
# FEDERAL REGISTER

Vol. 83 Wednesday,

No. 31 February 14, 2018

Pages 6451–6788

OFFICE OF THE FEDERAL REGISTER

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# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 800

## Fees for Official Inspection and Official Weighing Services Under the United States Grain Standards Act (USGSA)

**AGENCY:** Agricultural Marketing Service, GIPSA, USDA.

**ACTION:** Final rule.

**SUMMARY:** USDA, on behalf of the Agricultural Marketing Service (AMS) is announcing the fee schedule for official inspection and weighing services performed under the United States Grain Standards Act (USGSA), as amended, in order to comply with FGIS regulations and the Agriculture Reauthorizations Act of 2015, and publishing the annual review of Schedule A fees calculation and the resulting fees that went into effect on January 1, 2018.

**DATES:** Effective February 14, 2018.

**ADDRESSES:** Submit comments or notice of intent to submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Denise Ruggles, FGIS Executive Program Analyst, USDA AMS; Telephone: (816) 659–8406; Email: *Denise.M.Ruggles@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

USGSA authorizes the Secretary of Agriculture to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, costs for performing these services, including associated administrative and supervisory costs. The fees are in the regulations at 7 CFR 800.71.

On December 30, 2016, Grain Inspection, Packers and Stockyards Administration (GIPSA) published in the **Federal Register** (81 FR 96339) a final rule amending 7 CFR 800.71 in accordance with the Reauthorizations Act of 2015, which requires Federal Grain Inspection Service (FGIS) to conduct an annual review of the fees and operating reserve for the purposes of the annual adjustment of the fees.

### GIPSA/AMS Merger

The Secretary delegated to the Under Secretary for Marketing and Regulatory Programs (MRP) authorities ''related to grain inspection, packers and stockyards.'' 7 CFR 2.22(a)(3)(i)–(vi). In 7 CFR 2.81, the Under Secretary for MRP further delegated these authorities to the Administrator of GIPSA. In a November 14, 2017 Secretary's Memorandum, the Secretary directed that the authorities at 7 CFR 2.81 be re-delegated to the Administrator of AMS, and that the delegations to the Administrator of GIPSA be revoked. The delegations to the Under Secretary of MRP related to grain inspection, packers and stockyards at 7 CFR 2.22(a)(3) remain unchanged. As part of the reorganization, GIPSA (and FGIS) were merged into AMS.

### Exemption From Notice and Comment

In publishing this final rule, we are dispensing with the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically the rulemaking comports with and is consistent with the statutory adjustment of fees in section 7 of the USGSA (7 U.S.C. 79(j)) and the regulations at 7 CFR 800.71 with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule that will apply to all national tonnage fees, local tonnage fees, and fees for service in 2018.

### Fee Calculations

The regulations require FGIS annually review the national tonnage fees, local tonnage fees, and fees for service. After calculating the tonnage fees according to the regulatory formula in section 800.71(b)(1), FGIS then reviews the amount of funds in the operating reserve at the end of the fiscal year (FY2017 in this case) to ensure that it has 4½ months of operating expenses as required by section 800.71(b)(2) of the regulations. If the operating reserve has more, or less than 4½ months of operating expenses, then FGIS must adjust all Schedule A fees. For each $1,000,000, rounded down, that the operating reserve varies from the target of 4 ½ months, FGIS will adjust all Schedule A fees by 2 percent. If the operating reserve exceeds the target, all Schedule A fees will be reduced. If the operating reserve does not meet target, all Schedule A fees will be increased. The maximum annual increase or decrease in fees is 5 percent (7 CFR 800.71(b)(2)(i)–(ii)).

(a) Tonnage fees for the 5-year rolling average tonnage were calculated on the previous 5 fiscal years 2013, 2014, 2015, 2016 and 2017. Tonnage fees consist of the national tonnage fee and local tonnage fee and are calculated and rounded to the nearest $0.001 per metric ton. The tonnage fees are calculated as following:

(1) *National tonnage fee.* The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by FGIS during the previous 5 fiscal years.

$$\text{National Tonnage Fee} = \frac{\text{FY2017 National Administrative Costs}}{\text{5 Year Rolling Average Export Tons}}$$

| Fiscal year | Metric tons |
|---|---|
| 2013* | 81,207,695 |
| 2014 | 117,560,767 |
| 2015 | 118,758,937 |
| 2016 | 122,330,979 |
| 2017 | 135,017,935 |

| Fiscal year | Metric tons |
|---|---|
| 5-year Rolling Average | 114,975,263 |

*To provide uniformity in the 5-year Rolling Average calculation, fiscal year 2013 include tons of export grain officially inspected and/or weighed by delegated States and designated agencies prior to the implementation of the fee assessment in the FEDERAL REGISTER (78 FR 22151), effective May 1, 2013.

The national program administrative costs for fiscal year 2017 were $6,906,527. The fiscal year 2018 national tonnage fee, prior to the operating reserve review, is calculated to be at $0.060 per metric ton.

(2) *Local tonnage fee.* The local tonnage fee is the field office administrative costs for the previous fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the field office during the previous 5 fiscal years.

$$Local\ Tonnage = \frac{FY2017\ Field\ Office\ Administrative\ Costs}{5\ Year\ Rolling\ Average\ Export\ Tons\ (Local)}$$

The field offices fiscal year tons for the previous 5 fiscal years and calculated 5-year rolling average are as follows:

| Field office | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | 5-year Rolling Average |
|---|---|---|---|---|---|---|
| New Orleans | 42,399,760 | 62,862,914 | 65,244,517 | 66,077,535 | 70,439,862 | 61,404,918 |
| League City | 10,418,686 | 12,623,510 | 12,474,343 | 12,581,236 | 13,307,780 | 12,281,111 |
| Portland | 3,953,500 | 6,065,934 | 4,111,533 | 4,645,754 | 5,175,459 | 4,790,436 |
| Toledo | 1,329,718 | 1,802,339 | 2,484,604 | 2,030,506 | 2,229,920 | 1,975,417 |

The local field office administrative costs for fiscal year 2017 and the fiscal year 2018 calculated local field office tonnage fee, prior to the operating reserve review, are as follows:

| Field office | FY 2017 Local administrative costs | Calculated FY 2018 local tonnage fee |
|---|---|---|
| New Orleans | $1,722,327 | $0.028 |
| League City | 800,539 | 0.065 |
| Portland | 409,115 | 0.085 |
| Toledo | 349,374 | 0.177 |

(3) *Operating reserve.* In order to maintain an operating reserve not less than 3 and not more than 6 months, FGIS reviewed the value of the operating reserve at the end of FY2017 to ensure that an operating reserve of 4½ months is maintained.

The program operating reserve at the end of fiscal year 2017 was $23,546,619 with a monthly operating expense of $3,340,024. The target of 4.5 months of operating reserve is $15,030,108 therefore the operating reserve is greater than 4.5 times the monthly operating expenses by $8,516,511. For each $1,000,000, rounded down, above the target level, all Schedule A fees must be reduced by 2 percent. The operating reserve is $8.5 million above the target level resulting in a calculated 16 percent reduction. As required by 800.71(b)(2)(ii), the reduction is limited to 5 percent. Therefore, FGIS is reducing all Schedule A fees for service in Schedule A in paragraph (a)(1) by the maximum 5 percent. All Schedule A fees for service are rounded to the nearest $0.10, except for fees based on tonnage or hundredweight.

**Executive Orders 12866 and 13563**

The Office of Management and Budget (OMB) has reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs'''' (April 5, 2017).

**Regulatory Flexibility Act**

Since grain export volume can vary significantly from year to year, estimating the total impact in any single year can be difficult. AMS recognizes, however, that the industry needs predictable inspection and weighing fees. The regulations at 7 CFR 800.71(b) set an annual cap of 5 percent for increases or decreases in inspection and weighing fees, and the increases and decreases are fixed according the statutory requirements of the Agriculture Reauthorization Act of 2015. This rulemaking is unlikely to

have an annual effect of $100 million or more or adversely affect a significant number of small entities.

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act**

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

**List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, USDA amends 7 CFR part 800 as follows:

## PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

**Authority:** 7 U.S.C. 71–87k.

■ 2. Section 800.71(a)(1) is amended by revising Tables 1, 2, and 3 of Schedule A to read as follows:

**§ 800.71 Fees assessed by the Service.**

(a) * * *

(1) * * *

TABLE 1 OF SCHEDULE A—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

| | Monday to Friday (6 a.m. to 6 p.m.) | Monday to Friday (6 p.m. to 6 a.m.) | Saturday, Sunday, and overtime [2] | Holidays |
|---|---|---|---|---|
| (i) Inspection and Weighing Services Hourly Rates (per service representative): | | | | |
| 1-year contract ($ per hour) | $36.30 | $38.00 | $43.50 | $64.40 |
| Noncontract ($ per hour) | 64.40 | 64.40 | 64.40 | 64.40 |
| (ii) Additional Tests (cost per test, assessed in addition to the hourly rate): [3] | | | | |
| (A) Aflatoxin (rapid test kit method) | | | | 10.30 |
| (B) Aflatoxin (rapid test kit method-applicant provides kit) [4] | | | | 8.50 |
| (C) All other Mycotoxins (rapid test kit method) | | | | 18.80 |
| (D) All other Mycotoxins (rapid test kit method-applicant provides kit) [4] | | | | 17.00 |
| (E) NIR or NMR Analysis (protein, oil, starch, etc.) | | | | 2.50 |
| (F) Waxy corn (per test) | | | | 2.50 |
| (G) Fees for other tests not listed above will be based on the lowest noncontract hourly rate | | | | |
| (H) Other services | | | | |
| (*1*) Class Y Weighing (per carrier): | | | | |
| (*i*) Truck/container | | | | 0.70 |
| (*ii*) Railcar | | | | 1.50 |
| (*iii*) Barge | | | | 2.80 |
| (iii) Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier): | | | | |
| (A) All outbound carriers serviced by the specific Field Office (per-metric ton): | | | | |
| (*1*) League City | | | | 0.119 |
| (*2*) New Orleans | | | | 0.084 |
| (*3*) Portland | | | | 0.138 |
| (*4*) Toledo | | | | 0.225 |
| (*5*) Delegated States [5] | | | | 0.057 |
| (*6*) Designated Agencies [5] | | | | 0.057 |

[1] Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and re-inspection services will be assessed the same fee as the original inspection service.

[4] Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

[5] Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

TABLE 2 OF SCHEDULE A—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]

| | |
|---|---|
| (i) Original Inspection and Weighing (Class X) Services: | |
| (A) Sampling only (use hourly rates from Table 1 of this section) | |
| (B) Stationary lots (sampling, grade/factor, & check loading): | |
| (*1*) Truck/trailer/container (per carrier) | $20.30 |
| (*2*) Railcar (per carrier) | 30.00 |
| (*3*) Barge (per carrier) | 188.70 |
| (*4*) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) | 0.07 |
| (C) Lots sampled online during loading (sampling charge under (1)(i) of this table, plus): | |
| (*1*) Truck/trailer container (per carrier) | 12.20 |
| (*2*) Railcar (per carrier) | 25.40 |
| (*3*) Barge (per carrier) | 129.10 |
| (*4*) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) | 0.07 |
| (D) Other services: | |

TABLE 2 OF SCHEDULE A—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

| | |
|---|---|
| (*1*) Submitted sample (per sample—grade and factor) | 12.20 |
| (*2*) Warehouseman inspection (per sample) | 21.30 |
| (*3*) Factor only (per factor—maximum 2 factors) | 6.00 |
| (*4*) Check loading/condition examination (use hourly rates from Table 1 of this section, plus an administrative fee per hundredweight if not previously assessed) (CWT) | 0.07 |
| (*5*) Re-inspection (grade and factor only. Sampling service additional, item (1)(i) of this table) | 13.20 |
| (*6*) Class X Weighing (per hour per service representative) | 64.40 |
| (E) Additional tests (excludes sampling): | |
| (*1*) Aflatoxin (rapid test kit method) | 30.30 |
| (*2*) Aflatoxin (rapid test kit method—applicant provides kit) [3] | 28.50 |
| (*3*) All other Mycotoxins (rapid test kit method) | 39.00 |
| (*4*) All other Mycotoxins (rapid test kit method—applicant provides kit) [3] | 37.10 |
| (*5*) NIR or NMR Analysis (protein, oil, starch, etc.) | 10.30 |
| (*6*) Waxy corn (per test) | 10.30 |
| (*7*) Canola (per test-00 dip test) | 10.30 |
| (*8*) Pesticide Residue Testing: [4] | |
| (*i*) Routine Compounds (per sample) | 217.50 |
| (*ii*) Special Compounds (Subject to availability) | 115.90 |
| (*9*) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section | |
| (ii) Appeal inspection and review of weighing service: [5] | |
| (A) Board Appeals and Appeals (grade and factor) | 82.60 |
| (*1*) Factor only (per factor—max 2 factors) | 43.50 |
| (*2*) Sampling service for Appeals additional (hourly rates from Table 1 of this section) | |
| (B) Additional tests (assessed in addition to all other applicable tests): | |
| (*1*) Aflatoxin (rapid test kit method) | 30.30 |
| (*2*) Aflatoxin (rapid test kit method—applicant provides kit) [3] | 28.30 |
| (*3*) All other Mycotoxins (rapid test kit method) | 47.50 |
| (*4*) All other Mycotoxins (rapid test kit method—applicant provides kit) [3] | 45.70 |
| (*5*) NIR or NMR Analysis (protein, oil, starch, etc.) | 17.90 |
| (*6*) Sunflower oil (per test) | 17.90 |
| (*7*) Mycotoxin (per test-HPLC) | 141.90 |
| (*8*) Pesticide Residue Testing: [4] | |
| (*i*) Routine Compounds (per sample) | 217.50 |
| (*ii*) Special Compounds (Subject to availability) | 115.90 |
| (*9*) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section | |
| (C) Review of weighing (per hour per service representative) | 83.30 |
| (iii) Stowage examination (service-on-request): [4] | |
| (A) Ship (per stowage space) (minimum $257.50 per ship) | 51.50 |
| (B) Subsequent ship examinations (same as original) (minimum $154.50 per ship) | 51.50 |
| (C) Barge (per examination) | 41.30 |
| (D) All other carriers (per examination) | 16.20 |

[1] Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

[4] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[5] If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of $3.50 per sample by the Service.

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES [1]

| | |
|---|---|
| (i) Grain grading seminars (per hour per service representative) [2] | $64.40 |
| (ii) Certification of diverter-type mechanical samplers (per hour per service representative) [2] | 64.40 |
| (iii) Special weighing services (per hour per service representative): [2] | |
| (A) Scale testing and certification | 83.90 |
| (B) Scale testing and certification of railroad track scales | 83.90 |
| (C) Evaluation of weighing and material handling systems | 83.90 |
| (D) NTEP Prototype evaluation (other than Railroad Track Scales) | 83.90 |
| (E) NTEP Prototype evaluation of Railroad Track Scale | 83.90 |
| (F) Use of FGIS railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.) | 502.90 |
| (G) Mass standards calibration and re-verification | 83.90 |
| (H) Special projects | 83.90 |
| (iv) Foreign travel (hourly fee) [3] | 83.90 |
| (v) Online customized data service: | |
| (A) One data file per week for 1 year | 502.90 |
| (B) One data file per month for 1 year | 301.80 |
| (v) Samples provided to interested parties (per sample) | 3.10 |
| (vi) Divided-lot certificates (per certificate) | 2.00 |

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES [1]—Continued

| | |
|---|---|
| (vii) Extra copies of certificates (per certificate) | 2.00 |
| (viii) Faxing (per page) | 2.00 |
| (ix) Special mailing | Actual Cost |
| (x) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1). | |

[1] Any requested service that is not listed will be performed at $64.40 per hour.
[2] Regular business hours—Monday through Friday—service provided at other than regular business hours will be charged at 1-½ times the applicable hourly rate. (See the definition of "business day" in § 800.0(b))
[3] Foreign travel charged hourly fee of $83.90 plus travel, per diem, and related expenditures.

* * * * *

Dated: February 8, 2018.

**Greg Ibach,**

*Under Secretary, Marketing and Regulatory Programs.*

[FR Doc. 2018–02884 Filed 2–13–18; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0658; Product Identifier 2017–NE–20–AD; Amendment 39–19195; AD 2018–03–22]**

**RIN 2120–AA64**

## Airworthiness Directives; GE Aviation Czech s.r.o. Turboprop Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F turboprop engines. This AD requires removal of certain power turbine (PT) disks installed on the affected engines. This AD was prompted by a design review by the manufacturer that determined PT rotors with certain disks have less overspeed margin than originally stated during product certification. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 21, 2018.

**ADDRESSES:** For service information identified in this final rule, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0658; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F turboprop engines. The NPRM published in the **Federal Register** on September 22, 2017 (82 FR 44355). The NPRM was prompted by a design review by the manufacturer that determined PT rotors with certain disks have less overspeed margin than originally stated during product certification. The NPRM proposed to require removal of the affected PT disks. We are issuing this AD to correct the unsafe condition on these products.

The MCAI states:

> It was identified during a recent design review that power turbine (PT) rotors with certain disks, part number (P/N) M601–3220.6 and P/N M601–3220.7, have a reduction in the declared theoretical PT rotor overspeed limit.
>
> This condition, if not corrected, may lead to high energy debris release in case of PT rotor overspeed occurrence, possibly resulting in damage to, and/or reduced control of, the aeroplane.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0658.

### Comments

We gave the public the opportunity to participate in developing this final rule. We considered the comment received. Cody Hargis (not further identified) supported the NPRM.

### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed.

