, FSIS required foreign countries to submit written documentation identifying a list of establishments that had been exporting and would continue exporting Siluriformes fish to the United States. In addition, by March 1, 2016, FSIS required foreign countries to submit written documentation to demonstrate that they had laws or other legal measures in place that provide authority to regulate the growing and processing of fish for human food, and to assure compliance with FDA's good manufacturing practices, Hazard Analysis and Critical Control Point (HACCP) requirements, sanitation control procedures, and other regulatory requirements in 21 CFR part 123, *Fish and Fishery Products.*

FSIS recognized the foreign countries' initial documentation until the end of the transition period on September 1, 2017. Foreign countries that wished to continue exporting after September 1, 2017, were required to submit documentation substantiating the equivalence of their Siluriformes fish inspection system to that of the United States. Foreign countries that submitted complete equivalence documentation by September 1, 2017, were permitted to continue exporting Siluriformes fish until such time that FSIS determines if their Siluriformes fish inspection systems are equivalent to the U.S. system.

The PRC submitted its initial documentation in March 2017, which allowed it to continue exporting Siluriformes fish during the transitional period. In August 2017, the PRC submitted a Self-Reporting Tool (SRT), the questionnaire that FSIS uses to assess the equivalence of a foreign country's food safety inspection system.

FSIS stated in the final rule that, during the transitional period, it would reinspect imported Siluriformes fish and test for species identification and residues at least on a quarterly basis for each foreign establishment that exported Siluriformes fish to the U.S. (80 FR 75608). FSIS conducted random and targeted sampling and testing of imported Siluriformes fish during the transitional period, and on August 2, 2017, began reinspecting all shipments of Siluriformes fish, with random sampling for species and residue testing. During the testing, FSIS found residue violations in shipments of Siluriformes fish exported from the PRC. When imported product fails FSIS testing, the product is refused entry and the designated competent authority of the foreign government's inspection system is notified and further shipments of product from the foreign establishment are placed under either an increased or intensified level of sampling. FSIS notified the General Administration of Customs People's Republic of China (GACC), the PRC's central competent authority for food inspection, of the

residue violations. In response, GACC completed investigations to determine the cause of the violations and implemented corrective actions as necessary.

Statutory and Regulatory Basis for Proposed Action

Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to all the inspection, sanitary, quality, species verification, and residue standards, and all other provisions of the FMIA which are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA. As noted above, FSIS has allowed the PRC to continue shipping Siluriformes fish while FSIS made the determination concerning whether the country's inspection system is equivalent to that of FSIS.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(2)(i), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishment operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for sanitary handling of product; (5) official controls over condemned materials; (6) a HACCP system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program itself must achieve a level of public health protection equivalent to that achieved by the U.S. program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i)).

The foreign country's inspection system must ensure that establishments preparing Siluriformes fish for export to the United States comply with requirements equivalent to those of the FMIA and the regulations promulgated thereunder. The foreign country certifies the establishments as having met the required standards and notifies FSIS about establishments that are certified or removed from certification.

As discussed above, a foreign country's inspection system must be evaluated by FSIS to determine its eligibility to export Siluriformes fish to the United States. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to affect its inspection program. FSIS requests that countries provide information about their inspection systems through the SRT. The SRT can be found on the FSIS website at *2016 Siluriformes SRT*. The SRT is a standardized questionnaire that FSIS provides to foreign governments to gather information that characterizes foreign inspection systems. Through the SRT, FSIS collects information on practices and procedures in six areas, known as equivalence components: (1) Government Oversight (*e.g.,* Organization and Administration), (2) Government Statutory Authority and Food Safety and Other Consumer Protection Regulations (*e.g.,* Inspection System Operation, Product Standards and Labeling), (3) Government Sanitation, (4) Government HACCP Systems, (5) Government Chemical Residue Testing Programs, and (6) Government Microbiological Testing Programs. FSIS evaluates the information submitted to verify that the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site audit is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program. This comprehensive equivalence determination process is described more fully on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview*.

Under the regulations, foreign countries must be listed in the CFR as eligible to export Siluriformes fish to the United States. FSIS engages in rulemaking to list a country as eligible to export Siluriformes fish to the United States in the regulations at 9 CFR 557.26(b)(1). Once listed, the eligible country is required to certify that establishments meet the requirements to export Siluriformes fish to the United States and to ensure that products from these establishments are safe, wholesome, and not misbranded. To verify that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS conducts 100 percent re-inspection of those products at points-of-entry before they enter the U.S. commerce.

Evaluation of the PRC Siluriformes Fish Inspection System

In March 2017, the PRC submitted an initial equivalence application and requested that FSIS conduct a review of PRC's Siluriformes fish inspection system to establish eligibility to export Siluriformes fish to the United States. FSIS conducted a document review of the PRC's Siluriformes fish inspection system to determine whether that system was equivalent to that of the United States. FSIS concluded, based on review of the submitted documentation, that the PRC's laws, regulations, control programs, and procedures were equivalent to those of the United States.

Accordingly, FSIS proceeded with an on-site audit of the PRC's Siluriformes fish inspection system in May 2018, to verify whether the PRC's GACC effectively implemented a Siluriformes fish inspection system equivalent to that of the United States. The PRC currently only exports raw Siluriformes fish. FSIS auditors visited six of the 14 slaughter and raw processing establishments currently certified as eligible by the GACC to export Siluriformes fish and fish products to the United States and two pre-harvesting farms that provide raw fish to two of the audited establishments.

The audit did not identify any deficiencies that represented an immediate threat to public health. The audit did identify deficiencies that could lead to product contamination if not adequately addressed. The auditors identified deficiencies regarding government oversight. Specifically, in one audited provincial office, the GACC inspection personnel did not document all noncompliances identified during their verification activities. The auditors also identified deficiencies involving sanitation. Specifically, in one establishment, rusted pipes and loose silicone were observed on the overhead structures on the ceiling over exposed products in the production areas. In another establishment, beaded condensate was observed over exposed product in several production areas.

In addition, the auditors identified deficiencies regarding HACCP. Specifically, in all six establishments audited, establishments' ongoing verification activities did not include direct observations of monitoring activities. In five out of the six establishments audited, establishment verification records did not include the times or results of the verification activities. In four of the six establishments audited, corrective action records did not include all four parts of the corrective actions to be followed in response to a deviation from a critical limit. Lastly, in two establishments out of the six audited, monitoring records did not include the initials or signature of the establishment employee making the entry.