### Related Service Information

We reviewed GE Aviation Czech s.r.o. Alert Service Bulletin (ASB) No. ASB–M601E–72–50–00–0069, ASB–M601D–72–50–00–0052, ASB–M601F–72–50–00–0035, ASB–M601T–72–50–00–0028, and ASB–M601Z–72–50–00–0038, (single document), dated February 21, 2017. The ASB describe procedures for replacing the PT disk.

### Costs of Compliance

We estimate that this AD affects 50 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Disk removal and replacement | 56 work-hours × $85 per hour = $4,760 | $6,989 | $11,749 | $587,450 |

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [ Amended]**

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

**2018–03–22 GE Aviation Czech s.r.o.** (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–19195; Docket No. FAA–2017–0658; Product Identifier 2017–NE–20–AD.

**(a) Effective Date**

This AD is effective March 21, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F turboprop engines, with power turbine (PT) rotors with disks, part number (P/N) M601–3220.6 or P/N M601–3220.7, installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by a review by the manufacturer that determined that PT rotors with disks, P/N M601–3220.6 or P/N M601–3220.7, have less overspeed margin than originally declared during product certification. We are issuing this AD to prevent failure of the PT rotor. The unsafe condition, if not addressed, could result in failure of the PT rotor, uncontained release of the PT disk, damage to the engine, and damage to the airplane.

**(f) Compliance**

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

**(g) Required Actions**

After the effective date of this AD, remove the affected PT disk from service during the next engine overhaul or rebuild, or within 5 years, whichever occurs first.

**(h) Installation Prohibition**

After the effective date of this AD, do not install an affected PT disk on any engine.

**(i) Alternative Methods of Compliance (AMOCs)**

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

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

**(j) Related Information**

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2017–0100, dated June 8, 2017, for more information. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0658.

**(k) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on February 8, 2018.

**Robert J. Ganley,**

*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2018–02994 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF STATE

**22 CFR Part 126**

**[Public Notice 10306]**

**RIN 1400–AE51**

## Amendment to the International Traffic in Arms Regulations: Addition of South Sudan

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to include reference to South Sudan in its regulations on prohibited exports, imports, and sales to and from certain countries, and to update defense trade policy toward South Sudan by applying a policy of denial on the export of defense articles and defense services to South Sudan, except as otherwise provided. This amendment reflects a policy determination made by the Secretary of State.

**DATES:** The rule is effective on February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Engda Wubneh, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone: (202) 663–2816, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, ITAR Section 126.1 Update 2017.

**SUPPLEMENTARY INFORMATION:** In response to the escalating crisis in South Sudan, the Secretary of State has determined that it is in the best interests of U.S. foreign policy to restrict, with certain exceptions, the export of defense articles and defense services to South Sudan in order to reflect the U.S. government's opposition to the trade of arms to South Sudan and its contribution to the conflict and humanitarian crisis, to promote the cessation of hostilities, and to reinforce international unity in addressing the South Sudan crisis by aligning the United States with existing restrictions on certain exports to South Sudan by the European Union. This action requires the Department to amend ITAR § 126.1(d)(2) to include South Sudan in the list of countries to which a policy of denial applies, and to add a new paragraph (w) to specify the exceptions to the policy of denial for which licenses and other approvals to South Sudan may be approved on a case-by-case basis. Further, in accordance with ITAR § 129.7, no broker, as described in ITAR § 129.2, may engage in or make a proposal to engage in brokering activities subject to the ITAR that involve South Sudan without first obtaining the approval of the Directorate of Defense Trade Controls.

### Regulatory Analysis and Notices

*Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since this rule is exempt from 5 U.S.C. 553, the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards the aforementioned countries, there is good cause for the effective date of this rule to be the date of publication, as provided by 5 U.S.C. 553(d)(3).

*Regulatory Flexibility Act*

Since this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Reform Act of 1995*

This rulemaking does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

*Executive Orders 12372 and 13132*

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

*Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the scope of this rule implements a governmental policy limiting defense trade with a country, and does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. The Department also finds that any costs of this rulemaking are outweighed by the foreign policy benefits, as described in the preamble. This rule has not been designated a ''significant regulatory action'' by the Office and Information and Regulatory Affairs under Executive Order 12866.

*Executive Order 12988*

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175*

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Executive Order 13771*

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' See OMB Memorandum M–17–21, ''Guidance Implementing Executive Order 13771'' of April 5, 2017.

*Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements

subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, 22 CFR part 126 is amended as follows:

## PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 2. Section 126.1 is amended by revising the table in paragraph (d)(2), and adding paragraph (w), and by removing the Note to 126.1.

The revision and addition read as follows:

**§ 126.1 Prohibited exports, imports, and sales to or from certain countries.**

* * * * *

(d) * * *

(2) * * *

| Country | Country specific paragraph location |
|---|---|
| Afghanistan | See also paragraph (g) of this section. |
| Central African Republic | See also paragraph (u) of this section. |
| Cyprus | See also paragraph (r) of this section. |
| Democratic Republic of Congo | See also paragraph (i) of this section. |
| Eritrea | See also paragraph (h) of this section. |
| Haiti | See also paragraph (j) of this section. |
| Iraq | See also paragraph (f) of this section. |
| Lebanon | See also paragraph (t) of this section. |
| Libya | See also paragraph (k) of this section. |
| Somalia | See also paragraph (m) of this section. |
| South Sudan | See also paragraph (w) of this section. |
| Sudan | See also paragraph (v) of this section. |
| Zimbabwe | See also paragraph (s) of this section. |

* * * * *

(w) *South Sudan.* It is the policy of the United States to deny licenses or other approvals for exports of defense articles and defense services destined for South Sudan, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for monitoring, verification, or peacekeeping support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Defense articles and defense services intended solely for the support of, or use by, African Union Regional Task Force (AU–RTF) or United Nations entities operating in South Sudan, including but not limited to the United Nations Mission in the Republic of South Sudan (UNMISS), the United Nations Mine Action Service (UNMAS), the United Nations Police (UNPOL), or the United Nations Interim Security Force for Abyei (UNISFA);

(3) Defense articles and defense services intended solely for the support of or use by non-governmental organizations in furtherance of conventional weapons destruction or humanitarian demining activities;

(4) Non-lethal defense articles intended solely for humanitarian or protective use and related technical training and assistance;

(5) Personal protective equipment including flak jackets and helmets, temporarily exported to South Sudan by United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; or

(6) Any defense articles and defense services provided in support of implementation of the Comprehensive Peace Agreement, the Agreement on the Resolution of the Conflict in the Republic of South Sudan, or any successor agreement.

**Michael Miller,**

*Office Director, Office of Regional Security and Arms Transfers, Bureau of Political-Military Affairs, U.S. Department of State.*

[FR Doc. 2018–02995 Filed 2–13–18; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

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

*Correction*

In rule document 2018–02554 appearing on pages 5536–5537 in the issue of February 8, 2018, make the following correction:

**§ 706 .2 [Corrected]**

■ On page 5537, in Table Four, in the second column, ''DDG 115'' should read ''DDG 116''.

[FR Doc. C1–2018–02554 Filed 2–13–18; 8:45 am]

**BILLING CODE 1301–00–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 668, 674, 682, and 685

**[Docket ID ED–2017–OPE–0112]**

**RIN 1840–AD28**

### Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary delays, until July 1, 2019, the effective date of selected provisions of the final regulations entitled Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program (the 2016 final regulations), published in the **Federal**

**Register** on November 1, 2016. The Secretary is delaying the 2016 final regulations to ensure that there is adequate time to conduct negotiated rulemaking and develop revised regulations. The provisions for which the effective date is being delayed are listed in the **SUPPLEMENTARY INFORMATION** section of this document. The original effective date of the 2016 final regulations, published November 1, 2016, was July 1, 2017. The effective date was delayed by a document issued under section 705 of the Administrative Procedure Act (the 705 Document). The Department announced in an interim final rule (IFR) issued on October 24, 2017, that, under the Department's interpretation of the Higher Education Act, the effective date could be no earlier than July 1, 2018.

**DATES:** As of February 14, 2018, the effective date for the amendments to or additions of: §§ 668.14(b)(30), (31), and (32); 668.41(h) and (i); 668.71(c); 668.90(a)(3); 668.93(h), (i), (j); 668.171; 668.175 (c) and (d) and (f) and (h); Appendix C to Subpart L of Part 668; 674.33(g)(3) and (g)(8); 682.202(b)(1); 682.211(i)(7); 682.402(d)(3), (d)(6)(ii)(B)(*1*) and (*2*), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(*5*), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii); 682.405(b)(4); 682.410(b)(4) and (b)(6)(viii); 685.200(f)(3)(v) and (f)(4)(iii); 685.205(b)(6); 685.206(c); 685.212(k); 685.214(c)(2), (f)(4) through (7); 685.215(a)(1), (c)(1) through (c)(8), and (d); 685.222; Appendix A to Subpart B of Part 685; and 685.308(a), published November 1, 2016, at 81 FR 75926, and delayed on June 16, 2017 (82 FR 27621) and October 24, 2017 (82 FR 49114), is further delayed until July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** George Alan Smith, U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 294–34, Washington, DC 20202. Telephone: (202) 453–7757 or by email at: *George.Alan.Smith@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On October 24, 2017 (82 FR 49114), the Department of Education (Department) published an IFR giving notice that under its interpretation of section 482 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089), also known as the ''master calendar requirement,'' selected provisions of the 2016 final regulations would have an effective date of July 1, 2018. (82 FR 49114) The original effective date of the 2016 final regulations (November 1, 2016 at 81 FR 75926) was July 1, 2017. On June 16, 2017, a 705 Document (82 FR 27621) delayed the effective date of certain provisions of the 2016 final regulations until a legal challenge by the California Association of Private Postsecondary Schools (CAPPS) is resolved. *See* Complaint and Prayer for Declaratory and Injunctive Relief, *California Association of Private Postsecondary Schools* v. *DeVos,* Civil Action No. 1:17–cv–00999 (D.D.C. May 24, 2017). As explained in the IFR, because the 2016 final regulations have been postponed by the 705 Document beyond July 1, 2017, they cannot become effective earlier than July 1, 2018, to comply with the master calendar requirement. (82 FR 49115–49116).

Also on June 16, 2017, the Department announced its intent to convene a committee to develop proposed regulations to revise the existing regulations on borrower defense to repayment of Federal student loans and other matters (82 FR 27640), the same topics addressed in the 2016 final regulations. Under the master calendar requirement, a regulatory change that has been published in final form on or before November 1 of the year prior to the start of an award year—which begins on July 1 of any given year—may take effect only at the beginning of the next award year, or in other words, on July 1 of the next year. In light of this requirement, the regulations resulting from negotiated rulemaking could not be effective before, at the earliest, July 1, 2019.

Accordingly, the Department published a notice of proposed rulemaking (NPRM) proposing to delay the effective date of the 2016 final regulations until July 1, 2019 (October 24, 2017 at 82 FR 49155). This notice adopts that proposal, delaying the effective date of the 2016 final regulations, to continue to preserve the regulatory status quo, until July 1, 2019. The Department will continue to process borrower defense claims under the existing regulations that will remain in effect during the delay so that borrowers may continue to apply for the discharge of all or a part of their loans.

Based on the above considerations, the Department delays until July 1, 2019, the effective date of the following provisions of the final regulations in title 34 of the Code of Federal Regulations (CFR):

§ 668.14(b)(30), (31), and (32) Program participation agreement.

§ 668.41(h) and (i) Reporting and disclosure of information.

§ 668.71(c) Scope and special definitions.

§ 668.90(a)(3) Initial and final decisions.

§ 668.93(h), (i), and (j) Limitation.

§ 668.171 General.

§ 668.175(c), (d), (f), and (h) Alternative standards and requirements.

Part 668 subpart L, Appendix C.

§ 674.33(g)(3) and (g)(8) Repayment.

§ 682.202(b)(1) Permissible charges by lenders to borrowers.

§ 682.211(i)(7) Forbearance.

§ 682.402(d)(3), (d)(6)(ii)(B)(*1*) and (*2*), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(*5*), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii) Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

§ 682.405(b)(4)(ii) Loan rehabilitation agreement.

§ 682.410(b)(4) and (b)(6)(viii) Fiscal, administrative, and enforcement requirements.

§ 685.200(f)(3)(v) and (f)(4)(iii) Borrower eligibility.

§ 685.205(b)(6) Forbearance.

§ 685.206(c) Borrower responsibilities and defenses.

§ 685.212(k) Discharge of a loan obligation.

§ 685.214(c)(2) and (f)(4) through (7) Closed school discharge.

§ 685.215(a)(1), (c)(1) through (c)(8), and (d) Discharge for false certification of student eligibility or unauthorized payment.

§ 685.222 Borrower defenses.

Part 685 subpart B, Appendix A Examples of borrower relief.

§ 685.300(b)(11), (b)(12), and (d) through (i) Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

§ 685.308(a) Remedial actions.

**Note:** Section 668.90 has been redesignated as § 668.91 and § 668.93 has been redesignated as § 668.94 pursuant to the borrower defense procedural rule, published January 19, 2017 at 82 FR 6253 (the borrower defense procedural rule).

As noted in the IFR, the Department interprets all references to ''July 1, 2017'' in the text of the above-referenced regulations to mean the effective date of those regulations. The regulatory text included references to the specific July 1, 2017, date in part to provide clarity to readers in the future as to when the regulations had taken effect. Because the regulations did not take effect on July 1, 2017, we would, in connection with this delay of the effective date, read those regulations as referring to the new effective date established by this rule, *i.e.,* July 1, 2019.

This delay of the effective date of the 2016 final regulations does not delay the effective dates of the regulatory provisions published in 81 FR 75926 which: (1) Expand the types of documentation that may be used for the granting of a discharge based on the death of the borrower; (2) amend the regulations governing the consolidation of Nursing Student Loans and Nurse Faculty Loans so that they align with the statutory requirements of section 428C(a)(4)(E) of the HEA; (3) amend the regulations governing Direct Consolidation Loans to allow a borrower to obtain a Direct Consolidation Loan regardless of whether the borrower is also seeking to consolidate a Direct Loan Program or FFEL Program loan, if the borrower has a loan type identified in 34 CFR 685.220(b); (4) address severability; and (5) make technical corrections. In the 2016 final regulations, 34 CFR 682.211(i)(7) and 682.410(b)(6)(viii) were designated for early implementation, at the discretion of each lender or guaranty agency. That designation remains effective.

*Public Comment:* In response to our invitation in the NPRM, 14 parties submitted comments on the delay of the effective date. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change.

**Analysis of Comments and Changes**

An analysis of the comments and of any changes to this regulatory action since publication of the NPRM follows.

A number of commenters opposed the proposed rule to delay the effective date of selected provisions of the 2016 final regulations until July 1, 2019, stating that such delay (1) would harm student loan borrowers and, in some cases, taxpayers; (2) is unnecessary and unaligned with the mission of the Department of Education; (3) is not justifiable on the grounds that there is pending litigation as referenced in the NPRM; and (4) would not be compliant with the Administrative Procedure Act (APA). However, several commenters supported the delay because they believed, collectively, that a further delay would (1) relieve the regulatory burden on institutions; (2) mitigate uncertainty about the potential impact of the current regulations; and (3) prevent unnecessary harm and disruption to postsecondary educational institutions. We discuss and respond to these comments in greater detail below.

*Comments:* Several commenters stated that a further delay of the 2016 final regulations would harm borrowers because they would continue to be subject to the predatory practices of certain institutions without those institutions being held accountable through the financial responsibility standards and disclosures and student warnings contained in the 2016 final regulations. The commenters argued that the Secretary should protect and provide relief to borrowers who attended institutions of higher education that misrepresented their program offerings, or that employed deceptive marketing or recruiting tactics, instead of delaying the 2016 final regulations. The commenters claimed that a further delay would ensure that borrowers who apply or have applied for a loan discharge based on a borrower defense would be required to wait for new rules to go into effect before receiving consideration of their claims under the process established by the 2016 final regulations while interest, collection costs and financial distress continued to mount. The commenters also stated that a further delay of the pre-dispute arbitration and class action waiver provisions of the 2016 final regulations would leave students without access to the courts, while statutes of limitation run. Several commenters also argued that a further delay of the rule would harm student loan borrowers because borrowers would be denied access to the many provisions in the 2016 final regulations that are beneficial to borrowers, including provisions that provide:

—Automatic closed school discharges for borrowers who were enrolled in schools that closed on or after November 13, 2013, and who did not enroll in another school within three years of their school's closure;

—A second level of Departmental review for closed school discharge claims that were denied by a guaranty agency;

—An expansion of the conditions under which a FFEL or Direct Loan borrower may qualify for a false certification discharge;

—A clear process, based on new Federal standards, that establishes a borrower's procedural rights and describes how the Department will consider individual and group borrower defense discharge claims and pending requests for forbearance or suspension of collection on loans that are subject to borrower defense claims;

—Prohibitions on schools' ability to enforce pre-dispute arbitration agreements and class action waivers as to borrower defense-related claims for students receiving Direct Loans;

—Institutional financial responsibility triggers to protect the Federal government from losses that may arise from borrower defense claims and sudden school closures; and,

—Institutional financial protection disclosures for prospective and enrolled students to assist students in making informed choices about where to matriculate.

One commenter asserted that further delaying the 2016 final regulations would perpetuate existing harms experienced by borrowers, such as poor credit ratings resulting from debt that borrowers accumulated that the borrower may be able to discharge based on a borrower defense.