In summary, in the audit exit meeting, GACC committed to address the findings as presented. FSIS auditors will perform a follow-up audit in November 2018 to verify implementation of the PRC's corrective action plan and ensure that all outstanding issues have been resolved. Because none of these outstanding issues present an immediate public health threat, FSIS is proposing to list the PRC as eligible to ship Siluriformes fish to the United States. FSIS will post the follow-up audit on its website, will request comments on the follow up audit, and will consider those comments in developing the final rule.

The full report on the PRC's Siluriformes fish inspection system can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports/foreign-audit-reports.*

At this time, the PRC intends to certify fourteen establishments as eligible to export product to the U.S. The establishments intend to export raw Siluriformes fish. Should this rule become final, the government of the PRC must certify to FSIS those establishments that wish to export Siluriformes fish to the United States and that operate in accordance with requirements equivalent to that of the United States (9 CFR 557.2(a)). FSIS will verify that the establishments certified by the PRC's government are meeting the United States requirements through verification audits of the PRC's Siluriformes fish inspection system.

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish to the United States, the exporting country's products must be found to comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported from the PRC will continue to be subject to re-inspection at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS is, and will continue, to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis for the detection of drug and chemical residues, pathogens, species, and product composition for a subset of PRC's Siluriformes fish imported into the United States. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of FDA), depending on the violation. The import re-inspection activities can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/phis-import-component/phis-implementation-letter-to-importers/ct_index.*

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

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

Expected Costs of the Proposed Rule

As shown in Table 1, the PRC accounted for approximately 10 percent of Siluriformes fish imports and represented only 3.6 to 5.2 percent of Siluriformes fish consumption in the United States. The proposed rule is not expected to change the PRC's market share. If finalized, the proposed rule is not expected to have any cost to industry or consumers, because the proposed rule would maintain historical trade.

TABLE 1—SUMMARY OF SILURIFORMES SALES

	2013	2014	2015	2016	2017	5 Year average
	Millions of dollars					
Total U.S. Imports [1]	$363.42	$346.66	$351.13	$405.61	$381.89	$369.74
Total U.S. Domestic Production [2]	356.73	351.94	363.61	385.99	379.71	367.60
Total U.S. Exports [1]	4.69	4.00	4.95	4.80	6.18	4.92
U.S. Consumption of U.S. Production	98.7%	98.9%	98.6%	98.8%	98.4%	98.7%
Total U.S. Consumption [3]	$715.46	$694.60	$709.79	$786.80	$755.43	$732.41
Total U.S. Imports from the PRC [1]	$25.97	$36.19	$32.06	$37.46	$38.35	$34.01
The PRC as % of U.S. Imports	7.1%	10.4%	9.1%	9.2%	10.0%	9.2%
The PRC as % of U.S. Domestic Production	7.3%	10.3%	8.8%	9.7%	10.1%	9.3%

TABLE 1—SUMMARY OF SILURIFORMES SALES—Continued

	2013	2014	2015	2016	2017	5 Year average
	Millions of dollars					
The PRC as % of U.S. Consumption	3.6%	5.2%	4.5%	4.8%	5.1%	4.6%

Data Source: U.S. Census Bureau Trade Data.
[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/gats/default.aspx.*
[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/.*
[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Proposed Rule

Should this proposed rule become final, the Siluriformes fish trade between the United States and the PRC, and its associated benefits, would be maintained. As shown in Table 2, the United States is the PRC's largest foreign customer of Siluriformes fish, purchasing 63 to 71 percent of their total exports from 2015 to 2017. As shown in Table 1, the U.S. consumes 98.7 percent of all Siluriformes fish that it produces. U.S. production meets half of U.S. total demand. Maintaining current trade flows would help keep consumer prices for Siluriformes fish affordable and meet the large U.S. demand for these products. Additionally, the PRC provides several species of Siluriformes fish that are not produced domestically, allowing for greater product diversity and consumer choice.

TABLE 2—CHINESE SILURIFORMES EXPORT MARKET SHARE BY COUNTRY

Partner Country*	U.S. Dollars [in millions]			Share (%)		
	2015	2016	2017	2015	2016	2017
World	$49.30	$50.40	$41.30	100%	100%	100%
United States	30.87	35.92	27.32	63	71	66
Cote d Ivoire	0.61	5.74	4.14	1	11	10
Hong Kong	7.24	7.05	2.40	15	14	6
Congo, Dem. Rep	2.30	1.92	2.07	5	4	5
Congo	2.26	0.75	1.33	5	1	3
Ghana	0.04	0.14	1.04	0	0	3
Cameroon	3.62	0.09	0.57	7	0	1
Korea, South	0.64	0.36	0.40	1	1	1
Thailand	0.07	0.05	0.37	0	0	1
Angola	1.03	0.12	0.12	2	0	0
Mali	0.0	0.32	0.12	0	1	0
Zambia	0.33	0.31	0.04	1	1	0

Data Source: Global Trade Atlas—International Import and Export Commodity Trade Data (numbers reported by Chinese Customs) *http://www.gtis.com/gta_3d/scripts/commodity.cfm.*

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The expected trade volume is expected to remain within historical bounds, with little or no effect on U.S. establishments, regardless of size.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this proposed rule facilitates regulatory cooperation with foreign governments. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided the PRC with a questionnaire, referred to as the SRT, asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0153. The proposed rule contains no other paperwork requirements.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS web page located at:

http://www.fsis.usda.gov/federal-register.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. Constituent Updates are available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: *program.intake@usda.gov.*

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List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 557 as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

■ 2. In § 557.2, revise paragraph (b)(1) to read as follows:

§ 557.2 Eligibility of foreign countries for importation of fish and fish products into the United States.

* * * * *

(b)(1) It has been determined that fish and fish products from the following countries covered by foreign inspection certificates of the country of origin as required by § 557.4, are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part: Peoples Republic of China.

* * * * *

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018–20379 Filed 9–14–18; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0029]

RIN [0583–AD74]

Eligibility of the Socialist Republic of Vietnam To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Siluriformes fish inspection regulations to list the Socialist Republic of Vietnam (Vietnam) as a country eligible to export Siluriformes fish and fish products to the United States. FSIS is proposing this action because the Agency has reviewed Vietnam's laws, regulations, and inspection system as implemented and has determined that Vietnam's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Under this proposal, only raw Siluriformes fish and fish products produced in certified Vietnamese establishments would be eligible for export to the United States. All such products would continue to be subject to re-inspection at U.S. points-of-entry by FSIS inspectors.

DATES: Submit comments on or before October 19, 2018.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0029. 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, call (202)720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend its regulations at 9 CFR 557.2(b)(1) to add Vietnam as a country eligible to export Siluriformes fish and fish products to the United States (for convenience, in this proposed rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although Vietnam has been allowed to export these products to the United States under the conditions described below, Vietnam is not currently listed in the Code of

Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States.

Transitional Period

On December 2, 2015, FSIS published the final rule, ''Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish'' (80 FR 75590). The final rule established a mandatory FSIS inspection system for fish of the order Siluriformes and products derived from these fish. The final regulations implemented the provisions of the 2008 and 2014 Farm Bills, which amended the FMIA, mandating FSIS inspection of Siluriformes fish.

The final rule provided an 18-month period, from March 1, 2016, to September 1, 2017, for both the U.S. domestic Siluriformes fish industry and international trading partners to transition from the regulatory requirements of the U.S. Food and Drug Administration (FDA), the agency formerly responsible for regulatory oversight of Siluriformes fish, to the regulatory requirements of FSIS. By March 1, 2016, FSIS required foreign countries to submit written documentation identifying a list of establishments that had been exporting and would continue exporting Siluriformes fish to the United States. In addition, by March 1, 2016, FSIS required foreign countries to submit written documentation to demonstrate that they had laws or other legal measures in place that provide authority to regulate the growing and processing of fish for human food, and to assure compliance with FDA's good manufacturing practices, Hazard Analysis and Critical Control Point (HACCP) requirements, sanitation control procedures, and other regulatory requirements in 21 CFR part 123, *Fish and Fishery Products.*

FSIS recognized the foreign countries' initial documentation until the end of the transitional period on September 1, 2017. Foreign countries that wished to continue exporting after September 1, 2017, were required to submit documentation substantiating the equivalence of their Siluriformes fish inspection system to that of the United States. Foreign countries that submitted complete equivalence documentation by September 1, 2017, were permitted to continue exporting Siluriformes fish until such time that FSIS determines if their Siluriformes fish inspection systems are equivalent to the U.S. system.

Vietnam submitted its initial documentation in February 2016, which allowed it to continue exporting Siluriformes fish during the transitional period. In August 2017, Vietnam submitted a completed Self-Reporting Tool (SRT), the questionnaire that FSIS uses to assess the equivalence of a foreign country's food safety inspection system.

FSIS stated in the final rule that, during the transitional period, it would reinspect imported Siluriformes fish and test for species identification and residues at least on a quarterly basis for each foreign establishment that exported Siluriformes fish to the U.S. (80 FR 75608). FSIS conducted random and targeted sampling and testing of imported Siluriformes fish during the transitional period, and on August 2, 2017, began reinspecting all shipments of Siluriformes fish, with random sampling for species and residue testing. During the testing, FSIS found residue violations in shipments of Siluriformes fish exported from Vietnam. When imported product fails FSIS testing, the product is refused entry and the designated competent authority of the foreign government's inspection system is notified and further shipments of product from the foreign establishment are placed under either an increased or intensified level of sampling. FSIS notified Vietnam's National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD), the central competent authority for food inspection, of the residue violations, and in response, NAFIQAD investigated to determine the cause of the violations and provided corrective actions.

Statutory and Regulatory Basis for Proposed Action

Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to all the inspection, sanitary, quality, species verification, and residue standards, and all other provisions of the FMIA which are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA. As noted above, FSIS has allowed Vietnam to continue shipping product while FSIS made the determination concerning whether the country's inspection system is equivalent to that of FSIS.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(2)(i), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishments operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for sanitary handling of product; (5) official controls over condemned materials; (6) a HACCP system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program must achieve a level of public health protection equivalent to that achieved by the U.S. program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i)).

The foreign country's inspection system must ensure that establishments preparing Siluriformes fish for export to the United States comply with requirements equivalent to those of the FMIA and the regulations promulgated thereunder. The foreign country certifies the establishments as having met the required standards and notifies FSIS about establishments that are certified or removed from certification.

As discussed above, a foreign country's inspection system must be

evaluated by FSIS to determine its eligibility to export Siluriformes fish to the United States. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to affect its inspection program. FSIS requests that countries provide information about their inspection systems through the SRT. The SRT can be found on the FSIS website at *2016 Siluriformes SRT.* The SRT is a standardized questionnaire that FSIS provides to foreign governments to gather information that characterizes foreign inspection systems. Through the SRT, FSIS collects information on practices and procedures in six areas, known as equivalence components: (1) Government Oversight (*e.g.,* Organization and Administration), (2) Government Statutory Authority and Food Safety and Other Consumer Protection Regulations (*e.g.,* Inspection System Operation, Product Standards and Labeling), (3) Government Sanitation, (4) Government HACCP Systems, (5) Government Chemical Residue Testing Programs, and (6) Government Microbiological Testing Programs. FSIS evaluates the information submitted to verify that the critical points in the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program. This comprehensive process is described more fully on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview.*

Under the regulations, foreign countries must be listed in the CFR as eligible to export Siluriformes fish to the United States. FSIS engages in rulemaking to list a country as eligible to export Siluriformes fish to the United States in the regulations at 9 CFR 557.26(b)(1). Once listed, the eligible country is required to certify that establishments meet the requirements to export Siluriformes fish to the United States and to ensure that products from these establishments are safe, wholesome, and not misbranded. To verify that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS conducts 100 percent re-inspection of those products at points-of-entry before they enter the U.S. commerce.

Evaluation of Vietnam's Siluriformes Fish Inspection System

In August 2017, Vietnam requested that FSIS conduct a review of its Siluriformes fish inspection system and submitted the documentation to formally establish its eligibility to export Siluriformes fish to the United States. FSIS conducted a document review of Vietnam's Siluriformes fish inspection system to determine whether that system was equivalent to that of the United States. FSIS concluded, based review of the submitted documentation, that Vietnam's laws, regulations, control programs, and procedures were equivalent to those of the United States.

Accordingly, in May 2018, FSIS proceeded with an on-site audit of Vietnam's Siluriformes fish inspection system. FSIS audited eight of the 13 establishments currently exporting Siluriformes fish to the U.S. The on-site audit also included visits to two farms where fish were raised and pre-harvest operations were conducted. The purpose of the on-site audit was to verify whether NAFIQAD effectively implemented a Siluriformes fish inspection system equivalent to that of the United States. Vietnam currently exports only raw Siluriformes fish to the United States.