One commenter argued that further delay in the effective date harms borrowers because the delay creates uncertainty in how the Department will treat future borrower defense claims. The commenter asserted that while borrowers can wait for the outcome of the new rulemaking effort for clarity on the process, waiting has risks for borrowers as well, including the application of statutes of limitations which may limit the loan amount that may be discharged. The same commenter noted that Direct Loan borrowers with loans issued during the delay cannot avail themselves of the Federal standard in the 2016 final regulations; these borrowers will be limited to the State law standard. Finally, this commenter stated that although the Department claimed that borrowers would not be harmed by the further delay of the effective date of the 2016 final regulations because borrower defense claims would continue to be processed under existing regulations, the Department's own impact analysis estimates a reduction in student loan discharges of nearly two billion as a result of the further delay. Citing a July 2017 letter from the Department's Acting Under Secretary to Senator Richard Durbin, the commenter stated that the Department had not approved borrower defense applications since January 20, 2017, and that there were at least 64,000 outstanding borrower defense applications as of the date of the letter. The commenter noted that the number of unprocessed claims has since risen to 95,000, and that a further delay of the 2016 final regulations will exacerbate the lack of expediency in the Department's borrower defense discharge process to the detriment of borrowers who continue to wait for relief.

*Discussion:* The Department does not agree that borrowers will be significantly harmed by changing the effective date of the 2016 final

regulations to July 1, 2019. While the Department acknowledges that certain benefits of the 2016 final regulations will be delayed, it has determined that those benefits are outweighed by the administrative and transaction costs for regulated entities and borrowers of having those regulations go into effect only to be changed a short while later. First, the 2016 final regulations did not create the borrower defense regime but modified the pre-existing borrower defense regulations, in place since 1995. Those pre-existing regulations remain in effect, as does the statute that allows borrowers to assert defenses to repayment. Therefore, borrowers can continue to apply for relief from payment of loans under this existing process, and the Department is committed to processing those applications in a timely manner. Second, the instant rule merely delays the marginal benefits of the 2016 final regulations for a brief period of time (an additional year), it does not revoke them.

The Department does not share the commenters' concern that borrowers will be subject to certain institutions' predatory practices absent the 2016 final regulations. Because the current borrower defense regulations will remain in effect, borrowers will continue to be able to submit claims to the Department and have their claims processed in accordance with the HEA and those current regulations. Borrowers will not need to wait for new rules to go into effect to have a borrower defense claim considered. We do not anticipate that borrowers will be harmed by the current process because we routinely grant forbearances, and stop collection activities on defaulted loans, to borrowers while their discharge claims are under review. We acknowledge the commenter's concern regarding the number of pending claims before the Department. However, in the time since the commenter submitted the comment, the Department has issued decisions on borrower defense claims and we will continue to accept and process borrower defense claims.

In the event that the borrower defense regulations currently being negotiated result in discharge standards for a borrower defense claim different from the current standards, the new standards would apply only to loans first disbursed on or after the effective date of those regulations. Claims filed as to loans first disbursed before July 1, 2019, which would include currently pending claims and claims filed between the date of this final rule and July 1, 2019, will continue to be processed under the current standard for borrower defense claims.

We further disagree with commenters who claimed that the July 1, 2019 effective date would harm borrowers because the Federal standard established in the 2016 final regulations would not be in effect. As we noted in the 2016 final regulations, the Federal standard was designed to address much of the conduct covered by the State law-based standard so the vast majority of claims made by borrowers whose loans were first disbursed between July 1, 2017, and July 1, 2019, could be evaluated and discharges provided under the current State law-based standard. (81 FR 75937–75941). Any benefits to borrowers associated with having the Federal standard in place during that time period are outweighed by the confusion and disruption that would result from allowing the 2016 final regulations to take effect during a time when they are subject to a legal challenge and when the Department is reevaluating its borrower defense regulations generally. In addition to causing confusion for borrowers, implementing a different standard for a potentially short period of time could delay the processing of claims. One of the goals of the 2016 final regulations was to provide borrowers with more consistency and clarity about their borrower defense claims. (81 FR 39339–39340). Under the circumstances, the delay of the effective date of the 2016 final regulations provides greater clarity and consistency for borrowers, as well as a more streamlined process, than implementation of the rule under the current schedule.

With respect to the comment about a two billion dollar reduction in claims based on the difference in the primary and baseline scenarios from the net budget impact in the 2016 final regulations, as noted in the Regulatory Impact Analysis (RIA), the Department estimates the savings resulting from the delay to be much less. The savings resulting from the delay are mainly driven by slight differences between the State law-based standards in the current regulations and the Federal standards from the 2016 final regulations if they were applicable to loans disbursed between July 1, 2018, and July 1, 2019. Since we have always maintained that there would be significant overlap between the State law-based and Federal standards from the 2016 final regulations, the differences are estimated to be minor. The provisions of the 2016 final regulations pertaining to the process for review and determination of claims were not limited to specific cohorts designated by the effective date so the delay will not result in specific cohorts of borrowers being excluded from the process in effect when the claim is made. Additionally, the figures in the Accounting Statement for the 2016 final regulations would more appropriately be characterized as the costs associated with a single cohort and not the costs associated with a fiscal year. As part of its ongoing efforts to improve the utility of student loan information, the Department has updated its Accounting Statement presentation to better align with OMB Circular A–4, so the effects presented in this document do show the impact on the affected cohorts by fiscal year. The Net Budget Impact section of the RIA presents the assumptions about the effect of the delay.

With regard to the financial protection disclosures, the 2016 final regulations provided that before the disclosures would be required, the Secretary would conduct consumer testing to inform the identification of events for which disclosure would be required and to determine the form of the disclosure. In light of the fact that the 2016 final regulations provided for a future process before the disclosure requirement could be implemented, we do not believe a delayed effective date would significantly change what would occur in this regard during the period of the delay. In other words, because we did not anticipate the financial protection disclosures having a significant impact immediately following the 2016 final regulations' effective date, we believe the incremental effect of delaying those provisions is minimal. We address the comments related to institutional financial responsibility triggers in more detail in the RIA.

Moreover, there are other existing protections for borrowers, including periodic reviews and site visits by Department employees to title IV participating institutions to monitor regulatory compliance; and the activities of the enforcement unit within FSA charged with taking actions against parties participating in title IV, HEA programs to enforce compliance. In addition to the Department, other entities also act to protect students, borrowers, and taxpayers, such as the States through State law enforcement activities and other Federal agencies whose jurisdictions may overlap with, or affect, the higher education sector.

Finally, we note that borrowers may continue to apply for closed school and false certification discharges under the current regulations. With regard to the comments relating to the grounds for false certification discharge, as we stated in the notice of proposed

rulemaking that preceded the 2016 final regulations, these changes reflect statutory changes relating to false certification discharges for the lack of a high school diploma or its equivalent and for a disqualifying status. As a result, the Department's authority for false certification discharges on these grounds remains unchanged. (81 FR 39377–39378). In addition, under the current regulations, the Secretary has the authority to provide false certification discharges without an application based on information in the Secretary's possession. The 2016 final regulations explicitly provided that such information may include evidence that the school has falsified the Satisfactory Academic Progress of its students. Because the current regulation does not limit the information that may be considered by the Secretary to provide a false certification discharge without an application, we do not believe a delay of the 2016 revision to this provision will harm borrowers. With regard to a second level of review of a guaranty agency's determinations on closed school discharge requests, borrowers may raise any dispute with a guaranty agency to the Department's Federal Student Aid Ombudsman Group.

The Department acknowledges the commenters' concern that the window under applicable statutes of limitation for some borrowers to file lawsuits may end during the period covered by the delay of the 2016 final regulations' prohibitions on institutions' use of pre-dispute arbitration and class action waiver contractual provisions. However, as acknowledged in the 705 Document, serious questions regarding the legality of these provisions of the final regulations exist and these provisions are among the regulations directly challenged in the CAPPS litigation. The Department thinks that it is likely that the arbitration and class action waiver provisions will be overturned. Should the Department's regulations prohibiting schools from enforcing pre-dispute arbitration agreements and class action waivers be invalidated by the court, there would be significant confusion from borrowers and schools who may have engaged in court litigation on the basis of the prohibitions as to the enforceability of those agreements. We believe the harm from having these provisions take effect in the face of the CAPPS challenge is too great and outweigh any benefits these provisions would have. Further, we note that a borrower may continue to apply for relief, from the Department under the current, State-law based borrower defense to repayment regulations, irrespective of whether the borrower has a pre-dispute arbitration agreement with the school or an agreement to waive involvement in class action lawsuits.

We also note that the pre-dispute arbitration and class action waiver provisions of the 2016 final regulations would require some institutions to change their policies and procedures and to amend their enrollment agreements. In addition, re-training staff and sending notices to borrowers informing them of the changed class action waivers and pre-dispute arbitration provisions would impose administrative costs on institutions. If pre-dispute arbitration requirements and class action waivers are addressed through the current rulemaking process, institutions would need to repeat or reverse these steps to address any requirements that would go into effect on July 1, 2019. Maintaining the regulatory status quo with respect to pre-dispute arbitration agreements and class action waivers will reduce the administrative burden on schools and lessen confusion for borrowers who would be affected by these changes.

The Department further believes that implementing the 2016 final regulations at this time would cause significant confusion around borrower defenses generally that would be unfair to students and schools. Without a delay, if the current rulemaking process results in a different standard for borrower defense claims, there would be three separate sets of standards for borrower defense claims: the State-law based standard that is currently in effect; standards for loans disbursed between July 1, 2018, and July 1, 2019; and standards for loans disbursed on or after July 1, 2019. This would be more confusing for borrowers than the potential for two different standards—one for loans disbursed before July 1, 2019, and one for loans disbursed on or after July 1, 2019. Providing for an effective date of July 1, 2019, will allow the Department and the negotiating committee to develop new borrower defense regulations that would protect students from the most serious predatory practices, provide clear and evenhanded rules for students, colleges and universities to follow, and constrain the costs to taxpayers.

The Department's processing of borrower defense claims is not affected by the effective date of the 2016 final regulations, as the current regulations remain in effect. While the process for reviewing claims and the standard under which they are reviewed would have changed under the 2016 final regulations, the Department does not expect that the length of time required to review individual claims would have changed significantly if the 2016 final regulations had gone into effect as originally scheduled. With regard to group claims, the Department has granted group claims under the existing regulations. While the 2016 final regulations provided a regulatory process for granting group borrower defense claims, the Secretary had and continues to have the authority, and has exercised that authority, to grant group claims under the borrower defense regulations currently in effect.

*Changes:* None.

*Comment:* Some commenters claimed that the delay hurts American taxpayers because the 2016 final regulations would hold institutions that commit fraud monetarily accountable for their actions in cases of student loan discharges, rather than requiring taxpayers to absorb the costs of borrower defense discharges.

*Discussion:* As noted earlier in this section, the delay of the effective date of the 2016 final regulations will allow the Department to develop new borrower defense regulations that may be more beneficial to American taxpayers than the 2016 final regulations. We do not believe the delay will harm American taxpayers because the Department may assess liability for borrower defense claims on schools now, under the current regulations in effect. The financial protection triggers in the 2016 final rule were designed to increase the likelihood of recovering funds from institutions as claims come in over the life of the cohort, especially from institutions that might have significant exposure or that end up closing as a result of the financial risks identified by the triggers. The Department estimated that recovery activity would ramp up as the triggers were implemented, as reflected in the recovery assumption in the 2016 final rule (81 FR 76057), so a delay in the early years of recovery activity is not estimated to have a significant effect, as indicated by the change in the recovery assumption presented in this RIA. With the Department's authority to seek recoveries unchanged because of the change in effective date, we believe the possibility of slightly reduced recovery rates for a short period is warranted to further the goals of providing clarity by maintaining the regulatory status quo during this interim period. We note that the borrower defense procedural rule, which provided a regulatory framework for assessing liabilities against schools for which a borrower defense claim was successful, was published in the **Federal Register** on January 19, 2017,

and those regulations have been effective since that date.

*Changes:* None.

*Comment:* One commenter asserted that the data provided for the impact of the delays in the effective date of the 2016 final regulations were inadequate because the cost of providing financial protection was not quantified in the RIA of the 2016 final regulations and the NPRM preceding this final rule; and there is no additional data to estimate the costs institutions may avoid from the delayed effective date of the financial protection provisions.

Another commenter pointed out that if the effective date of the 2016 final regulations was not delayed, the Department estimated that $381 million in loans would be forgiven between July 1, 2017, and July 1, 2019. The commenter noted that the Department does point out that the Federal government will save this money by delaying the effective date but does not point out that borrowers will end up absorbing the cost. The commenter noted that the Department could change the current regulations and not include the new closed school discharge provisions, and noted that even a temporary delay causes financial stress that can trap some borrowers in poverty. Moreover, borrowers who default on their loans because they are not discharged would not be eligible for further financial aid.

*Discussion:* The Department appreciates the comments about the RIA for the NPRM preceding this final rule. In that RIA, the Department acknowledged that the costs of providing financial protection were not quantified in the RIA for the 2016 final regulations and that there is no additional data to estimate those costs. That fact, however, does not mean that we have not sufficiently justified this delay.

As discussed in the RIA for this final rule with respect to the delay of the financial protection provisions, several factors will affect the cost for individual institutions, including: the level of institutional conduct giving rise to borrower defense claims, the applicability of certain financial protection triggers, the financial strength of the institution, the manner in which the institution provides financial protection to the Department, and the potential development of financial products aimed at providing this protection. The Department believes that individual institutions are best positioned to evaluate their potential exposure to borrower defense claims, their financial relationships with parties who could provide financial protection, and the cost of providing protection. Along with the uncertainty about the projected amount of claims as recognized in the different sensitivity runs presented in the RIA for the 2016 final regulations, the Department believes that quantifying the cost of providing financial protection would provide a false sense of precision. Rather than producing a number that would be inapplicable to most institutions, the Department focused on explaining the regulations and providing data about the provisions for which it had information such as the cohort default rate (CDR), 90/10 revenue requirement, fluctuation in title IV aid, withdrawal rate, and accreditor action triggers. The 2016 final regulations did not present information about the provisions related to U.S. Securities and Exchange Commission or stock exchange actions, gainful employment, the withdrawal of owner's equity from an institution, teach-outs, State licensing, financial stress tests, an institution's violation of a loan agreement, or pending borrower defense claims. Additionally, given that the known borrower defense claims at the time were from a small number of institutions and many had not been approved or disapproved, it is unclear how the distribution of successful borrower defense claims at institutions would match up with the distribution of institutions' performance on the financial responsibility triggers for which the Department had some information.

As is further discussed in the RIA for this final rule, the Department recognizes that the delayed effective date will postpone the impact of the financial protection provisions on institutions. This impact was not quantified for the same reasons described above, but would be a fraction of the total protection expected to be generated under the rule as some of the triggers are tied to the production of certain performance measures and would not have kicked in immediately under the 2016 regulations. Successful claims made by borrowers will be paid regardless of the limited delay in the date for requiring institutions to provide financial protection, and the Department believes the cost to taxpayers of the slightly reduced recoveries described in the Net Budget Impact in the RIA is justified by the benefits of reconsidering the financial protection provisions and appropriately balancing the costs to institutions with protection of borrowers and taxpayers.

With respect to the comment about closed school discharges, the Department disagrees with the claim that borrowers will bear a $381 million cost because of the delay. As noted in the NPRM, the $364 million savings estimated for FY 2017 occurred because the Department did not execute the modification for cohorts 2014–2016 anticipated in the President's Budget (PB) for 2018 because of the change of the effective date of the 2016 final regulations. The difference in the $381 million estimated for the three-year automatic discharge in the 2016 final regulations and the $364 million estimate for the modification in this rule is that the $381 million was based on PB 2017 loan model assumptions and the modification to be executed was based on the PB 2018 assumptions. Under the credit reform scoring rules applicable to the student loan programs, the unexecuted modification created savings that needed to be recognized. This budget scoring requirement does not affect borrowers or their eligibility for a closed school discharge. Borrowers can avoid any uncertainty about the timing of receiving a closed school discharge or costs associated with a delay in receipt of such discharge by submitting a closed school discharge application at any time. Any costs or savings associated with changes in the automatic discharge provision as a result of the current negotiated rulemaking are outside the scope of the analysis of the delay, and we will address any related issues raised by commenters in response to the NPRM for the proposed rule resulting from the current rulemaking process.

*Changes:* None.

*Comment:* Some commenters expressed their belief that the delay is not aligned with Congressional intent, citing 20 U.S.C. 3402, and is contrary to the public interest.

*Discussion:* In 20 U.S.C. 3402, Congress states that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal government to coordinate its education activities more effectively.

In its execution of these responsibilities, and consistent with 20 U.S.C. 3402, the Department has determined that the public interest is best served by a delay in the effective date of the 2016 final regulations.

*Changes:* None.

*Comments:* Some commenters expressed concerns that the Department did not follow required rulemaking processes in delaying the effective date of the 2016 final regulations. These concerns alleged specific statutory and

APA violations. First, commenters stated that the Department's justification to waive negotiated rulemaking was insufficient. Second, commenters wrote that we did not provide sufficient justification for the delay. One commenter said that the NPRM fails to identify any specific deficiencies in the 2016 final regulations, or findings and rationale that support revising those regulations. Third, a commenter stated that the minor cost savings detailed in the RIA were insufficient justification to delay the rule. In addition, one commenter stated that further negotiated rulemaking on the 2016 final regulations was redundant and wasteful.

*Discussion:* The Department adhered to all applicable laws in promulgating this final rule. First, with regard to waiver of negotiated rulemaking, section 492(b)(2) of the HEA provides that the Secretary may waive negotiated rulemaking if she determines that there is good cause to do so, and publishes the basis for such determination in the **Federal Register** at the same time as the proposed regulations in question are first published. In the NPRM, the Department properly articulated the good cause supporting our waiver of the HEA's negotiated rulemaking requirement. The NPRM explained that the original catalyst for the delay was the CAPPS litigation, filed on May 24, 2017, and that it would not have been possible for the Department to engage in negotiated rulemaking and publish final regulations after that date (much less after October 24, 2017, the date the NPRM was published), and prior to July 1, 2018 (the current effective date of the 2016 final regulations). Negotiated rulemaking on this discrete issue simply was not practicable. It is a time-consuming and resource-intensive process, and could not practicably be completed by July 1, 2018.

Negotiated rulemaking typically takes the Department well over 12 months to complete. The statute requires the Department to hold public hearings before commencing any negotiations. Based upon the feedback the Department receives during the hearings, the Department then identifies those issues on which it will conduct negotiated rulemaking, announces those, and solicits nominations for non-Federal negotiators. Negotiations themselves are typically held over a 3 month period. Following the negotiations, the Department then prepares a notice of proposed rulemaking and submits the proposed rule to OMB for review. The proposed rules are then open for public comment for 30–60 days. Following the receipt of public comments, the Department then prepares a final regulation and submits it to OMB for review.

With the completion of all of these steps taking well over 12 months, it would not have been feasible for the Department to complete negotiated rulemaking on the delayed effective date by July 1, 2018. Indeed, it would not have been feasible even if the Department had commenced the process on May 24, 2017, when it learned of the CAPPS litigation. Thus, the Department had good cause to waive that requirement.

Regarding the comment that we did not provide sufficient justification to propose delay of the effective date of the 2016 final regulations, the Department is in the process of developing proposed revisions to the borrower defense regulations through the negotiated rulemaking process. As a result of the timing of the negotiated rulemaking and the effect of the master calendar requirement, any regulations resulting from the negotiated rulemaking cannot become effective before July 1, 2019. Therefore, the Department proposed in the NPRM to delay the effective date of the 2016 final regulations to July 1, 2019. This would prevent a scenario in which the 2016 final regulations might become effective for a short period of time before new regulations resulting from the current borrower defense rulemaking process take effect, a result which likely would lead to a great deal of confusion and difficulty for borrowers and schools alike. Accordingly, the Department articulated a reasonable and sufficient justification to propose a delay of a final rule.

Also with regard to the comment that the NPRM fails to identify any specific deficiencies in the 2016 final regulations, the APA and applicable case law require only that an agency's rulemaking justify the particular action or actions to be taken by that rule. This final rule does not amend the substance of the 2016 final regulations; it merely changes the effective date of the 2016 final regulations and is fully supported based on the information provided in the NPRM and in this final rule. Amending the substance of the 2016 final regulations (or prior borrower defense regulations) would require a separate rationale. We are separately conducting a negotiated rulemaking process to address the substance of the borrower defense regulations, and any resulting NPRM will provide a rationale for proposed changes.

The NPRM at issue here proposed only a delay of the effective date of the 2016 final regulations; it did not propose any other changes and therefore the Department was not required to solicit comment on any matters other than the effective date. Also contrary to the commenter's assertions, the number of comments received in response to an NPRM has no bearing on the sufficiency of the Department's solicitation of public engagement. The APA requires the Department to ''give interested persons an opportunity to participate'' and consider ''the relevant matter presented,'' not to reach a certain threshold of comments before it may proceed with the rulemaking process. 5 U.S.C. 553(c). The Department requested comments that covered the scope of our rulemaking—delay of an effective date—and considered each applicable comment received in promulgating this final rule.

The regulatory impact analysis in the NPRM estimated the quantified economic effects and net budget impact of the delay, and projected that the delay would result in a net cost savings. However, the delay was not proposed solely on the basis of those calculations. Executive Order 13563 requires the Department to, in part, ''propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).'' Just as the commenters note harms to borrowers that cannot be definitively quantified, not all benefits of the delay are measurable in monetary terms. Delaying the effective date as proposed in the NPRM will preserve the regulatory status quo while the Department reconsiders the substance of its regulations governing borrower defense, preventing borrowers and institutions alike from being subject to an uncertain, quickly changing set of regulatory requirements. The Department undertook the required analysis and determined that the benefits of the delay would justify the costs.

With regard to the comment about redundancy and wastefulness, we have substantive concerns about the 2016 final regulations. In light of that, negotiated rulemaking and publication of an NPRM with request for further public comment is the statutorily required path to ensure public input and potentially make substantive changes to the Department's regulations. After careful consideration, we determined the benefits of proceeding with negotiated rulemaking to properly analyze the borrower defense regulations outweighed the costs of doing so.

*Changes:* None.

*Comment:* Some commenters also argued that the CAPPS lawsuit is an inappropriate basis for the delay

because CAPPS' litigation addresses only some of the regulatory provisions being delayed, but the notices effectuating the delay included many regulatory provisions, including those related to closed school discharge.

*Discussion:* The CAPPS litigation is not the basis for the delay proposed in the NPRM, although it was the reason for the initial delay of the 2016 final regulations' effective date. We further note that contrary to the commenter's assertion, CAPPS' complaint expressly prays for an order declaring ''that the entirety of the Final Rule is contrary to the Constitution,'' and asks that the Court enjoin the Department from ''taking any action whatsoever pursuant to the final regulations,'' indicating that its challenge is broader than the commenters portray.

*Changes:* None.

*Comment:* Some commenters supported the proposal in the NPRM. One commenter asserted that the 2016 final regulations' intention missed the mark and created an unnecessarily complex and costly system that is confusing to students, unfair to institutions, and puts taxpayers on the hook for huge costs. The commenter also suggested that maintaining the regulatory status quo under the 1994–95 standard is critical to the public interest and that requiring institutions to use their time and finances to implement the expensive 2016 final regulations while another rulemaking is occurring would be burdensome and contrary to the goals of Executive Order 13777, which is intended to help alleviate the regulatory burdens on the American people. This same commenter emphasized that the delay will help to maintain an existing, easily understood process—especially for students seeking redress under the current State law-based standard.

Commenters asserted that the delay of selected provisions of the 2016 final regulations would mitigate uncertainty about the potential impact of the regulations, especially in light of ongoing litigation, the master calendar requirement, and ongoing negotiated rulemaking.

One commenter asserted that the Department properly used Section 705 of the APA to avoid substantial harm to students. The commenter suggested that if some of the provisions of the 2016 final regulations went into effect and were quickly struck down by a court, the result would be chaotic, particularly if the subsequent regulatory framework change occurred in the course of an award year. The commenter asserted further that the ongoing negotiated rulemaking is justified based on the need to improve the borrower defense regulations as part of a regulatory reset. This commenter argued that because the reset could lead to significant changes, it would be nonsensical, even aside from the litigation, to implement new regulations for a full or for part of an award year only to change them after the current negotiated rulemaking process is complete.

One commenter asserted that the arbitration and class action provisions in the 2016 final regulations would require institutions to incur significant costs in changing multiple policies and procedures and amending existing and future enrollment agreements, re-training staff, litigating new cases, and sending notices to borrowers that existing class action waivers or arbitration provisions will not be enforced. According to the commenter, the implementation of these requirements would divert resources from students and would require the further diversion of resources if schools were required to retrain staff and litigate the effects of the temporary ban on past agreements with students, including those signed during the interim period, if the regulations were to change as a result of the current rulemaking process.

The commenter also stated that the financial responsibility provisions that require, in some circumstances, an institution to obtain a letter of credit or some type of financial protection would impose a significant burden on schools because a letter of credit is difficult to obtain and the additional cost could cause many schools, including some historically black colleges and universities, to close. The commenter also argued that the delay is appropriate because schools may need to establish different compliance measures if the current negotiated rulemaking process modifies the financial responsibility provisions. In such event, the commenter stated that the temporary implementation of these provisions would lead to potentially unnecessary compliance and training costs for schools to accommodate different rules.

The commenter also argued that the repayment rate provisions which would require proprietary schools with a certain loan repayment rate to distribute a warning to students and prospective students might damage the reputation of such schools and impact such schools' ability to draw students and raise funds. The commenter argued that the delay would prevent any disruptions as changes to the requirements are considered during the negotiated rulemaking process.

Finally, the commenter stated its view that given the significant expansion of borrower defense under the 2016 final regulations and the changes to the borrower defense regulations that may result from the Department's current rulemaking effort, the additional delay is required to prevent confusion for students and the expenditure of school resources on implementing the different borrower defense standards and procedures when those resources could otherwise be used to enhance student experiences.

*Discussion:* While comments regarding the effect of the 2016 final regulations are outside of the scope of the NPRM, the Department agrees that the delay will provide clarity for institutions and students, as well as save institutions from incurring the costs and expending the resources necessary to comply with the requirements under the 2016 final regulations that would potentially be in effect for only a short period of time.

*Changes:* None.

**Executive Orders 12866, 13563, and 13771**

*Regulatory Impact Analysis*

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

The Department estimates the quantified annualized economic and net budget impacts of the delay of the effective date to be −$26.9 million in reduced costs to institutions and the Federal government. These reduced costs result from the delay of the borrower defense provisions of the 2016 final regulations as they would apply to

the 2017 to 2019 loan cohorts, as well as from the delayed paperwork burden on institutions and the delayed execution of the closed school automatic discharge. This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final rule under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final rule only on a reasoned determination that its benefits justify its costs. Based on the analysis that follows, the Department believes that this final rule is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action.

The quantified economic effects and net budget impact associated with the delayed effective date are not expected to be economically significant.

**Effects of Delay**

As indicated in the RIA published with the 2016 final regulations on November 1, 2016, those final regulations were economically significant with a total estimated net budget impact of $16.6 billion over the 2017–2026 loan cohorts in the primary estimate scenario, including a cost of $381 million for cohorts 2014–2016 attributable to the provisions for a three-year automatic closed school discharge.

However, as noted in the RIA for the NPRM published October 24, 2017, the analysis of the net budget impact in this final rule is limited to the effect of delaying the effective date of the 2016 final regulations from July 1, 2018, to July 1, 2019, and does not account for any potential changes in the 2016 final regulations or administrative updates to existing processes and procedures related to borrower defense claims.

As the net budget impact is based on the net present value of the cash flows of the relevant cohorts over 40 years, delaying the 2016 final regulations until July 1, 2019, will have limited effect, as discussed below.

Even with the change in the effective date to July 1, 2019, borrowers will still be able to submit claims. The provisions of the 2016 final regulations pertaining to the process for review and determination of claims were not limited to specific cohorts designated by the effective date so the delay will not result in specific cohorts of borrowers being excluded from the process in effect when the claim is made. Loans made before July 1, 2017, were always subject to the State law-based standard, and borrowers' ability to bring claims under that standard is unchanged by the delay. For claims filed after the effective date of the regulations for loans made on or after July 1, 2019, the Federal standard established in the 2016 final regulations would apply. As discussed previously, the Department interprets all references to ''July 1, 2017'' in the text of the final regulations to mean the effective date of the final regulations. As a result, the delay in the effective date means that loans made between July 1, 2018, and June 30, 2019, will be subject to the current State law-based standard. As we noted in the 2016 final regulations, the Federal standard was designed to address much of the conduct already covered by the State law-based standard, so the vast majority of discharge claims associated with loans made between July 1, 2017, and the delayed effective date could be made under the current, State law-based standard as well. (81 FR 76057)

Some commenters suggested that borrowers will be harmed by the delay, either through uncertainty as to how claims will be handled, the application of statutes of limitation, or processing delays. Commenters also expressed concerns about the processing of existing claims and the effect of the delay on their resolution. The Department does not agree that the delay of the effective date of the 2016 final regulations will affect the processing of existing claims. Existing claims were always subject to the State law-based standard in the current regulations. Efforts to improve the efficiency of claims processing are ongoing and are not contingent upon implementation of the 2016 final regulations.

The Department maintains that the loans affected by the delay from July 1, 2018 to July 1, 2019 are those issued between those dates and for which any potential borrower defense claims will now be evaluated under the State law-based standard. These loans have not been made yet, and the NPRM and this final rule clarify that the State law-based standard will apply to them—this provides borrowers certainty regarding the standard that will be applied to their claims. Some commenters noted the difference in the annualized estimate for the primary and baseline scenarios and suggested the delay will cost borrowers approximately two billion dollars. As explained in the *Net Budget Impact,* the Department estimates the cost of the delay to be much less than two billion dollars given that there is significant overlap between the current State law-based standard and the Federal standard from the 2016 final regulations and that claims associated with these loans will be handled under the process in place when their claim is made. The Department does not believe that the delay will result in reversion to the baseline scenario assumptions for the borrower percentage so the effect on borrowers will be much lower than the commenters suggested. Additionally, the figures in the Accounting Statement for the 2016 final regulations would more appropriately be characterized as the costs associated with a single loan cohort and not the costs associated with a fiscal year, so the change in the

effective date would not result in the two billion dollar difference as it reflects just one year of the 40-year life of the cohort. The Department has updated its Accounting Statement in this final rule so the effects presented in this RIA show the impact on the affected loan cohorts by fiscal year.

As discussed in the *Analysis of Comments and Changes* the potential effects on borrowers include possible reduced access to courts from the delay in the arbitration and class action waiver provisions while statutes of limitation are running. We think it is likely that these provisions will be overturned in the CAPPS litigation and are concerned about the confusion to borrowers that would result. We believe the harm that would occur outweighs any benefits of these provisions. We note that a borrower may submit a borrower defense claim to the Department with respect to his or her Federal loans at any time without regard to arbitration agreements or class action waiver clauses in agreements between the borrower and the school, as the loan is between the Federal government and the borrower.

In addition to borrowers, institutions are also affected by the delayed effective date. As indicated in the RIA for the 2016 final regulations, institutions would bear the major costs of compliance, paperwork burden, and providing financial protection to the Department. In terms of cost savings for institutions, the estimated annual paperwork burden was approximately $9.4 million in the first year after the 2016 final regulations were to take effect. In the revised scenario developed to estimate the effect of this delay in the effective date, estimated transfers from institutions to students, via the Federal government, would be reduced by approximately $9.3 million for the 2017 and 2018 loan cohorts because of the slight reduction in claims from the application of the State law-based standard and the change in the effective date of the financial protection provisions as reflected in the assumptions presented in Table 1. The costs of providing financial protection were not quantified in the RIA for the 2016 final regulations, and the Department has no additional data to estimate costs institutions may avoid from the delayed effective date of the financial protection provisions. Given the limited history of borrower defense claims and recovery actions and numerous factors that affect the cost for individual institutions, the Department believed that quantifying the cost of providing financial protection would provide a false sense of precision. As noted in the 2016 final regulations and the NPRM, there are several ways for institutions to provide financial protection to the Department, including some that may be developed in the future. The price of this protection would likely vary by the size of the institution and the institution's existing financial relationships with parties who could provide the financial protection. Other key elements that contribute to the uncertain cost of financial protection overall are the distribution of borrower defense claims, the type of institutions involved, the applicability of specific financial protection triggers, and the Department's pursuit of recoveries. The Department recognizes that the delayed effective date will postpone the impact of the financial protection provisions on institutions. This would be a fraction of the total protection expected to be generated under the rule as some of the triggers are tied to the production of certain performance measures such as gainful employment rates and there would be some time, possibly months, between the effective date and the next release of rates. The recovery assumption always assumed some ramping up of financial protection as different metrics became available for application, so the change in effective date will affect the early years when recoveries were assumed to be smaller. Borrowers are not affected by institutions' delay in incurring the costs of financial protection, and the Department believes it is worth the cost to taxpayers from reduced recoveries described in the Net Budget Impact in the RIA to reconsider the financial protection provisions and appropriately balance the costs to institutions with protection of borrowers and taxpayers.

**Net Budget Impact**

As described in the NPRM, to estimate the net budget impact of the delay in the effective date to July 1, 2019, the Department developed a scenario that revised the primary estimate assumptions from the 2016 final regulations for the affected 2017 to 2019 cohorts, as was done for the one-year delay described in the IFR. The Department has reviewed the comments it received, particularly those about the potential impacts and estimation of the effects of the delay and responded in the Analysis of Comments and Changes section and this RIA. However, the Department believes that the assumptions for the scenario to estimate the net budget impact on the student loan program from the delay from July 2018 to July 2019 remain appropriate and reasonable.

As before, the Department applies an assumed level of school conduct that could generate borrower defense claims, borrower claims success, and recoveries from institutions (respectively labeled as Conduct Percent, Borrower Percent, and Recovery Percent in Table 1) to the PB 2018 loan volume estimates to generate the estimated net borrower defense claims for each loan cohort, loan type, and sector. The assumptions for the primary scenario from the 2016 final regulations were the basis for the PB2018 baseline that assumed the final regulations would go into effect on July 1, 2017. The scenario developed for the NPRM is designed to capture the incremental change from the one-year delay in the IFR associated with the further one-year delay in the effective date to July 1, 2019. Compared to the scenario developed for the IFR, recoveries are reduced by an additional two percent for the 2017 and 2018 cohorts, all of the 2018 cohort is subject to the State law-based standard, and the affected portion of the 2019 cohort is subject to the current, State law-based standard and reduced recoveries at the five percent level used for the one-year delay in the IFR. Table 1 presents assumptions for the primary estimate from the final regulations and the revised estimate for the delay from July 1, 2018 to July 1, 2019, in the effective date. In this scenario, the conduct percent is 90 percent of the primary scenario from the final regulations and the borrower percent is the same. The financial protection provided was always expected to increase over time, so the delayed effective date in the near term is not expected to significantly affect the amount of recoveries over the life of any particular loan cohort, limiting any net budget impact from the delay. To estimate the potential reduction in recoveries related to the proposed delayed effective date, we reduced recoveries for the affected portion of the 2017 and 2018 cohorts by seven percent for the private not-for-profit and proprietary sectors and by five percent for the 2019 cohort. As in the 2016 final regulations and the IFR, recoveries from public institutions were held constant at 75 percent across scenarios.