The audit of Vietnam's Siluriformes fish inspection system did not identify any deficiencies that represented an immediate threat to public health. The audit did find that NAFIQAD inspectors were not identifying the establishment's failures to adequately document results of operational sanitation monitoring in all of the establishments FSIS visited. Specifically, at each establishment audited, the FSIS auditors found that the establishments were documenting operational sanitation monitoring; however, it was not at the frequency prescribed in the establishment's sanitation procedures. The audit also found that, in one establishment, the hazard analysis identified the shipping step in its process, but did not identify all potential hazards associated with that step.

On June 29, 2018, FSIS sent NAFIQAD the draft final audit report, and requested a written response regarding any corrective actions undertaken and changes made to Vietnam's Siluriformes fish inspection system. On August 10, 2018, NAFIQAD responded with written comments and corrective actions.

In response to the finding that NAFIQAD inspectors did not identify establishment's failure to adequately document results of operational sanitation monitoring, NAFIQAD provided examples of monitoring forms and procedures, and stated that these documents showed that operational sanitation monitoring in establishments was performed and documented in accordance with the establishment's Sanitation Standard Operating Procedures once every one or two hours depending on production stage and establishments sanitation procedure. FSIS agrees that this frequency of monitoring is sufficient. The frequency and documentation of the monitoring of the sanitation operations must replicate the frequency and monitoring in the written sanitation procedures.

In response to the finding that one establishment's hazard analysis identified the shipping step, but not all potential hazards associated with that step, NAFIQAD explained that the establishment did not identify the hazards because the product had been frozen and transported outside of the factory and that the establishment is revising its HACCP plan to include the hazard of pathogen growth.

In addition to the corrective actions discussed above, FSIS reviewed Vietnam's corrective action plan for all of the audit findings and concluded that all have been satisfactorily addressed.

In summary, FSIS has completed the document review, on-site audit, and verification of corrective actions as part of the equivalence process, and all outstanding issues have been resolved. FSIS has concluded that, as implemented, Vietnam's inspection system for Siluriformes fish is equivalent to that of the United States. The full report on Vietnam's Siluriformes fish inspection system can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports/foreign-audit-reports.*

At this time, Vietnam intends to certify thirteen establishments as eligible to export Siluriformes fish to the United States. Vietnam's eligibility applies to the export of raw Siluriformes fish only. Should this rule become final, the government of Vietnam must certify to FSIS those establishments that wish to export Siluriformes fish to the United States and that operate in accordance with requirements equivalent to that of the United States (9 CFR 557.2(a)). FSIS will verify that the establishments certified by Vietnam's government are meeting the United States requirements through verification audits of Vietnam's Siluriformes fish inspection system.

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish to the United

States, the exporting country's products must be found to comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported from Vietnam will continue to be subject to re-inspection at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS is, and will continue, to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis for the detection of drug and chemical residues, pathogens, species, and product composition for a subset of Vietnam's Siluriformes fish imported into the United States. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of FDA), depending on the violation. The import re-inspection activities can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/phis-import-component/phis-implementation-letter-to-importers/ct_index.*

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

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

Expected Costs of the Proposed Rule

If this rule is finalized, establishments in Vietnam would be listed as eligible to export raw Siluriformes fish to the United States. Adoption of this rule is not expected to have quantified costs because the proposed rule maintains the existing trade in Siluriformes fish between the United States and Vietnam. The United States has historically imported Siluriformes fish from Vietnam. Therefore, market conditions, including prices and supplies, are not expected to be impacted by this rule. From 2013 to 2017, 90.5 percent of total Siluriformes fish imports to the United States were from Vietnam, Table 1. Vietnamese Siluriformes fish accounted for 45.7 percent of U.S. consumption, Table 1.

TABLE 1—SUMMARY OF SILURIFORMES FISH SALES

	2013	2014	2015	2016	2017	5 Year average
	Millions of dollars					
Total U.S. Imports [1]	$363.42	$346.66	$351.13	$405.61	$381.89	$369.74
Total U.S. Domestic Production [2]	356.73	351.94	363.61	385.99	379.71	367.60
Total U.S. Exports [1]	4.69	3.99	4.95	4.80	6.18	4.92
Total U.S. Consumption [3]	715.46	694.60	709.79	786.80	755.43	732.41
Total U.S. Imports from [1] Vietnam	335.03	309.53	318.40	367.65	342.96	334.71
Vietnam as % of U.S. Imports	92.2%	89.3%	90.7%	90.6%	89.8%	90.5%
Vietnam as % of U.S. Domestic Production	93.9%	87.9%	87.6%	95.3%	90.3%	91.1%
Vietnam as % of U.S. Consumption	46.8%	44.6%	44.9%	46.7%	45.4%	45.7%

Data Source: U.S. Census Bureau Trade Data.
[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/gats/default.aspx.*
[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/.*
[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Proposed Rule

The proposed rule may qualitatively benefit industry by maintaining market stability and continued opportunity for trade between the United States and Vietnam. Consumers in the United States would continue to have access to more choices when purchasing Siluriformes fish, specifically of the family Pangasius, which are native to Vietnam, The People's Republic of China, and other neighboring Asian nations. Pangasius have a different flavor, color and texture than other Siluriformes fish found in the United States. The Siluriformes fish trade between the United States and Vietnam would maintain choices for consumers in the United States.[1]

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because, as stated above, the rule would maintain existing trade.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this proposed rule facilitates regulatory cooperation with foreign governments. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Vietnam with a questionnaire, referred to as the SRT, asking for detailed information about the country's

[1] Sea Grant Delaware Seafood Health Facts: Making Smart Choices accessed on 7/27/2018 *https://www.seafoodhealthfacts.org/description-top-commercial-seafood-items/pangasius.*

inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0153. The proposed rule contains no other paperwork requirements.

E-Government Act

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Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

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List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS is proposing to further amend 9 CFR part 557, as proposed to be amended elsewhere in this issue of the **Federal Register**, as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

§ 557.2 [Amended]

■ 2. Section 557.2 is amended by adding ''Socialist Republic of Vietnam'' in alphabetical order to the list of countries in paragraph (b)(1).

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018–20376 Filed 9–14–18; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 557

[Docket No. FSIS–2018–0031]

RIN [0583–AD75]

Eligibility of Thailand To Export Siluriformes Fish and Fish Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Siluriformes fish inspection regulations to list Thailand as a country eligible to export Siluriformes fish and fish products to the United States. FSIS is proposing this action because the Agency has reviewed Thailand's laws, regulations, and inspection system as implemented and has determined that Thailand's Siluriformes fish inspection system is equivalent to the system that the United States has established under the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Under this proposal, only raw Siluriformes fish and fish products produced in certified Thailand establishments would be eligible for export to the United States. All such products would continue to be subject to re-inspection at U.S. points-of-entry by FSIS inspectors.