TABLE 1—REVISED ASSUMPTIONS FOR ONE-YEAR DELAY FROM JULY 1, 2018 TO JULY 1, 2019

| Cohort | 2017 | | 2018 | | 2019 | |
|---|---|---|---|---|---|---|
| | Pub/Priv NFP | Prop | Pub/Priv NFP | Prop | Pub/Priv NFP | Prop |
| Conduct Percent: | | | | | | |
| Final Primary | 3.0 | 20 | 2.4 | 16 | 2.0 | 13.6 |
| Delay to 2019 | 2.7 | 18 | 2.16 | 14.4 | 1.8 | 12.24 |
| Borrower Percent: | | | | | | |
| Final Primary | 35 | 45 | 36.8 | 47.3 | 36.8 | 47.3 |
| Delay to 2019 | 35 | 45 | 36.8 | 47.3 | 36.8 | 47.3 |
| | Pub | Priv/Prop | Public | Priv/Prop | Pub | Priv/Prop |
| Recovery Percent: | | | | | | |
| Final Primary | 75 | 23.8 | 75 | 23.8 | 75 | 23.8 |
| Delay to 2019 | 75 | 22.134 | 75 | 22.134 | 75 | 24.871 |

The net budget impact associated with these effects of the one-year delay in the effective date on the borrower defense provisions only is approximately −$46.1 million from the 2017 to 2019 loan cohorts.

As the amount and composition of borrower defense claims and estimated recoveries over the lifetime of the relevant loan cohorts are not expected to change greatly due to the delayed effective date, the Department does not estimate an economically significant net budget impact from the delay itself, with a potential net budget impact related to borrower defense claims of −$46.1 million in reduced costs for the affected cohorts. This represents the incremental change associated with the one-year delay from July 1, 2018, to July 1, 2019. If compared to the PB 2018 baseline, the savings would be approximately −$78.8 million.

The closed school automatic discharge provisions were the other significant source of estimated net budget impact in the 2016 final regulations. Under credit reform scoring, the modification to older cohorts for the automatic discharge provision estimated to cost $364 million was expected to occur in FY 2017 in the PB 2018. As a result of the delay in the effective date, the Department will not execute the modification in FY 2017.

Moving the execution of the modification beyond FY 2017 will require a new cost analysis with economic assumptions from the fiscal year of the execution. This will result in a change of cost, but at this point it is not possible to know the discount rates in future fiscal years, so the cost of the modification will be determined in the year that it is executed. While the actual cost of the future modification cannot be determined at this time, the Department did approximate the effect of the delay by shifting the timing of the relevant discharges back by a year and recalculating a modification using the discount rates and economic assumptions used for the calculation of the PB2018 modification. When calculated in this manner, the delay in the modification to July 2018 described in the IFR resulted in estimated savings of less than $10 million. Using the same approach, the delay to July 2019 is expected to save approximately $15 million above the savings from the initial one-year delay.

As the delay does not change the substance of the automatic discharge, we would expect the amount and composition of loans affected by the automatic discharge not to change significantly. The closed school three-year automatic discharge provisions were applicable to loans made on or after November 1, 2013, and were not linked to the effective date of the final regulations. Therefore, delaying the effective date of those provisions will not change the set of loans eligible for this automatic discharge. Additionally, borrowers would have the ability to apply for a closed school discharge before July 1, 2019, if they did not want to wait for the automatic discharge to be implemented. For future cohorts, the delay is not significant as the three-year period will fall beyond the delayed effective date. Any significant change to the estimated net budget impact associated with the closed school automatic discharge depends on any substantive changes made to the provisions as a result of the current rulemaking process and changes to economic assumptions when the modification is executed.

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have determined that this rule will result in cost savings. Therefore, this rule would be considered an Executive Order 13771 deregulatory action.

**Accounting Statement**

In evaluating whether a regulation is economically significant, a key consideration is whether the annual effect in any given year is over $100 million.

To evaluate this, the Department looked at the difference in the undiscounted cash flows related to the death, disability, and bankruptcy (DDB) claims in which borrower defense claims are included for the one-year delay established in the IFR and the one-year delay scenario established in this notice and described under the heading ''Net Budget Impact''. The difference from subtracting this delay scenario from the IFR one-year delay scenario for the 2017 to 2019 loan cohorts is summarized in Table 2.

TABLE 2—DIFFERENCE IN UNDISCOUNTED NET CASHFLOWS FOR THE 2017 TO 2019 LOAN COHORTS FROM THE ONE-YEAR DELAY IN 2016 BORROWER DEFENSE RULE TO JULY 1, 2019

| | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|---|---|---|---|---|---|---|---|---|---|---|
| Change in DDB Cashflow | 159 | 7,489 | 496,637 | 637,361 | 538,468 | 6,004,802 | 9,525,520 | 4,668,143 | 2,156,009 | 3,003,657 |

Table 3 shows the effects when those differences in the DDB cashflows are discounted at 7 and 3 percent and annualized.

| Category | Benefits | |
|---|---|---|
| Institutions may not incur compliance costs or costs of obtaining financial protection until the rule is in effect ... | Not Quantified | |
| **Category** | **Costs** | |
| | 7% | 3% |
| Continued use of State-law based standard<br>Delay in providing consumer information about institutions' performance and practices<br>Potential decreased awareness and usage of closed school and false certification discharges | Not Quantified | |
| Savings associated with delay in compliance with paperwork requirements ..... | −9.5 | −9.51 |
| **Category** | **Transfers** | |
| | 7% | 3% |
| Reduction in transfers from the Federal government to affected borrowers in the 2017 to 2019 cohorts that would have been partially borne by affected institutions via reimbursements ..... | −3.5 | −3.8 |
| Reduced reimbursements from affected institutions to affected students, via the Federal government as loan cohorts 2017 to 2019 are subject to the existing borrower defense regulation ..... | −1.2 | −1.3 |
| Delay in closed school automatic discharge implementation from 2018 to 2019 ..... | −14.8 | −14.8 |

**Paperwork Reduction Act of 1995**

As indicated in the Paperwork Reduction Act section published in the 2016 final regulations, the assessed estimated burden was 253,136 hours, affecting both institutions and individuals, with an estimated cost of $9,458,484. The table below identifies the regulatory sections, OMB Control Numbers, estimated burden hours, and estimated costs of those final regulations.

| Regulatory section | OMB Control No. | Burden hours | Estimated cost $36.55/hour institution, $16.30/hour individual |
|---|---|---|---|
| 668.14 | 1845–0022 | 1,953 | 71,382 |
| 668.41 | 1845–0004 | 5,346 | 195,396 |
| 668.171 | 1845–0022 | 3,028 | 110,673 |
| 668.175 | 1845–0022 | 60,560 | 2,213,468 |
| 682.211 | 1845–0020 | 5,784 | 211,405 |
| 682.402 | 1845–0020 | 1,838 | 67,179 |
| 685.222 | 1845–0142 | 249 (Individuals) | 4,059 |
| 685.222 | 1845–0142 | 800 (Institutions) | 29,240 |
| 685.300 | 1845–0143 | 179,362 | 6,555,681 |
| Total | | 258,920 | 9,458,484 |
| Cost savings due to delayed effective date excluding 682.211 early implementation allowed. | | 253,136 | 9,247,079 |
| Burden remaining | | 5,784 | 211,405 |

This final rule delays the effective date of the implementation of all of the cited regulations and will result in a cost savings in the total amount of $9,458,484. However, 34 CFR 682.211(i)(7) which was included in the 2016 final regulations, regarding mandatory forbearance based on a borrower defense claim, with an estimated 5,784 hours and $211,405 cost, was designated for early implementation. Lenders may have elected early implementation and, therefore, those specific costs and hours remain applicable and have been subtracted from the overall estimated cost savings. Based on the delayed effective date of July 1, 2019, the revised estimated annual cost savings to institutions and individuals is $9,247,079 ($9,458,484 − $211,405) with an estimated burden hours savings of 253,136 (258,920 − 5,784).

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**List of Subjects**

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

*34 CFR Part 674*

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Parts 682 and 685*

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: February 9, 2018.

**Betsy DeVos,**

*Secretary of Education.*

[FR Doc. 2018–03090 Filed 2–9–18; 4:15 pm]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2017–0435; FRL–9973–23—Region 6]**

## Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Infrastructure State Implementation Plan Requirements for the National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Arkansas to address the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 2006 and 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), 2008 lead (Pb) NAAQS, 2008 ozone ($O_3$) NAAQS, 2010 nitrogen dioxide ($NO_2$) NAAQS, and the 2010 sulfur dioxide ($SO_2$) NAAQS. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS. CAA sections 110(a)(1) and (2) require each state to make a new SIP submission within three years after EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP or ''i-SIP.''

**DATES:** This final rule is effective on March 16, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0435. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Nevine Salem, (214) 665–7222, *salem.nevine@epa.gov.* To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at (214) 665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

### I. Background

The background for this action is discussed in detail in our November 20, 2017 proposal (82 FR 55065). In that action, we proposed to approve the Arkansas i-SIP submittal dated March 24, 2017 to address the requirements of sections 110(a)(1) and (2) of the Act for the 2006 and 2012 $PM_{2.5}$ NAAQS, 2008 lead (Pb) NAAQS, 2008 ozone ($O_3$) NAAQS, 2010 nitrogen dioxide ($NO_2$) NAAQS, and the 2010 sulfur dioxide ($SO_2$) NAAQS. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS. CAA sections 110(a)(1) and (2) require each state to make a new SIP submission within three years after EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS.

We received an anonymous public comment on December 18, 2017 on the proposed rulemaking action. The comment is posted to the docket (EPA–R06–OAR–2017–0435). The commenter raised concerns about the accuracy of agricultural and wild fires emissions inventory. Such comment is irrelevant and is outside the scope of this specific rule making action.

### II. Final Action

As detailed in the proposal action, EPA is approving the majority of the March 24, 2017, Arkansas i-SIP submittal, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2006 $PM_{2.5}$, 2008 Pb, 2008 $O_3$, 2010 $SO_2$, 2010 $NO_2$, and 2012 $PM_{2.5}$ NAAQS. Table 1 outlines the specific actions [1] we are approving in this final rulemaking.

TABLE 1—FINAL ACTIONS ON THE ARKANSAS INFRASTRUCTURE SIP SUBMITTAL FOR VARIOUS NAAQS

| Element | 2006 $PM_{2.5}$ | 2008 Pb | 2008 Ozone | 2010 $NO_2$ | 2010 $SO_2$ | 2012 $PM_{2.5}$ |
|---|---|---|---|---|---|---|
| (A): Emission limits and other control measures | A* | A | A | A | A | A |
| (B): Ambient air quality monitoring and data system | A* | A | A | A | A | A |
| (C)(i): Enforcement of SIP measures | A* | A | A | A | A | A |
| (C)(ii): PSD program for major sources and major modifications | A* | A | A | A | A | A |
| (C)(iii): Permitting program for minor sources and minor modifications | A* | A | A | A | A | A |

[1] Note that regarding CAA 110(D)(i)(II) Visibility Protection—(''prong 4'') for the 2006 $PM_{2.5}$, EPA previously proposed disapproval at 80 FR 38419 (July 6, 2015) for an earlier SIP submittal dated September 21, 2009. However, in the State's March 24, 2017 submittal, Arkansas submitted revisions to address CAA 110(D)(i)(II) (''prong 4'') for the 2006 $PM_{2.5}$ that supersede the September 21, 2009 submittal. In Table 1 below, we are making an administrative correction to the table as was originally proposed. We are making an administrative correction to note a minor change from ''No submittal'' to ''No action'' for the 2006 $PM_{2.5}$ (''prong 4''). We will address the 2006 $PM_{2.5}$ NAAQs 110(a)(2)(D)(i)(II)(''prong 4'') element in a future rule making.

TABLE 1—FINAL ACTIONS ON THE ARKANSAS INFRASTRUCTURE SIP SUBMITTAL FOR VARIOUS NAAQS—Continued

| Element | 2006 $PM_{2.5}$ | 2008 Pb | 2008 Ozone | 2010 $NO_2$ | 2010 $SO_2$ | 2012 $PM_{2.5}$ |
|---|---|---|---|---|---|---|
| (D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2) | A* | A | *No submittal | A | No action | No action |
| (D)(i)(II): PSD (requirement 3) | A* | A | A | A | A | A |
| (D)(i)(II): Visibility Protection (requirement 4) | No action | A | No action | No action | No action | No action |
| (D)(ii): Interstate and International Pollution Abatement | A | A | A | A | A | A |
| (E)(i): Adequate resources | A* | A | A | A | A | A |
| (E)(ii): State boards | A* | A | A | A | A | A |
| (E)(iii): Necessary assurances with respect to local agencies | A* | A | A | A | A | A |
| (F): Stationary source monitoring system | A* | A | A | A | A | A |
| (G): Emergency power | A* | A | A | A | A | A |
| (H): Future SIP revisions | A* | A | A | A | A | A |
| (I): Nonattainment area plan or plan revisions under part D | + | + | + | + | + | + |
| (J)(i): Consultation with government officials | A* | A | A | A | A | A |
| (J)(ii): Public notification | A* | A | A | A | A | A |
| (J)(iii): PSD | A* | A | A | A | A | A |
| (J)(iv): Visibility protection | + | + | + | + | + | + |
| (K): Air quality modeling and data | A* | A | A | A | A | A |
| (L): Permitting fees | A* | A | A | A | A | A |
| (M): Consultation and participation by affected local entities | A* | A | A | A | A | A |

*Key to Table 1:* Final actions on AR infrastructure SIP submittals for various NAAQS.
A—Approve.
A*—Previously approved for an earlier submittal.
+—Not germane to infrastructure SIPs.
No action—EPA is taking no action on these infrastructure requirements in this rulemaking. EPA may address in separate future rulemaking action(s).
*—No submittal *FIP in place.

## III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 16, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 7, 2018.

**Anne Idsal,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart E—Arkansas

■ 2. In § 52.170, in paragraph (e), the third table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP'' is amended by adding the following entries at the end:

**§ 52.170 Identification of plan.**

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal/ effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * * * |
| Infrastructure for the 2006 $PM_{2.5}$ NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(D)(ii). |
| Infrastructure for the 2008 Pb NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L) and (M). |
| Infrastructure for the 2008 $O_3$ NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining and PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). |
| Infrastructure for the 2010 $NO_2$ NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(A), (B), (C), (D)(i)(portion pertaining to nonattainment interference with maintenance and PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). |
| Infrastructure for the 2010 $SO_2$ NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(A), (B), (C), (D)(i)(portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). |
| Infrastructure for the 2012 $PM_{2.5}$ NAAQS. | Statewide ..... | 3/24/2017 | 2/14/2018, [Insert **Federal Register** citation]. | Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). |

[FR Doc. 2018–02892 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 170322302–8104–02]**

**RIN 0648–BG74**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 16 to the Coastal Pelagic Species Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is publishing this final rule to implement Amendment 16 of the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This rule will allow for very small amounts of directed, non-live bait fishing (referred to as ''minor directed fishing'') on CPS finfish to occur when a fishery is otherwise closed to directed fishing. Currently, when directed fishing is closed, a small sector of the CPS fishery that is not part of the primary commercial directed fishery has been precluded from landing even minor amounts because this activity does not fall under the existing exemptions for incidental harvest or for harvesting CPS to be sold as live bait. This rule allows this sector to continue directed fishing after other directed fisheries are closed, unless otherwise specified in a closure notice published by NMFS or if an applicable annual catch limit (ACL) is anticipated to be exceeded. To prevent exploitation of this rule to make large aggregate harvests, ''minor directed fishing'' would not be allowed to exceed landings of 1 metric ton (mt) per day per vessel or person or one fishing trip per day by any vessel. The purpose of this rule is to provide greater flexibility to small fishing operations, while continuing to conserve the target CPS fish stocks.

**DATES:** Effective March 16, 2018.

**ADDRESSES:** Copies of the CPS FMP as amended through Amendment 16, with notations showing how Amendment 16 will change the FMP are available via the Federal eRulemaking Portal: *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0135,* or by contacting the Pacific Fisheries Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034; or Kerry Griffin, Pacific Fishery Management Council, at 503–820–2280.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

At its April 2017 meeting, the Pacific Fishery Management Council (Council) voted to submit Amendment 16 to NMFS for review and approval. On November 6, 2017, NMFS published a Notice of Availability for Amendment 16 in the **Federal Register** (82 FR 51381), with a comment period ending January 5, 2018. On November 22, 2017,

NMFS published a proposed rule to implement Amendment 16 in the **Federal Register** (82 FR 55551), with a comment period ending December 22, 2017. NMFS approved Amendment 16 on February 1, 2018.

This final rule implements Amendment 16 by allowing ''minor directed fishing'' for CPS finfish after a directed fishery has been closed. Current regulations allow live bait fishing and incidental landings to continue even after a directed fishery closure; this rule allows a small sector of the CPS fishery that is not part of the primary commercial directed fishery to harvest minor amounts of CPS even during a directed fishery closure. This minor directed fishery intentionally targets CPS and typically sells the catch as specialty dead bait to recreational and commercial fisheries, or as fresh fish to restaurants and the public. Total landings from this sector typically make up less than one percent of the total landings of any particular CPS stock. Currently, directed fishing closures apply even to minor directed fisheries.

This final rule will allow minor directed fishing to continue after a directed fishery is closed. Minor directed fishing will be allowed unless otherwise specified by NMFS when closing the directed fishery, or if an applicable ACL is anticipated to be exceeded. To prevent this rule from being exploited by those who would make large aggregate harvests, ''minor directed fishing'' is limited to landings that do not exceed 1 mt per day per vessel or person or one fishing trip per day by any vessel. The intent of distinguishing between a ''vessel'' and ''person'' in these regulations is that some minor directed fishermen target CPS from a platform other than a vessel (*e.g.,* beach seine); in that case, a single fishing trip (*e.g.,* a single haul of a beach seine) may only land a few hundred pounds. Therefore, Amendment 16 allows a person not using a vessel to make multiple fishing trips in a single day as long as the person's total landings do not exceed 1 mt in a day. Vessels are limited to a single trip per day as their typical landings are much greater per trip. For vessels, the 1-mt daily landing restriction functions like a trip limit.

This rule also updates the definition of ''Regional Administrator'' to reflect the absorption of the former NMFS Southwest Region into the West Coast Region, and to explicitly reference the fact that directed ''live bait'' fisheries may continue to operate after most other directed fishing is prohibited (which is an original provision of the FMP, not a change made by Amendment 16).

A total of 10 public comments relevant to this action were received on Amendment 16 and the proposed rule. Commenters consisted of West Coast fishing industry representatives, seafood companies, fishermen, and charter boat owners/operators. All comments expressed support for Amendment 16, primarily noting that the ability to harvest small amounts of sardine will provide new business opportunities to small-scale fishermen, including sale to specialty markets, restaurants, and as dead bait. No changes were made from the proposed rule.

### Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP as revised by Amendment 16, other provisions of the MSA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 8, 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 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 § 660.502, revise the definition of ''*Regional Administrator*'' to read as follows:

**§ 660.502 Definitions.**

* * * * *

*Regional Administrator* means the Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

* * * * *

■ 3. In § 660.505, revise paragraph (i) to read as follows:

**§ 660.505 Prohibitions.**

* * * * *

(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the **Federal Register**, or a directed trip limit as described in § 660.511(d).

* * * * *

■ 4. In § 660.511, revise paragraph (d) to read as follows:

**§ 660.511 Catch restrictions.**

* * * * *

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator, except the following directed fisheries may continue until the effective date of a **Federal Register** document published by the Regional Administrator that the annual catch limit has been reached or is projected to be reached:

(1) Fishing exclusively for live bait;

(2) Minor directed fishing for finfish that does not exceed 1 mt per day per vessel or person, and which is limited to 1 fishing trip per day by any vessel.

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[FR Doc. 2018–03040 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 161020985–7181–02]**

**RIN 0648–XG023**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea subarea of the

Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2018 Pacific cod allocation of the total allowable catch (TAC) for the Bering Sea Trawl Catcher Vessel A-Season Sector Limitation in the Bering Sea subarea of the BSAI.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), February 11, 2018, through 1200 hours, A.l.t., April 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 allocation of Pacific cod total allowable catch (TAC) for the Bering Sea Trawl Catcher Vessel A-Season Sector Limitation in the Bering Sea subarea of the BSAI is 24,768 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 26, 2017) and inseason adjustment (82 FR 60329, December 20, 2017).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2018 allocation of Pacific cod TAC for the Bering Sea Trawl Catcher Vessel A-Season Sector Limitation in the Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,268 mt and is setting aside the remaining 1,500 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 8, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 9, 2018.

**Emily H. Menashes,**

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

[FR Doc. 2018–03087 Filed 2–9–18; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 83, No. 31
Wednesday, February 14, 2018

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 61

**[NRC–2017–0081]**

**RIN 3150–AK00**

## Greater-Than-Class C and Transuranic Waste

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Public meeting; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is seeking stakeholder participation and involvement in identifying the various technical issues that should be considered in the development of a regulatory basis for the disposal of Greater-than-Class C (GTCC) and transuranic radioactive waste through means other than a deep geologic disposal, including near surface disposal. To assist in this process, the NRC is holding a public meeting and is requesting that stakeholders respond to the questions discussed in Section IV, ''Specific Request for Comments,'' of this document.

**DATES:** Submit comments by April 16, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2017–0081. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (EST) Federal workdays; telephone: 301–415–1677.

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:** Cardelia H. Maupin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4127; email: *Cardelia.Maupin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2017–0081 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 *https://www.regulations.gov* and search for Docket ID NRC–2017–0081.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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.*
- *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–2017–0081 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket. If your comment contains proprietary or sensitive information, please contact the individual listed in the **FOR INFORMATION CONTACT** section of this document to determine the most appropriate method for submitting your comment.

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 will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and 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 into ADAMS.

## II. Discussion

On December 22, 2015, the Commission, in Staff Requirements Memorandum (SRM)–SECY–15–0094, ''Historical and Current Issues Related to Disposal of GTCC Low Level Radioactive Waste (LLRW)'' (ADAMS Accession No. ML15356A623), directed the NRC staff to develop a regulatory basis for disposal of GTCC and transuranic waste through means other than a deep geologic disposal, including near surface disposal, within six months of the completion of the final rule for part 61 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Low-Level Radioactive Waste Disposal,'' RIN 3150–AI92; Docket ID NRC–2011–0012. The Commission also directed the staff to conduct a public workshop during the development of the regulatory basis to receive input from stakeholders. On

September 8, 2017, the Commission, in SRM–SECY–16–0106, ''Final Rule: Low-Level Radioactive Waste Disposal (10 CFR part 61) (RIN 3150–AI92)'' (ADAMS Accession No. ML17251B147), revised its earlier directions regarding the development of the GTCC and transuranic waste regulatory basis. The Commission directed the staff to develop the regulatory basis six months after the publication of the supplemental proposed rule for the 10 CFR part 61 rulemaking.

The NRC staff is in the initial phase of implementing the Commission's directions in SRM–SECY–15–0094 and SRM–SECY–16–0106. The process of potentially amending the NRC's regulations is very thoughtful and deliberative because it can have significant impacts on members of the public, States, licensees, and other stakeholders. The regulatory basis describes the various scientific, technical, and legal issues associated with a potential rulemaking. Therefore, as a part of the initial steps in implementing the Commission's directions, the staff has planned a public meeting with stakeholders to identify the various technical issues that should be considered in the development of a regulatory basis for the disposal of GTCC and transuranic waste. The staff is also requesting that stakeholders respond to the questions discussed in Section IV, ''Specific Request for Comments,'' of this notice. When this initial phase is completed, staff plans to develop a regulatory basis, which will be provided for public review. Staff plans to hold public meetings on the draft regulatory basis as well. After which, the staff will develop a final regulatory basis.

## III. Background

The NRC's ''*Licensing Requirements for Land Disposal of Radioactive Waste*'' are provided in 10 CFR part 61. Section 10 CFR 61.2, ''*Definitions,*'' provides that waste as used in part 61 means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. The definition also indicates that low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (2), (3), and (4) of the definition of byproduct material in § 20.1003.

The Statements of Consideration (SOC) for the 10 CFR part 61 proposed rule explained that not all waste may be suitable for disposal in the near surface. Specifically, *Section IV Purpose and Scope* of the SOC (46 FR 38082; July 24, 1981) indicates that, while 10 CFR part 61 was intended to deal with the disposal of most LLRW defined by the Low-Level Radioactive Waste Policy Act, the 10 CFR part 61'waste classification system identified some LLRW that are not suitable for disposal under its regulatory framework, and alternative methods would have to be used.

In § 61.55, ''*Waste classification,*'' the NRC developed a classification system for waste for near surface disposal, which categorizes waste as Class A, B, or C. This provision also describes waste that is not generally acceptable for near-surface disposal, whose disposal methods must be more stringent than those specified for Class C waste. This waste is referred to as GTCC waste.

The GTCC waste is generated by nuclear power reactors, facilities supporting the nuclear fuel cycle, and other facilities and licensees outside of the nuclear fuel cycle. This class of wastes include (1) plutonium-contaminated nuclear fuel cycle wastes; (2) activated metals; (3) sealed sources; and (4) radioisotope product manufacturing wastes (*i.e.,* wastes ''occasionally generated as part of manufacture of sealed sources, radiopharmaceutical products and other materials used for industrial, education, and medical applications'').

With regards to transuranic waste, as mentioned earlier, transuranic waste is not included in the § 61.2 definition of LLRW. In a 1988 amendment to the Atomic Energy Act of 1954, as amended, a definition for transuranic was added. Transuranic waste [1] is defined as ''material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram [(nCi/g)], or in such other concentrations as the [U.S.] Nuclear Regulatory Commission may prescribe to protect the public health and safety.'' Transuranic waste is a byproduct of nuclear research and power production and is primarily produced from spent fuel recycling, medical isotope production, or nuclear weapons fabrication. The waste may consist of rags, tools, and laboratory equipment contaminated with organic and inorganic residues.

The identification and evaluation of regulatory concerns associated with land disposal of GTCC and transuranic waste will largely depend on the characteristics of the wastes (*e.g.,* isotopes, concentrations and volumes of waste, physical and chemical properties). The variable characteristics of the waste can influence the decision regarding the appropriate regulatory approach to use for management and disposal of these wastes. Overly conservative assumptions for the inventory and characteristics could significantly limit disposal options, whereas, overly optimistic assumptions with respect to characteristics could lead to a disposal facility that may not provide adequate protection of public health and safety, and security.

## IV. Specific Request for Comment

The NRC is seeking stakeholder participation and involvement in identifying the various technical issues that should be considered in the development of a draft regulatory basis for the disposal of GTCC and transuranic radioactive waste through means other than a deep geologic disposal, including near surface disposal. To assist in this process, the NRC staff is requesting that stakeholders respond to the questions below. In addition, the NRC staff has conducted some initial technical analyses to assist its understanding of potential hazards with near surface disposal of GTCC and transuranic wastes, which are contained in draft ''*NRC Staff Analyses Identifying Potential Issues Associated with the Disposal of Greater-Than-Class C Low-Level Radioactive Waste,*'' (ADAMS Accession No. ML17362A012). The draft analyses should assist in providing responses to the following questions:

*Question 1:* What are the important radionuclides that need to be considered for the disposal of the GTCC and transuranic wastes?

The U.S. Department of Energy has described three broad categories of GTCC wastes, including a range of transuranic radionuclides, in its ''Final Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste'' (*http://www.gtcceis.anl.gov/documents/index.cfm).* The three categories are entitled activated metals, sealed sources, and other wastes. The attributes (*e.g.,* radionuclide concentrations, heat generation, and waste form) vary significantly between the three categories. Certain waste streams represent a very specific waste form (*e.g.,* stainless steel for most activated metals; very concentrated amounts in sealed sources) that may require specific treatment to mitigate potential safety, security and criticality concerns. Some

[1] Defense waste containing more than 100 nCi of alpha emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years can be disposed of at the Waste Isolation Pilot Plant.

waste streams may contain sufficient quantities of specific radionuclides that will present a significant thermal output and/or gas generation through radiolysis. Still other waste streams may contain a significant quantity of fissile radionuclides (*e.g.,* some isotopes of uranium and plutonium). The NRC is interested in identifying those radionuclides that could be important for evaluating the safety and security of: (1) Storage associated with the operational period at a disposal facility, and (2) the post-closure period, including inadvertent intruder protection. Additionally, the NRC is interested in obtaining available data and information to support the characteristics of GTCC and transuranic wastes.

*Question 2:* How might GTCC and transuranic wastes affect the safety and security of a disposal facility during operations (*i.e.,* pre-closure period)?

The presence of sufficient quantities of high activity radionuclides and/or fissile radionuclides in GTCC and transuranic wastes may impact the design and operational activities associated with a disposal facility prior to disposal. The NRC is interested in identifying those design and operational activities at a disposal facility that may be impacted by GTCC and transuranic wastes. For example, the requirements in 10 CFR part 73 would require licensees to develop safeguards systems to protect against acts of radiological sabotage and to prevent the theft or diversion of Special Nuclear Material (*i.e.,* transuranic waste such as plutonium, uranium-233, or uranium enriched in the isotopes uranium-233 or uranium-235) if a sufficient amount of Special Nuclear Material were present above ground at the disposal facility.

*Question 3:* How might GTCC and transuranic wastes affect disposal facility design for post-closure safety including protection of an inadvertent intruder?

The NRC is considering disposal units (*e.g.,* a single trench, borehole, and vault) that would contain a single category of waste (*e.g.,* sealed sources) as well as disposal units that contain a mixture of all three waste types. However, the NRC believes the best approach for understanding the issues would be to assume that waste within a disposal unit would be separated by the waste category and not be co-mingled. Such an approach could provide a clear understanding of the issues associated with how a specific waste category might affect disposal facility design. Certain waste streams associated with GTCC and transuranic wastes have larger inventories and concentrations of radionuclides than was typically considered at LLRW disposal facilities. For example, certain GTCC and transuranic wastes in sufficient quantities have the potential for: (1) Significant thermal output that could affect degradation processes within a disposal unit, and (2) hydrogen gas generation through radiolysis that could also affect degradation processes of the waste package and waste form. Additionally, waste streams associated with GTCC and transuranic wastes may have fissile materials that require facilities to be designed to limit the potential for a criticality event or limit the amount of fissile material that can be disposed. There is a potential balance between security/safety and economic feasibility of design, construction, and operation. The NRC would like to hear from the stakeholders on these aspects as well. The information provided on economic feasibility would be in concert with the NRC's strategies on examining the cumulative effects of potential regulatory actions. The NRC is interested in identifying the various scenarios that should be considered in evaluating the post-closure safety for the disposal of GTCC and transuranic wastes especially scenarios associated with specific issues and concerns that may not have been previously considered for commercial disposal facilities (*e.g.,* synergistic effects of the thermal output on geochemical processes affecting release of radionuclides).

## V. Public Meeting

To facilitate the understanding of the public and other stakeholders of these issues and the submission of comments, the NRC staff has scheduled a public meeting for February 22, 2018, from 1:00 p.m. to 3:00 p.m. (EST) in the NRC Auditorium at 11545 Rockville, Pike, Rockville, MD. In addition, those wishing to participate by Webinar will be able to view the presentation slides prepared by the NRC and electronically submit comments during the meeting. Participants must register to participate in the Webinar. Registration information may be found in the meeting notice (*https://www.nrc.gov/pmns/mtg?do=details&Code=20180033*). The meeting notice can also be accessed through the NRC's public website under the headings Public Meetings & Involvement > Public Meeting Schedule; see web page *https://www.nrc.gov/public-involve/publicmeetings/index.cfm.*

Additionally, the final agenda for the public meeting will be posted no fewer than 10 days prior to the Webinar at this website. Those who are unable to participate in person or via Webinar may also participate via teleconference. For details on how to participate via teleconference, please contact Sarah Achten; telephone: 301–415–6009; email: *Sarah.Achten@nrc.gov.*

Dated at Rockville, Maryland, this day of February 9, 2018.

For the Nuclear Regulatory Commission.

**Gregory F. Suber,**

*Acting Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–03085 Filed 2–13–18; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0078; Product Identifier 2017–NM–107–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2017–01–02, which applies to certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2017–01–02 requires an inspection for discrepant inboard and outboard trailing edge flap rotary actuators. Since we issued AD 2017–01–02, we have determined that it is necessary to revise the applicability to include additional airplanes, and to reduce the number of affected actuators. This proposed AD would continue to require an inspection of the inboard and outboard trailing edge flap rotary actuator for any discrepant rotary actuator, and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by April 2, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0078.

**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–2018–0078; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW, Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@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–2018–0078; Product Identifier 2017–NM–107–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 proposed AD.

**Discussion**

We issued AD 2017–01–02, Amendment 39–18769 (82 FR 4775, January 17, 2017) (''AD 2017–01–02''), for certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2017–01–02 requires an inspection for discrepant inboard and outboard trailing edge flap rotary actuators. AD 2017–01–02 resulted from a report that indicated that some rotary actuators of the inboard and outboard trailing edge flap may have been assembled with an incorrect no-back brake rotor-stator stack sequence during manufacturing. We issued AD 2017–01–02 to detect and replace incorrectly assembled rotary actuators, which could cause accelerated unit wear that will eventually reduce braking performance. This degradation could lead to loss of no-back brake function and reduced controllability of the airplane.

**Actions Since AD 2017–01–02 Was Issued**

Since we issued AD 2017–01–02, we have determined that it is necessary to revise the applicability to include additional airplanes, and to reduce the number of affected actuators.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017. The service information describes procedures for an inspection of the inboard and outboard trailing edge flap rotary actuator for any discrepant rotary actuator, and corrective actions if necessary. The related investigative action includes a functional test of the trailing edge flap no-back brake. The corrective actions include replacement of the discrepant rotary actuator with a non-discrepant rotary actuator. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 2017–01–02 and add airplanes to the applicability. This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0078.

The phrase ''related investigative actions'' is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

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

**Differences Between This Proposed AD and the Service Information**

To support operations, many operators have put processes in place that, given certain conditions, allow them to rotate or transfer parts or equipment within their fleets to different aircraft than what is defined in the manufacturer's type design. We have determined that the parts or equipment subject to the unsafe condition may have been rotated or transferred in this manner, due to similarity with parts or equipment not subject to the unsafe condition. Therefore, the applicability of this proposed AD is for all The Boeing Company Model 787 series airplanes.

The effectivity specified in Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015, consists of only certain Boeing Model 787–8 and 787–9 airplanes. In this proposed AD, the actions required by paragraphs (g) and (h) of this AD would be accomplished on any The Boeing Company Model 787 series airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of the final rule. Expanding the applicability of this proposed AD addresses the rotability issue of the trailing edge flap rotary actuators. We have confirmed with the manufacturer that the accomplishment instructions in the following service information are applicable to the expanded group of airplanes:

- Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015.
- Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 002, dated November 3, 2016.
- Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017.

The Boeing Company Model 787 series airplanes with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated after the effective date of the final rule are not required to complete the actions specified in paragraphs (g) and (h) of this AD, but must comply with the parts installation prohibition in paragraph (i) of this AD.