DATES: Submit comments on or before October 19, 2018.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0031. 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, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Roberta Wagner, Assistant Administrator, Office of Policy and

Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend its regulations at 9 CFR 557.2(b)(1) to add Thailand as a country eligible to export Siluriformes fish and fish products to the United States (for convenience, in this proposed rule, ''Siluriformes fish and fish products'' will be shortened to ''Siluriformes fish''). Although Thailand has been allowed to export these products to the United States under the conditions described below, Thailand is not currently listed in the Code of Federal Regulations (CFR) as eligible to export Siluriformes fish to the United States.

Transitional Period

On December 2, 2015, FSIS published the final rule, ''Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish'' (80 FR 75590). The final rule established a mandatory inspection system for fish of the order Siluriformes and products derived from these fish. The final regulations implemented the provisions of the 2008 and 2014 Farm Bills, which amended the FMIA, mandating FSIS inspection of Siluriformes fish.

The final rule provided an 18-month period, from March 1, 2016, to September 1, 2017, for both the U.S. domestic Siluriformes fish industry and international trading partners to transition from the regulatory requirements of the U.S. Food and Drug Administration (FDA), the agency formerly responsible for regulatory oversight of Siluriformes fish, to the regulatory requirements of FSIS. By March 1, 2016, FSIS required foreign countries to submit written documentation identifying a list of establishments that had been exporting and would continue exporting Siluriformes fish to the United States. In addition, by March 1, 2016, FSIS required foreign countries to submit written documentation to demonstrate that they had laws or other legal measures in place that provide authority to regulate the growing and processing of fish for human food, and to assure compliance with FDA's good manufacturing practices, Hazard Analysis and Critical Control Point (HACCP) requirements, sanitation control procedures, and other regulatory requirements in 21 CFR part 123, *Fish and Fishery Products.*

FSIS recognized the foreign countries' initial documentation until the end of the transitional period on September 1, 2017. Foreign countries that wished to continue exporting after September 1, 2017, were required to submit documentation substantiating the equivalence of their Siluriformes fish inspection system to that of the United States. Foreign countries that submitted complete equivalence documentation by September 1, 2017, were permitted to continue exporting Siluriformes fish until such time that FSIS determines if their Siluriformes fish inspection systems are equivalent to the U.S. system.

Thailand submitted its initial documentation in February 2016, which allowed it to continue exporting Siluriformes fish during the transitional period. In April 2017, Thailand submitted a completed Self-Reporting Tool (SRT), the questionnaire that FSIS uses to assess the equivalence of a foreign country's food safety inspection system.

FSIS stated in the final rule that, during the transitional period, it would reinspect imported Siluriformes fish and test for species identification and residues on at least a quarterly basis for each foreign establishment eligible to export Siluriformes fish to the U.S. (80 FR 75608). FSIS conducted random and targeted sampling and testing of imported Siluriformes fish during the transitional period, and on August 2, 2017, began reinspecting all shipments of Siluriformes fish, with random sampling for species and residue testing. As a result of the testing, FSIS found a residue violation in a shipment of Siluriformes fish exported from Thailand. When imported product fails FSIS testing, the product is refused entry and the designated competent authority of the foreign government's inspection system is notified and further shipments of product from the foreign establishment are placed under either an increased or intensified level of sampling. FSIS notified the Thailand Department of Fisheries (DOF), the central competent authority for food inspection, of the residue violation, and in response, DOF stated that the processor would be suspended until DOF inspectors could re-audit the processor's HACCP system.

Statutory and Regulatory Basis for Proposed Action

Siluriformes fish are an amenable species under the FMIA (21 U.S.C. 601(w)(2)). The FMIA prohibits importation into the United States of adulterated or misbranded meat and meat food products (21 U.S.C. 620). Under the FMIA and its implementing regulations, Siluriformes fish imported into the United States must be from foreign countries that maintain an inspection system that ensures compliance with requirements equivalent to all the inspection, sanitary, quality, species verification, and residue standards, and all other provisions of the FMIA which are applied to official establishments in the United States. The regulatory requirements for foreign countries to become eligible to export Siluriformes fish and fish products to the United States are provided in 9 CFR 557.2, which cross-references 9 CFR 327.2, the regulations for the import of other products also subject to the FMIA. As noted above, FSIS has allowed Thailand to continue shipping product while FSIS made the determination concerning whether the country's inspection system is equivalent to that of FSIS.

Section 557.2(a) (cross-referencing 9 CFR 327.2(a)(2)(i), (a)(2)(i), (a)(2)(ii)(C)–(I), (a)(2)(iii)–(iv), and (a)(3)), requires a foreign country's inspection system be authorized by legal authority that imposes requirements equivalent to those of the United States, specifically with respect to: (1) Official controls by the national government over establishment construction, facilities, and equipment; (2) direct official supervision of the preparation of product to assure that product is not adulterated or misbranded; (3) separation of establishment operations for product certified for export from product that is not certified; (4) requirements for sanitation at certified establishments and for sanitary handling of product; (5) official controls over condemned materials; (6) a HACCP system; and (7) any other requirements found in the FMIA and its implementing regulations.

In addition to a foreign country's legal authority and regulatory requirements, the inspection program must achieve a level of public health protection equivalent to that achieved by the U.S. program. Specifically, the inspection program organized and administered by the national government must impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing, so as to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) ultimate control and supervision by the national government over the official activities of employees or licensees; (3) competent, qualified inspectors; (4) enforcement and certification; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements required by the regulations in Subchapter F—

Mandatory Inspection of Fish of the Order Siluriformes and Products of Such Fish, which cross-references 9 CFR 327.2(a)(2)(i)).

The foreign country's inspection system must ensure that establishments preparing Siluriformes fish for export to the United States comply with requirements equivalent to those of the FMIA and the regulations promulgated thereunder. The foreign country certifies the establishments as having met the required standards and notifies FSIS about establishments that are certified or removed from certification.