**Costs of Compliance**

We estimate that this proposed AD affects 89 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 | 5 work-hours × $85 per hour = $425 | $0 | $425 | $37,825 |

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft or the number of rotary actuators (up to 8 per shipset) that might need these on-condition actions:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Check to determine flight cycles on the rotary actuator. | 1 work-hour × $85 per hour = $85 | $0 | $85 per rotary actuator. |
| Functional Test per rotary actuator | 2 work-hours × $85 per hour = $170 | 0 | $170 per rotary actuator. |
| Replacement per rotary actuator | 2 work-hours × $85 per hour = $170 | 0 | $170 per rotary actuator. |
| System Test after rotary actuator replacement(s) per airplane. | 24 work-hours × $85 per hour = $2,040 | 0 | $2,040 per airplane. |

**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 have 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 that the 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) 2017–01–02, Amendment 39–18769 (82 FR 4775, January 17, 2017), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2018–0078; Product Identifier 2017–NM–107–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by April 2, 2018.

**(b) Affected ADs**

This AD replaces AD 2017–01–02, Amendment 39–18769 (82 FR 4775, January 17, 2017) (''AD 2017–01–02'').

**(c) Applicability**

This AD applies to all The Boeing Company Model 787 series airplanes, certificated in any category.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report indicating that some inboard and outboard trailing edge flap rotary actuators may have been assembled with an incorrect no-back brake rotor-stator stack sequence during manufacturing. We are issuing this AD to detect and replace incorrectly assembled rotary actuators, which could cause accelerated unit wear that will eventually reduce braking performance. This degradation could lead to loss of no-back brake function and reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Inspection and Other Actions**

For The Boeing Company Model 787–8 and 787–9 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015: Within 60 months after February 21, 2017 (the effective date of AD 2017–01–02), do an inspection of the inboard and outboard trailing edge flap rotary actuator for any discrepant rotary actuator, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015; or Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017. If any discrepant rotary actuator is found, within 60 months after February 21, 2017, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015; or Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017. After the effective date of this AD only Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017, may be used.

(1) Replace the discrepant rotary actuator.

(2) Check the maintenance records to determine the flight cycles of each discrepant rotary actuator and, within 60 months after February 21, 2017 (the effective date of AD 2017–01–02), do all applicable related investigative and corrective actions.

**(h) New Requirements: Inspection, Related Investigative and Corrective Actions**

For airplanes not identified in Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015, which have an Original Certificate of Airworthiness or Export Certificate of Airworthiness with a date on or before the effective date of this AD: Within 60 months after the effective date of this AD, do an inspection of the inboard and outboard trailing edge flap rotary actuator for any discrepant rotary actuator, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017. If any discrepant rotary actuator is found, within 60 months after the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017.

(1) Replace the discrepant rotary actuator.

(2) Check the maintenance records to determine the flight cycles of each discrepant rotary actuator and, within 60 months after the effective date of this AD, do all applicable related investigative and corrective actions.

**(i) Parts Installation Limitation**

As of the effective date of this AD, no person may install, on any airplane, a rotary actuator with a part number and serial number identified in Appendix A of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017, unless the actuator has been permanently marked in accordance with Task 2 of Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 003, dated July 28, 2017, with ''B787–81205–SB270032–00 INCORPORATED.''

**(j) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 002, dated November 3, 2016.

(2) This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 001, dated November 3, 2015, or Boeing Alert Service Bulletin B787–81205–SB270032–00, Issue 002, dated November 3, 2016.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle 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 the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously for AD 2017–01–02 are approved as AMOCs for the corresponding provisions of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (k)(5)(ii) of this AD apply.

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

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

**(l) Related Information**

(1) For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW, Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 30, 2018.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–03026 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 514

**[Docket No. FDA–2017–N–6381]**

**RIN 0910–AH51**

## Postmarketing Safety Reports for Approved New Animal Drugs; Electronic Submission Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is proposing to amend its postmarketing safety reporting regulations for approved new animal drugs to require that certain adverse drug experience and product/manufacturing defect reports be submitted to FDA in an electronic format that we can process, review, and archive. This action is intended to improve our systems for collecting and analyzing postmarketing safety reports. The proposed change would help us to more rapidly review postmarketing safety reports, identify emerging safety problems, and disseminate safety information in support of our public health mission. In addition, the proposed amendments would facilitate international harmonization and exchange of safety information.

**DATES:** Submit either electronic or written comments on the proposed rule by April 30, 2018. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by March 16, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 30, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 30, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2017–N–6381 for ''Postmarketing Safety Reports for Approved New Animal Drugs; Electronic Submission Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (PRA) to the Office of Management and Budget (OMB) in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, ''Records and Reports Concerning Experience with Approved New Animal Drugs.''

**FOR FURTHER INFORMATION CONTACT:** *With regard to the proposed rule:* Linda Walter-Grimm, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5762, *Linda.Walter-Grimm@fda.hhs.gov.*

*With regard to the information collection:* Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

### *A. Purpose of the Proposed Rule*

FDA is issuing this proposed rule to amend our regulations under § 514.80 (21 CFR 514.80) to require electronic submission of certain postmarketing

safety reports for approved new animal drugs and to provide a procedure for requesting a temporary waiver of the requirement. This action is intended to improve our systems for collecting and analyzing postmarketing safety reports. The proposed change would help us to more rapidly review postmarketing safety reports, identify emerging safety problems, and disseminate safety information in support of our public health mission. In addition, the proposed amendments would facilitate international harmonization and exchange of safety information.

*B. Summary of the Major Provisions of the Proposed Rule*

We require applicants to submit to us postmarketing safety reports of adverse drug experiences and product/manufacturing defects for approved new animal drugs (see § 514.80). An applicant is defined as ''a person or entity who owns or holds on behalf of the owner the approval for an NADA [new animal drug application] or an ANADA [abbreviated new animal drug application], and is responsible for compliance with applicable provisions of the act and regulations.'' (§ 514.3 (21 CFR 514.3)) In addition, nonapplicants, defined in § 514.3 as ''any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product,'' may elect to submit adverse drug experience reports directly to us (§ 514.80(b)(3)).

We propose to require electronic submission for the following reports for approved new animal drugs: 3-day alert reports that applicants elect to submit directly to FDA's Center for Veterinary Medicine (CVM) in addition to the requirement they have to submit these reports on paper Form FDA 1932 to the appropriate FDA District Office or local FDA resident post; 15-day alert reports and followup reports; product/manufacturing defect and adverse drug experience reports submitted by nonapplicants who elect to report adverse drug experiences directly to CVM in addition to providing these reports to the applicant; product/manufacturing defect and adverse drug experience reports (including reports of previously not reported adverse drug experiences that occur in postapproval studies) required to be submitted as part of the periodic drug experience report. We propose to replace the current paper submission process with the electronic submission requirement and a procedure for requesting a temporary waiver of the electronic submission requirement. Finally, we propose to clarify where to submit reports not required to be submitted electronically. Under the proposed rule, we would continue to require 3-day alert reports to be submitted to the appropriate FDA District Office or local FDA resident post. However, as noted, if in addition to the report an applicant submits on paper Form FDA 1932 to the appropriate FDA District Office or local FDA resident post, an applicant elects to submit a 3-day field alert report directly to CVM, the applicant would be required to submit the report to CVM electronically.

*C. Legal Authority*

Our legal authority to require electronic submission of postmarketing safety reports for approved new animal drugs derives from sections 201, 301, 501, 502, 512, and 701 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321, 331, 351, 352, 360b, and 371).

*D. Costs and Benefits*

The purpose of this proposed rule is to require electronic submission of certain postmarketing safety reports for approved new animal drugs. The rule, if finalized, would also provide a procedure for requesting a temporary waiver of the electronic reporting requirement for ''good cause'' shown, such as a natural disaster. As currently proposed, this rule would not change the content of the postmarketing safety reports or the frequency of the reporting requirements. Currently, most submitters have chosen, voluntarily, to use electronic submission for the reports that would be affected by this proposed rule. As of 2016, approximately 99.7 percent of postmarketing safety reports eligible for electronic submission were electronically submitted. Thus, this proposed rule would affect a small proportion of these reports.

The major benefits of this proposed rule, if finalized, would be to animal health and the Agency in the form of quicker access to postmarketing safety information. The annual cost savings to the Agency is estimated at $7,535. The present value of these benefits over 10 years is $64,272 at a 3 percent discount rate, and $52,920 at a 7 percent discount rate.

Total one-time costs to industry would be $61,311 for changing standard operating procedures (SOPs) and training employees to electronically submit postmarketing safety reports in accordance with the new SOPs. Recurring costs to the Agency would be $153 per year, for processing the waivers to the electronic reporting requirement. Annualizing these costs over a 10-year period, we estimate total annualized costs to be $7,131 at a 3 percent discount rate, and $8,310 at a 7 percent discount rate. The present value of these costs over 10 years is $60,823 at a 3 percent discount rate, and $58,368 at a 7 percent discount rate.

## II. Background

When a new animal drug is approved and enters the market, the product is introduced to a larger population in settings different from the controlled studies required by the approval process. New information generated during the postmarketing period offers further insight into the benefits and/or risks of the product, and evaluation of this information is important to ensure the safe and effective use of these products.

*A. Need for the Regulation*

CVM receives information regarding adverse drug experiences for approved new animal drugs from postmarketing safety reports. For over 25 years, we have received these safety reports on paper. However, the majority of submitters have chosen, voluntarily, to utilize electronic submission as electronic means became available. As of 2016, approximately 99.7 percent of postmarketing safety reports eligible for electronic submission were electronically submitted. The proposed rule would require electronic submission of the remaining 0.3 percent of postmarketing safety reports eligible for electronic submission.

Electronic submission improves our ability to process and archive postmarketing safety reports in a timely manner, and to make postmarketing reports more readily available for analysis. Information from electronic and paper reports is entered into our computerized database, which is designed to support our postmarketing safety surveillance program for animal drug products. Scientists at CVM use the database to make decisions about product safety, which may include regulatory action. Electronically submitted reports are available for analysis as soon as they have been processed, generally within 2 days of receipt. Safety reports submitted to us on paper must be physically received, reviewed, and then manually entered into our computerized database, a process that can take several weeks. Paper reports increase the time it takes us to review safety information, impede our ability to analyze the data comprehensively, and hinder our ability to quickly identify problems. Voluntary electronic submission of safety reports has been an important step in improving

our postmarketing surveillance capabilities.

The proposed rule, which would require electronic submission of certain postmarketing safety reports, would further improve our systems for collecting and analyzing these reports and would save FDA an expected $7,459 annually, primarily in the cost of processing paper submissions. The proposal would:

- Expedite our access to safety information and provide us data in a format that would support more efficient and comprehensive reviews;
- Enhance our ability to rapidly communicate information about suspected problems to animal owners, veterinarians, consumers, and industry within the United States and internationally in support of our public health mission; and
- Eliminate or reduce the time and costs to industry associated with submitting paper reports, and the time, costs, errors, and physical storage needs of the Agency associated with manually entering data from paper reports into the electronic system for review and analysis.

The proposed rule would allow us to be more responsive to rapidly occurring changes in the technological environment. Consistent with our current practice for voluntarily provided electronic submissions, the proposed rule would require that data in electronic submissions conform to the data elements in Form FDA 1932 and our technical documents on how to provide electronic submissions (*e.g.,* method of transmission and processing, media, file formats, preparation and organization of files). The proposed rule would allow us to issue updated technical documents, as necessary. The most current information on submitting postmarketing safety reports to us in electronic format can be found on our web page at *http://www.fda.gov/AnimalVeterinary/SafetyHealth/ReportaProblem/ucm212682.htm* (see, *e.g.,* ''Instructions for Electronic Submission of Mandatory Adverse Event Reports to FDA CVM''). As necessary, we will revise the technical specifications referenced in our technical documents to address changing technical specifications or any additional specifications needed for electronic submission. Using guidance documents and technical documents to communicate these technical specifications will permit us to be more responsive to rapidly occurring changes in the technological environment.

The proposed rule is also an important step in our continuing efforts to harmonize our postmarketing safety reporting regulations with international standards for submitting safety information. Currently, the technical specifications referenced in our guidance documents supporting the voluntary electronic submission processes rely upon and adopt certain safety reporting and transmission standards recommended by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). VICH was formed to facilitate the harmonization of technical requirements for the marketing authorization or ''registration'' of veterinary medicinal products among three regions: The European Union, Japan, and the United States. Our electronic submission specifications allow applicants or nonapplicants to submit postmarketing safety reports using the Health Level 7 (HL7) Individual Case Safety Report (ICSR) standard that has been adopted worldwide by VICH. In this proposed rule, we reaffirm our intention to continue to rely on these VICH-recommended standards. We believe the continued use of VICH standards will promote harmonization of safety reporting among regulatory agencies and facilitate the international exchange of postmarketing safety information. Accordingly, this proposed rule is consistent with our ongoing initiatives to encourage the widest possible use of electronic submission and to promote international harmonization of safety reporting for animal drug products through reliance on VICH standards. We anticipate that the proposed rule would enhance industry's global pharmacovigilance practices by allowing it to use common data elements and transmission standards when submitting ICSRs to multiple regulators.

### *B. Current Regulatory Framework*

The current postmarketing safety reports required under § 514.80 for approved NADAs and approved ANADAs are summarized below. The proposed electronic submission requirement would leave the substantive aspects of these reports largely unchanged.

#### 1. Description and Timing of Safety Reports

Under section 512(*l*) of the FD&C Act, we may require holders of approved NADAs to submit reports regarding postapproval experiences with their animal drugs. Our implementing regulation at § 514.80 requires applicants to submit to us postmarketing safety reports of adverse drug experiences and product/manufacturing defects. As stated previously, an applicant is defined as ''a person or entity who owns or holds on behalf of the owner the approval for an NADA or an ANADA, and is responsible for compliance with applicable provisions of the act and regulations.'' (See § 514.3.) In addition, nonapplicants, defined in § 514.3 as ''any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product,'' may elect to submit adverse drug experience reports directly to us (§ 514.80(b)(3)).

Specifically, § 514.80(b) requires the following adverse drug experience reports, among other reports:

- Three-day field alert reports (§ 514.80(b)(1)). Applicants must submit a report to the appropriate FDA District Office or local resident post with information pertaining to product and manufacturing defects that may result in serious adverse drug events within 3 working days of first becoming aware that a defect may exist.
- Fifteen-day alert reports (§ 514.80(b)(2)(i)) and followup reports (§ 514.80(b)(2)(ii)). Applicants must submit a report to us for each postmarketing adverse drug event that is both serious and unexpected within 15 working days of first receiving the information about the adverse drug event. A followup report must be submitted within 15 working days of receipt of significant new information or as requested by us.
- Nonapplicant reports (§ 514.80(b)(3)). Nonapplicants are required to forward reports of adverse drug experiences *to the applicant* within 3 working days of first receiving the information. A nonapplicant may choose to also submit an additional report *directly to us* within 15 working days of first receiving the information, but must still provide the report to the applicant. (As noted above, a ''nonapplicant'' is any person other than the applicant whose name appears on the label of the approved new animal drug product and who is engaged in the manufacturing, packing, distribution, or labeling of that drug product. 21 CFR 514.3.)
- Reports of product/manufacturing defects and adverse drug experiences submitted as part of the periodic drug experience report (§ 514.80(b)(4)(iv)(A) and (C)). Applicants are required to submit a periodic report every 6 months for the first 2 years following approval (6-month periodic drug experience reports) and yearly thereafter (yearly

periodic drug experience report). The periodic drug experience report must contain, among other things, reports for each product/manufacturing defect and adverse drug experience not previously reported as 3-day field alert reports under § 514.80(b)(1) or 15-day alert or followup reports under § 514.80 (b)(2) (*i.e.,* the periodic drug experience report must contain reports of all expected or nonserious adverse drug events and product/manufacturing defects that did not result in an adverse drug event report). This also includes previously not reported adverse drug experiences that occur in postapproval studies.

2. Current Methods for the Submission of Postmarketing Safety Reports

As noted, for over 25 years we have received postmarketing safety reports on paper. Currently, § 514.80 requires that applicants and nonapplicants submit to us reports of adverse drug experiences and product/manufacturing defects on paper Form FDA 1932. It further requires that 3-day field alert reports must be submitted to the appropriate FDA District Field Office or local FDA resident post while 15-day alert reports and followup reports, periodic drug experience reports, and nonapplicant reports must be submitted to CVM (§ 514.80(b)(1) to (3), (b)(4)(iv)(A) and (C), and (g)).

As noted earlier in this preamble, since May 2010 we have provided industry with the option of submitting certain postmarketing safety reports electronically. Since that time, the majority of submitters have chosen, voluntarily, to utilize electronic submission. As of 2016, approximately 99.7 percent of postmarketing safety reports eligible for electronic submission were electronically submitted.

Reports that may be submitted electronically include 15-day alert reports and followup reports (§ 514.80(b)(2)(i) and (ii)); nonapplicant reports of adverse drug experiences submitted directly to FDA (§ 514.80(b)(3)); and reports of product/manufacturing defects and adverse drug experiences submitted as part of the periodic drug experience report (§ 514.80(b)(4)(iv)(A) and (C)). At this time, 3-day field alert reports (§ 514.80(b)(1)) must be submitted on paper Form FDA 1932 to the appropriate FDA District Office or local resident post. CVM collaborates with the FDA District Office or local resident post to follow up as appropriate in response to 3-day field alert reports. If an applicant elects to submit a 3-day field alert report directly to CVM, the applicant would be required to submit the report electronically. However, this would not alleviate the applicant's responsibility to submit this report to the FDA District Field Office or local FDA resident post on paper Form FDA 1932.

Electronic reports may be submitted through FDA's Electronic Submission Gateway or through the FDA-National Institutes of Health Safety Reporting Portal (Safety Reporting Portal). The Electronic Submission Gateway allows applicants or nonapplicants to submit postmarketing safety reports using the HL7 ICSR standard, which, as discussed earlier in this preamble, has been adopted worldwide by VICH. The Electronic Submission Gateway provides industry with gateway-to-gateway access to transmit an HL7 ICSR message using the FDA electronic submission standard. The Safety Reporting Portal provides applicants or nonapplicants a means to submit individual postmarketing safety reports without having to make financial investments in the technical infrastructure needed to access the Electronic Submission Gateway. Any person who has internet access can use the Safety Reporting Portal to submit reports through a user-friendly, interactive questionnaire available at *https://www.safetyreporting.hhs.gov/*.