As discussed above, a foreign country's inspection system must be evaluated by FSIS to determine its eligibility to export Siluriformes fish to the United States. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to affect its inspection program. FSIS requests that countries provide information about their inspection systems through the Self Reporting Tool (SRT). The SRT can be found on the FSIS website at *2016 Siluriformes SRT.* The SRT is a standardized questionnaire that FSIS provides to foreign governments to gather information that characterizes foreign inspection systems. Through the SRT, FSIS collects information on practices and procedures in six areas, known as equivalence components: (1) Government Oversight (*e.g.,* Organization and Administration), (2) Government Statutory Authority and Food Safety and Other Consumer Protection Regulations (*e.g.,* Inspection System Operation, Product Standards and Labeling), (3) Government Sanitation, (4) Government HACCP Systems, (5) Government Chemical Residue Testing Programs, and (6) Government Microbiological Testing Programs. FSIS evaluates the information submitted to verify that the critical points in the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program. This comprehensive process is described more fully on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview.*

Under the regulations, foreign countries must be listed in the CFR as eligible to export Siluriformes fish to the United States. FSIS engages in rulemaking to list a country as eligible. Countries found eligible to export Siluriformes fish to the United States are listed in the regulations at 9 CFR 557.26(b)(1). Once listed, the eligible country is required to certify that establishments meet the requirements to export Siluriformes fish to the United States and to ensure that products from these establishments are safe, wholesome, and not misbranded. To verify that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS conducts 100 percent re-inspection of those products at points-of-entry before they enter the U.S. commerce.

Evaluation of Thailand's Siluriformes Fish Inspection System

In April 2017, Thailand requested that FSIS conduct a review of its Siluriformes fish inspection system and submitted the documentation to formally establish its eligibility to export Siluriformes fish to the United States. FSIS conducted a document review of Thailand's Siluriformes fish inspection system to determine whether it was equivalent to that of the United States. FSIS concluded, based review of the submitted documentation, that Thailand's laws, regulations, control programs, and procedures were equivalent to those of the United States.

Accordingly, in May 2018, FSIS proceeded with an on-site audit of Thailand's Siluriformes fish inspection system. The purpose of the on-site audit was to verify that DOF effectively implemented a Siluriformes fish inspection system equivalent to that of the United States. FSIS audited each of the four establishments then certified to export Siluriformes fish to the United States, one pre-harvest operation, and one cold storage facility. During the visits to the four establishments, none were producing Siluriformes fish for export to the United States. However, FSIS auditors were able to conduct observation of DOF inspection at two of the four establishments and to perform document reviews.

The May 2018 audit of Thailand's Siluriformes fish inspection system identified several deficiencies that the DOF was requested to address. Among other things, the audit found that the DOF did not have regulatory requirements for establishments to maintain daily records documenting the monitoring of the Sanitation Standard Operating Procedures (SOPs), although the establishments did document and maintain sanitation records. Also, the DOF did not have regulatory requirements for establishments to develop HACCP verification procedures for direct observation of monitoring activities and corrective actions, resulting in no performance of the procedure by the establishments. Furthermore, because only two out of the four establishments FSIS visited during the May 2018 audit were operational, auditors were unable to verify the full implementation of Thailand's food safety inspections system. At the audit exit meeting, the DOF committed to addressing the preliminary findings.

On June 27, 2018, FSIS sent the DOF the draft final audit report, and advised that, in order to verify the full implementation of Thailand's Siluriformes fish inspection system, it would be necessary to schedule a follow up on-site visit.

On June 28, 2018, FSIS sent a follow-up letter proposing a follow-up on-site audit of Thailand's Siluriformes fish inspection system in August 2018. The letter explained that the objective of the follow-up audit was to verify any corrective actions or changes to Thailand's food safety inspection system as a result of the findings of the first audit and that the scope of the audit would be limited to aspects of Thailand's national inspection system.

FSIS conducted the follow-up audit between August 27 and 31, 2018, visiting the three establishments currently certified to export Siluriformes fish to the United States (Thailand delisted one establishment prior to the follow-up audit). The follow-up audit focused on the inspections system's ability to control hazards and prevent non-compliances that threaten food safety. FSIS auditors visited all three establishments certified by the DOF to export products to the United States. During this audit, all certified establishments were able to perform operations. The FSIS auditors were able to see production of Siluriformes fish, in addition to the implementation of corrective actions in response to the deficiencies found in the May onsite audit.

The FSIS auditors determined that Thailand's food safety inspection system governing fish of the order Siluriformes and their products are being implemented as documented in the SRT and according to their corrective actions responses. A review and analysis of each component with corrective actions by the FSIS auditors did not identify any findings representing an immediate threat to public health.

In summary, FSIS has completed the document review, on-site audit, follow-up audit with verification of corrective actions as part of the equivalence

process, and determined that all outstanding issues have been resolved. FSIS has concluded that, as implemented, Thailand's inspection system for Siluriformes fish is equivalent to that of the United States. The full report on Thailand's Siluriformes fish inspection system can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports/foreign-audit-reports.*

At this time, Thailand intends to certify three establishments as eligible to export Siluriformes fish to the United States. Thailand's eligibility applies to the export of raw Siluriformes fish only. Should this rule become final, the government of Thailand must certify to FSIS those establishments that wish to export Siluriformes fish to the United States and that operate in accordance with requirements equivalent to that of the United States (9 CFR 557.2(a)). FSIS will verify that the establishments certified by Thailand's government are meeting the United States requirements through verification audits of Thailand's Siluriformes fish inspection system.

Although a foreign country may be listed in FSIS regulations as eligible to export Siluriformes fish products to the United States, the exporting country's products must be found to comply with all other applicable requirements of the United States. Accordingly, Siluriformes fish exported from Thailand will continue to be subject to re-inspection at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS is, and will continue, to conduct other types of re-inspection activities, such as taking product samples for laboratory analysis for the detection of drug and chemical residues, pathogens, species, and product composition for a subset of Thailand's Siluriformes fish imported into the United States. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of FDA), depending on the violation. The import re-inspection activities can be found on the FSIS website at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/phis-import-component/phis-implementation-letter-to-importers/ct_index.*

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

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

Expected Costs of the Proposed Rule

If this rule is finalized, establishments in Thailand would be listed as eligible to export raw Siluriformes fish to the United States. Adoption of this rule is not expected to have quantified costs associated with it because the rule would maintain existing trade between the United States and Thailand in Siluriformes fish. The United States has historically imported Siluriformes fish from Thailand. Over the last 5 years, total sales from Thailand Siluriformes fish imports only averaged 0.017 percent of U.S. domestic production, and constituted only 0.009 percent of total United States consumption, Table 1. In 2016, Thailand exported 3.5 times more Siluriformes fish to the United States than average, but these exports still accounted for only 0.027 percent of total domestic consumption, Table 1. These amounts are unlikely to have any substantive effect on U.S. production or prices for domestically harvested Siluriformes fish.

TABLE 1—SUMMARY OF SILURIFORMES FISH SALES

	2013	2014	2015	2016	2017	5 year average
	Millions of dollars					
Total U.S. Imports [1]	$363.42	$346.66	$351.13	$405.61	$381.89	$369.74
Total U.S. Domestic Production [2]	356.73	351.94	363.61	385.99	379.71	367.60
Total U.S. Exports [1]	4.69	3.99	4.95	4.80	6.18	4.92
Total U.S. Consumption [3]	715.46	694.60	709.79	786.80	755.43	732.41
Total U.S. Imports [1] from Thailand	0.04	0.02	0.01	0.21	0.04	0.06
Thailand as % of U.S. Imports	0.012%	0.005%	0.003%	0.052%	0.010%	0.017%
Thailand as % of U.S. Domestic Production	0.012%	0.005%	0.003%	0.054%	0.010%	0.017%
Thailand as % of U.S. Consumption	0.006%	0.002%	0.002%	0.027%	0.005%	0.009%

Data Source: U.S. Census Bureau Trade Data.
[1] Import and Export Data Accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/gats/default.aspx.*
[2] U.S. Production Data Accessed from USDA National Agricultural Statistics Service: Quick Stats: *https://quickstats.nass.usda.gov/.*
[3] U.S. Consumption data is assumed to equal Imports + Domestic Production − Exports.

Expected Benefits of the Proposed Rule

If finalized, this rule would result in the continued opportunity for trade between the United States and Thailand. The volume of trade is likely to continue to be small and is expected to have little or no effect on U.S. Siluriformes fish production or prices. U.S. consumers, however, are expected to continue to have access to more choices when purchasing Siluriformes products. The rule would, therefore, maintain choices for U.S. consumers and promote economic competition.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because, as stated above, the rule would maintain existing trade.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this proposed rule facilitates regulatory cooperation with foreign governments. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export Siluriformes fish to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Thailand with a questionnaire, referred to as the self-reporting tool (SRT), asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB number 0583–0153. The proposed rule contains no other paperwork requirements.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. Constituent Updates are available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 557

Imported products.

For the reasons set out in the preamble, FSIS is proposing to further amend 9 CFR part 557, as proposed to be amended elsewhere in this issue of the **Federal Register**, as follows:

PART 557—IMPORTATION

■ 1. The authority citation for part 557 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

§ 557.2 [Amended]

■ 2. Section 557.2 is amended by adding ''Thailand'' in alphabetical order to the list of countries in paragraph (b)(1).

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018–20380 Filed 9–14–18; 4:15 pm]

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FEDERAL REGISTER

Vol. 83 Wednesday,
No. 182 September 19, 2018

Part V

The President

Federal Register
Vol. 83, No. 182
Wednesday, September 19, 2018

Presidential Documents

Title 3—

The President

Proclamation 9785 of September 14, 2018

National Gang Violence Prevention Week, 2018

By the President of the United States of America

A Proclamation

Too many of our Nation's communities are afflicted by terrible and senseless acts of violence committed by members of gangs and cartels. Horrendous, criminal acts have become increasingly common in our cities and towns where the notorious and savage MS–13 and other criminal gangs operate. During National Gang Violence Prevention Week, my Administration commits to continue its steadfast efforts to identify and eradicate the gangs that spread bloodshed, murder our youth, and lay siege to neighborhoods across our country.

While my Administration has successfully indicted and convicted countless gang members, gang violence still destroys families and threatens our liberty. When street gangs smuggle drugs into our communities, violence, addiction, overdoses, and other criminal activities follow. Extortion, sex trafficking, murder, robbery, and witness intimidation are only some of the evils that trail in the wake of gang activity.

Our brave law enforcement officers are fearlessly confronting gang violence. They routinely and courageously fight criminal organizations, even in the face of increasingly brazen, hateful attacks. The Department of Justice is partnering with State, local, and tribal law enforcement—including our Nation's 3,081 sheriffs—to bolster efforts to combat criminal gangs through comprehensive violent crime reduction initiatives, such as Project Safe Neighborhoods. Additionally, it is increasing the number of Federal prosecutors focused on gang violence and is providing enhanced training on gang investigations to State and local law enforcement agencies. Because of these efforts, we have already seen tremendous success in prosecuting gang-based violent crime and reducing the influence of criminal gangs.

I have also instructed my Administration to aggressively address transnational criminal organizations, especially MS–13. Organized and led from Central America, MS–13 has entrenched its claws in communities from the East Coast to the West Coast. Its growing influence poses a serious risk to our country's youth and community safety. Through increased interagency efforts and the creation of collaborative task forces that include both Federal agencies and State and local law enforcement, we have made great strides in protecting our Nation's most vulnerable communities from MS–13's violence and greatly diminished its ability to recruit new members. Earlier this year, Operation Matador demonstrated the success of these efforts, resulting in the indictment of dozens of MS–13 gang members for Federal racketeering offenses.

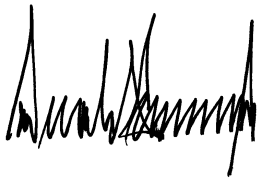
While this progress is promising, the scourge of MS–13 and other transnational criminal organizations will not abate until our Nation's borders are fully secure and those who seek to harm us are no longer able to exploit loopholes in our broken immigration laws. In the past year, United States Immigration and Customs Enforcement (ICE) has arrested more than 4,800 criminal gang members, including nearly 796 arrests related to MS–13. We are grateful for the often dangerous work ICE conducts each day to enforce the law, secure our border, and keep us safe. The Congress must take action to protect public safety and national security by providing

the necessary resources to secure our borders and close the dangerous loopholes in our laws that leave our borders open to dangerous exploitation.

This week, we rededicate ourselves to dismantling, and ultimately eradicating, criminal gang organizations, which threaten our way of life. Let us strengthen our resolve to protect our communities from gang violence and to ensure they are places where all Americans can live, work, and raise their families. We also reaffirm our duty to support members of law enforcement, who, every day, place their lives on the line to protect and save anyone in need—be it family members, friends, neighbors, or strangers.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of September 16 through September 22, 2018, as ''National Gang Violence Prevention Week.'' I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–20563
Filed 9–18–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9786 of September 14, 2018

National Historically Black Colleges and Universities Week, 2018

By the President of the United States of America

A Proclamation

National Historically Black Colleges and Universities Week celebrates the extraordinary contributions of Historically Black Colleges and Universities (HBCUs) and pays tribute to their rich legacy of promoting equal opportunities for high-quality education. For more than 150 years, these pillars of higher education have opened doors to brighter futures for many Americans. Their continued leadership in providing educational opportunities to a broad and diverse range of students plays an important role in our Nation's academic successes, with their graduates influencing and enhancing every sector of our economy.

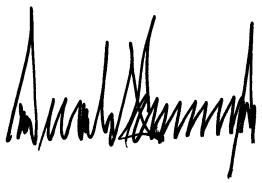
For decades after the Civil War, under the harsh inequality of segregation and racial prejudice, the overwhelming majority of institutions of higher learning excluded minority students. Despite these adversities, the visionary leaders of HBCUs empowered their students by providing them opportunities for academic success. These institutions have produced many leaders in business, law, government, academia, and the military, and the rigorous education they offer has contributed to our national economic competitiveness and shared prosperity.

My Administration is committed to investing in HBCUs to help ensure that they can educate future generations of American students. Earlier this year, after my Administration's bipartisan collaboration with the Congress, I signed into law legislation that increased Federal funding to important HBCU programs by more than 14 percent.

Today, there are more than 100 HBCUs in 19 States, the District of Columbia, and the U.S. Virgin Islands. Combined, they educate nearly 300,000 enrolled students who will contribute their talents to bolstering our economy and serving our communities. This week, we reaffirm our support for HBCUs and recognize the profound influence they have had, and will continue to have, on our Nation. We are proud to support the tireless dedication of these institutions to advancing their students' full potential.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16 through September 22, 2018, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–20564
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Presidential Documents

Proclamation 9787 of September 14, 2018

Prescription Opioid and Heroin Epidemic Awareness Week, 2018

By the President of the United States of America

A Proclamation

During Prescription Opioid and Heroin Epidemic Awareness Week, we acknowledge the devastating toll the opioid epidemic has inflicted on our country and its people, and we pledge to raise awareness of the dangers of prescription and illicit opioid abuse. As we continue our work to end this terrible crisis, I encourage all Americans to provide our families, friends, coworkers, and neighbors with the love and support they need as they strive to overcome addiction.

Drug overdoses are now the leading cause of deaths resulting from injury in the United States. In 2017, approximately 134 Americans died every day from an opioid overdose, and more than two million Americans suffered from addiction to prescription or illicit opioids. Between 1999 and 2017, more than 400,000 Americans, including so many of our young people, have died from overdoses involving opioids. We must aggressively combat this epidemic affecting our communities.

I have tasked my Administration with strengthening our public health and safety response to the opioid overdose crisis. In March, I released my Administration's plan to address the epidemic by reducing drug demand, cutting off the flow of illicit drugs, expanding access to overdose prevention and evidence-based treatment for opioid use disorder, and conducting research to improve prevention and treatment in the future. This interagency effort is providing targeted funding to States and communities to help people in need. Additionally, in February, I secured $6 billion in new funding for combating the opioid epidemic.

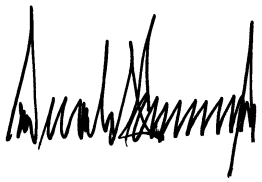
As we continue to raise awareness regarding the opioid crisis, we must work to remove the harmful stigma and misconceptions surrounding both prescription and illicit opioid abuse. I encourage those whose lives have been affected by their own personal struggle with addiction or by the struggle of a loved one to share their stories. Through platforms such as *The Crisis Next Door,* which the White House launched earlier this year, we are building a dialogue that has the potential to save thousands of lives.

As we observe Prescription Opioid and Heroin Epidemic Awareness Week, we reaffirm our individual roles in creating a stronger, healthier, and drug-free society. In every community, there is someone who is either fighting opioid addiction or susceptible to falling victim to it. And in every community, there is someone who could lend a helping hand. To any American currently battling addiction, whether you are in treatment or long-term recovery: we stand with you. To any American who wants to help: we have resources available to support you. Together, as one Nation, we can—and will—win the battle against the opioid epidemic.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16 through September 22, 2018, as Prescription Opioid and Heroin Epidemic Awareness Week. I call upon my fellow Americans to observe this week with appropriate

programs, ceremonies, religious services, and other activities that raise awareness about the prescription opioid and heroin epidemic and to consider concrete follow up activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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Presidential Documents

Proclamation 9788 of September 14, 2018

Constitution Day, Citizenship Day, and Constitution Week, 2018

By the President of the United States of America

A Proclamation

On this day and during this week, we celebrate the signing of our Constitution, which has proved that Government established by the people through reflection and deliberate choice can thrive and endure, rather than devolve into chaos and upheaval. Our Nation began with the ''honorable determination,'' as James Madison put it, ''to rest all our political experiments on the capacity of mankind for self-government.'' We recognize the Constitution's role in securing for our country the blessings of liberty; we salute the service members, statesmen, and citizens who have defended it; and we commit ourselves to the active citizenship that self-government requires.

The Framers established a strong Federal Government able to provide the energy and stability its people require while simultaneously limiting its reach and reserving all powers not expressly assigned to the Federal Government to the States and the people. When the Federal Government acts, it must do so with accountability. We are a Nation of laws, and laws must be enacted by the people's elected representatives. The Constitution ensures that the Government acts only with the consent of the governed, as expressed by the representatives responsible to them. That vital safeguard is lost when obscure and unaccountable regulators impose unforeseen mandates on the American people or twist the plain meaning of statutes to regulate without authority from the Congress. Our constitutional system will be ''of little avail to the people,'' Madison said, when the law ''is little known, and less fixed.''

In my Inaugural Address, I promised to return power to the American people. As President, I have instructed my Cabinet and all agency officials to regulate only when, and how, authorized by duly enacted statute. I have also instructed agencies to eliminate regulations that are ineffective, that fail to address real-world problems, that are needlessly burdensome, and that prevent Americans from designing their own innovative solutions. I call on Federal agencies to make room for States and local communities, for religious and civic organizations, and for individual Americans to address problems with the ingenuity and determination that make our country great.

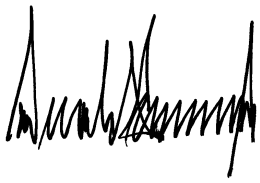
On this day and during this week, I once again call on all citizens to reflect on the original public meaning of our Constitution. And I call on Government officials to be mindful that laws must be clear and intelligible, and enacted through an open, constitutional process so that the American people can hold their Government accountable.

The Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 17, 2018,

as Constitution Day and Citizenship Day, and September 17, 2018, through September 23, 2018, as Constitution Week. On this day and during this week, we celebrate the citizens and the Constitution that have made America the greatest Nation this world has ever known. In doing so, we recommit ourselves to the enduring principles of the Constitution and thereby ''secure the Blessings of Liberty to ourselves and our Posterity.''

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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