For applicants or nonapplicants that submit large numbers of reports, sending an HL7 ICSR electronic file is more cost effective because the information from the reports is transmitted directly from the submitter's database to FDA, eliminating the need for additional resources for collating, copying, storing, retrieving, and mailing paper copies. For applicants or nonapplicants that submit a small number of reports, the use of the web-based Safety Reporting Portal may be more cost effective than implementing a system to send an HL7 ICSR message through the FDA Electronic Submission Gateway.

## III. Legal Authority

Section 512(*l*) of the FD&C Act requires that, following approval of a NADA or ANADA, applicants must establish and maintain records and make reports to the Agency of data related to experience, as prescribed by regulation or order. FDA has general rulemaking authority under section 701(a) of the FD&C Act, which permits the Secretary of Health and Human Services to promulgate regulations for the efficient enforcement of the FD&C Act. In order to implement section 512(*l*) of the FD&C Act, FDA promulgated regulations for records and updates concerning experience with new animal drugs (see § 514.80). The proposed amendments to this regulation will further efficient enforcement of section 512(*l*) by permitting records and reports to be reported electronically.

## IV. Description of the Proposed Rule

We are proposing to amend our regulations in part 514 (21 CFR part 514). The proposed rule would require electronic submission of certain postmarketing safety reports for approved new animal drugs and provide a procedure for requesting a temporary waiver of the requirement. This action is intended to improve our systems for collecting and analyzing postmarketing safety reports.

### *A. Scope*

The proposed rule would amend § 514.80 to require electronic submission of the following postmarketing safety reports for approved new animal drugs:

- Three-day alert reports that applicants elect to submit directly to CVM in addition to the requirement they have to submit these reports on paper Form FDA 1932 to the appropriate FDA District Office or local FDA resident post (§ 514.80(b)(1);
- Fifteen-day alert reports (§ 514.80(b)(2)(i)) and followup reports (§ 514.80(b)(2)(ii));
- Product/manufacturing defects and adverse drug experience reports submitted by nonapplicants who elect to report adverse drug experiences directly to FDA under § 514.80(b)(3) in addition to providing these reports to the applicant; and
- Product/manufacturing defects and adverse drug experience reports (including reports of previously not reported adverse drug experiences that occur in postapproval studies) required to be submitted as part of the periodic drug experience report (§ 514.80(b)(4)(iv)(A) and (C)).

At this time, we are not proposing to require electronic submission of 3-day field alert reports (§ 514.80(b)(1)) to the appropriate FDA District Office or local resident post because, as noted previously, we currently do not have the information technology systems in place to share with FDA District Offices or local resident posts reports submitted electronically through the Electronic Submission Gateway or Safety Reporting Portal. Under this proposed rule, these reports would continue to be submitted on paper Form FDA 1932 directly to the appropriate FDA District Office or local resident post. CVM will continue to collaborate with the FDA District Office or local resident post to follow up as appropriate in response to

3-day field alert reports submitted directly to the FDA District Office or local resident post. However, as noted, if an applicant elects to submit a 3-day field alert report directly to CVM, the applicant would be required to submit the report electronically. This would not alleviate the applicant's responsibility to submit this report to the FDA District Field Office or local FDA resident post on paper Form FDA 1932.

*B. Proposed Provisions*

1. Electronic Submission Requirement

We are proposing that applicants would continue to have the obligation to submit 3-day field alert reports directly to the appropriate FDA District Office or local resident post within 3 working days of first becoming aware that a defect may exist. However, if applicants choose to also report directly to CVM in addition to reporting to the appropriate FDA District Office or local resident post, they would be required to submit the report to CVM electronically, unless we grant a waiver permitting an alternate submission method or we otherwise request an alternate submission method. (See proposed § 514.80(b)(1).)

We are proposing that 15-day alert reports and followup reports would be required to be submitted to us electronically, unless we grant a waiver permitting an alternate submission method (see section IV.B.2 of this document) or we otherwise request an alternate submission method (see section IV.B.3 of this document). (See proposed § 514.80(b)(2)(i) and (ii).)

We are proposing that nonapplicants would continue to have the obligation of forwarding reports of adverse drug experiences to the applicant within 3 working days of first receiving the information. Nonapplicants would also continue to have the option of choosing to report directly to us in addition to reporting to the applicant. However, if nonapplicants opt to report directly to us, they would be required to submit the report electronically, unless we grant a waiver permitting an alternate submission method or we otherwise request an alternate submission method. (See proposed § 514.80(b)(3).)

We are proposing that reports of product/manufacturing defects and adverse drug experiences required to be submitted as part of the periodic drug experience report would be required to be submitted to us electronically, unless we grant a waiver permitting an alternate submission method or we otherwise request an alternate submission method. (See proposed § 514.80(b)(4)(iv)(A) and (C).) This includes reports of defects and experiences not previously reported under § 514.80(b)(1) and (2) and previously not reported adverse drug experiences that occur in postapproval studies. These reports could be submitted individually at any time within the timeframe for submitting the periodic drug experience report under current § 514.80(b)(4).

We are proposing that reports submitted to us under § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) be submitted in an electronic format that FDA can process, review, and archive, and that data submitted in electronic submissions conform to the data elements in Form FDA 1932 and our technical documents on how to provide electronic submissions (*e.g.,* method of transmission and processing, media, file formats, preparation and organization of files). The proposed rule would allow us to issue updated technical documents, as necessary. (See proposed § 514.80(d)(1).)

2. Waivers

We are proposing to allow applicants or nonapplicants to request a temporary waiver from the electronic submission requirement for ''good cause'' shown. Examples of circumstances that could constitute ''good cause'' for granting waivers of the electronic submission requirement include crisis situations that impact an applicant's or nonapplicant's ability to report electronically, such as natural disasters, pandemics, and terrorism. The proposed rule would require applicants and nonapplicants to submit a waiver request to us in writing. The initial request, however, could be made by telephone or email to CVM's Division of Veterinary Product Safety, with prompt written followup submitted as a letter to the application. If we grant the request for a temporary waiver, the applicant or nonapplicant would be required to follow the conditions for reporting that we specify upon granting the waiver. (See proposed § 514.80(d)(2).)

We anticipate that temporary waivers of the electronic submission requirement will only be needed in rare circumstances such as natural disasters, pandemics, and terrorism, as noted. An applicant or nonapplicant experiencing technical difficulties that temporarily prevent use of the Electronic Submission Gateway could, as a backup, electronically submit reports using the Safety Reporting Portal. An applicant or nonapplicant that relies on the Safety Reporting Portal but experiences a short-term, temporary interruption of internet services could, as a backup, electronically submit reports from any other computer with access to a working internet connection.

3. FDA Request for Alternate Submission Method

We may require an applicant or nonapplicant to submit reports that would otherwise be required to be submitted electronically to be submitted in an alternate format, such as on paper using Form FDA 1932. We anticipate that we would request the submission of reports through an alternate method only in the event that we experience a prolonged system outage or other major technical problem. During such an event, we would provide advice on the desired method for submission (most likely on paper using Form FDA 1932) and the types of reports that should be submitted using the alternate method. Applicants and nonapplicants should be prepared to comply with such a request by maintaining the capability to submit paper reports using Form FDA 1932 if needed. (See proposed § 514.80(b)(1) to (3), and (b)(4)(iv)(A) and (C).)

4. Mailing Addresses

Finally, we propose to clarify where to submit reports not required to be submitted electronically. Under the proposed rule, we would continue to require 3-day alert reports to be submitted to the appropriate FDA District Office or local FDA resident post. (See proposed § 514.80(g).)

## V. Proposed Effective and Compliance Dates

We propose that any final rule based on this proposal become effective 30 days after the date on which it is published in the **Federal Register**. Although we are proposing that the final rule become effective 30 days after the date of publication in the **Federal Register**, we are proposing to provide additional time before applicants and nonapplicants would be required to comply with the electronic submission requirement. We propose that the compliance date would be 12 months after the publication date of the final regulation. The Safety Reporting Portal currently is capable of receiving all of the affected reports and is available to any applicant or nonapplicant with access to the internet. We tentatively conclude that applicants and nonapplicants not currently submitting the affected reports electronically would, in 12 months, be able to make changes to their business practices that would be needed to come into compliance with the proposed requirements.

## VI. Economic Analysis of Impacts

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

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs of the rule are minimal in both absolute value and in comparison to average yearly sales of small firms in this industry, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $148 million, using the most current (2016) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

The purpose of this proposed rule is to require electronic submission of certain postmarketing safety reports for approved new animal drugs. The rule, if finalized, would also provide a procedure for requesting a temporary waiver of the electronic reporting requirement for ''good cause'' shown, such as a natural disaster. As currently proposed, this rule would not change the content of the postmarketing safety reports or the frequency of the reporting requirements.

The major benefits of this proposed rule, if finalized, would be to animal health and the Agency in the form of quicker access to postmarketing safety information; the annual cost savings to the Agency is estimated at $7,535. The present value of these benefits over 10 years is $64,272 at a 3 percent discount rate, and $52,920 at a 7 percent discount rate.

Total one-time costs to industry would be $61,311 for changing SOPs and training employees to electronically submit postmarketing safety reports in accordance with the new SOPs. Recurring costs to the Agency would be $153 per year, for processing the waivers to the electronic reporting requirement. Annualizing these costs over a 10-year period, we estimate total annualized costs to be $7,131 at a 3 percent discount rate, and $8,310 at a 7 percent discount rate. The present value of these costs over 10 years is $60,823 at a 3 percent discount rate, and $58,368 at a 7 percent discount rate.

SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

| Category | Primary estimate | Low estimate | High estimate | Units | | | Notes |
|---|---|---|---|---|---|---|---|
| | | | | Year dollars | Discount rate (%) | Period covered (years) | |
| Benefits: | | | | | | | |
| Annualized | $7,535 | | | 2016 | 7 | 10 | |
| Monetized $/year | 7,535 | | | 2016 | 3 | 10 | |
| Annualized | | | | | 7 | | |
| Quantified | | | | | 3 | | |
| Qualitative | | | | | | | |
| Costs: | | | | | | | |
| Annualized | 7,131 | | | 2016 | 7 | 10 | |
| Monetized $/year | 8,310 | | | 2016 | 3 | 10 | |
| Annualized | | | | | 7 | | |
| Quantified | | | | | 3 | | |
| Qualitative | | | | | | | |
| Transfers: | | | | | | | |
| Federal | | | | | 7 | | |
| Annualized Monetized $millions/year | | | | | 3 | | |
| From/To | From: | | | To: | | | |
| Other Annualized | | | | | 7 | | |
| Monetized $millions/year | | | | | 3 | | |
| From/To | From: | | | To: | | | |

Effects:
State, Local or Tribal Government:
Small Business: Will not have a significant impact on a substantial number of small entities.
Wages:
Growth:

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full analysis of economic impacts is available in the docket (FDA–2017–N–6381) for this proposed rule and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

**VII. Analysis of Environmental Impact**

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

**VIII. Paperwork Reduction Act of 1995**

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* section of this document with an estimate of the one-time and recurring reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title:* Records and Reports Concerning Experience with Approved New Animal Drugs—OMB Control Number 0910–0284—Revision

*Description:* This proposed rule would revise the existing information collection requirements in the postmarketing safety reporting regulations for approved new animal drugs to require electronic submission of certain postmarketing safety reports for approved new animal drugs. This rule does not change the content of these postmarketing reports. It only proposes to require that they be submitted in an electronic form. We are also proposing to provide a procedure for requesting a temporary waiver of the requirement.

*Description of Respondents:* Respondents to the information collection provisions of this proposed rule are applicants and nonapplicants.

*Reporting:* Currently, the postmarketing safety reporting regulations for approved new animal drugs include requirements to submit to us postmarketing safety reports of adverse drug experiences and product/manufacturing defects. Section 514.80 requires applicants and nonapplicants to keep records of and report to us data, studies, and other information concerning experience with new animal drugs for each approved NADA and ANADA. Following complaints from animal owners or veterinarians, or following their own detection of a problem, applicants or nonapplicants are required to submit adverse event reports and product/manufacturing defect reports under § 514.80(b)(1) to (3) and (b)(4)(iv)(A) and (C) on Form FDA 1932. Form FDA 1932 may be submitted on paper or electronically via the Electronic Submission Gateway or Safety Reporting Portal. Form FDA 1932a (the voluntary reporting form) is used by veterinarians and the public to submit adverse event reports, product defects, and lack of effectiveness complaints directly to FDA. Form FDA 1932a may be submitted on paper or may be submitted electronically by completing and emailing a fillable PDF form. Form FDA 2301 is used to submit the required transmittal of periodic reports (§ 514.80(b)(4)); special drug experience reports (§ 514.80(b)(5)(i)); promotional material for new animal drugs (§ 514.80(b)(5)(ii)); and distributor statements (§ 514.80(b)(5)(iii)). Form FDA 2301 may be submitted on paper, may be submitted electronically by completing and emailing a fillable PDF form, or may be submitted electronically via CVM's eSubmitter. We review the records and reports required in § 514.80 and the voluntary reports to facilitate a determination under section 512(e) of the FD&C Act as to whether there may be grounds for suspending or withdrawing approval of the new animal drug.

The proposed rule will revise these requirements to require electronic submission of the following postmarketing safety reports for approved new animal drugs:

- Three-day alert reports that applicants elect to submit directly to CVM in addition to the requirement that they have to submit these reports on paper Form FDA 1932 to the appropriate FDA District Office or local FDA resident post (§ 514.80(b)(1);
- Fifteen-day alert reports (§ 514.80(b)(2)(i)) and followup reports (§ 514.80(b)(2)(ii));
- Product/manufacturing defects and adverse drug experience reports submitted by nonapplicants who elect to report adverse drug experiences directly to FDA under § 514.80(b)(3) in addition to providing these reports to the applicant; and
- Product/manufacturing defects and adverse drug experience reports (including reports of previously not reported adverse drug experiences that occur in postapproval studies) required to be submitted as part of the periodic drug experience report (§ 514.80(b)(4)(iv)(A) and (C)).

At this time, we are not proposing to require electronic submission of 3-day field alert reports (§ 514.80(b)(1)) to the appropriate FDA District Office or local resident post because, as noted previously, we currently do not have the information technology systems in place to share with the FDA District Office or local resident post reports submitted electronically through the Electronic Submission Gateway or Safety Reporting Portal. These reports would continue to be submitted on paper Form FDA 1932 directly to the appropriate FDA District Office or local resident post. CVM will continue to collaborate with the FDA District Office or local resident post to follow up as appropriate in response to 3-day field alert reports submitted directly to the FDA District Office or local resident post. However, as noted, if an applicant elects to submit a 3-day field alert report directly to CVM, the applicant would be required to submit the report electronically. This would not alleviate the applicant's responsibility to submit this report to the FDA District Field Office or local FDA resident post on paper Form FDA 1932.

The proposed rule will also revise these requirements to allow applicants or nonapplicants to request a temporary waiver from the electronic submission requirement for ''good cause'' shown. Examples of circumstances that could constitute ''good cause'' for granting waivers of the electronic submission requirement include crisis situations that impact an applicant's or nonapplicant's ability to report electronically, such as natural disasters, pandemics, and terrorism. The proposed rule would require applicants and nonapplicants to submit a waiver request to us in writing. The initial request, however, could be made by telephone or email to CVM's Division of Veterinary Product Safety, with prompt

written followup submitted as a letter to the application.

The continuous monitoring of new animal drugs affords the primary means by which we obtain information regarding problems with the safety and efficacy of marketed approved new animal drugs, as well as product/manufacturing problems. Postapproval marketing surveillance is important to ensure the continued safety and effectiveness of new animal drugs. Drug effects can change over time and other effects may not manifest until years after the approval.

We estimate the reporting burden of this collection of information as follows:

TABLE 1—ESTIMATED RECURRING REPORTING BURDEN [1]

| 21 CFR section | Form FDA No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| Electronic submission of postmarketing safety reports under proposed § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) | 1932 | 15 | 18 | 270 | 1 | 270 |
| Request for waiver, proposed § 514.80(d)(2) | N/A | 1 | 1 | 1 | 1 | 1 |
| Total | | | | 271 | | 271 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 shows the estimated recurring reporting burden associated with the proposed rule. In section II.C. of the Preliminary Regulatory Impact Analysis (PRIA), we estimated that 15 firms submitted a paper Form FDA 1932 report from 2011 to 2015 and thus would be affected by the proposed rule's requirement to submit electronically. As stated in the PRIA, we estimate that in 2016 CVM received 270 of the affected postmarketing safety reports on paper. We calculate the number of responses per respondent as the total annual responses divided by the number of respondents. We estimate that, on average, it will take 1 hour to submit electronic postmarketing safety reports for approved new animal drugs, for a total of 270 hours. We base our estimate of 1 hour per report on our experience with electronic postmarketing safety reporting. In the PRIA, we also estimated the burdens associated with submission of waiver requests. We expect very few waiver requests (see section II.E. of the PRIA), estimating that approximately one firm would request a waiver annually under proposed § 514.80(d)(2). We estimate that a waiver request would take approximately 1 hour to prepare and submit to us. Together, this results in a total of 271 hours and 271 responses. If this rule is finalized as proposed, we would reduce the paper reporting collection approved under OMB control number 0910–0284 by 270 hours and increase the electronic reporting collection approved under OMB control number 0910–0645 by 270 hours.

*Recordkeeping:* We estimate the recordkeeping burden of this collection of information as follows:

TABLE 2—ESTIMATED ONE-TIME RECORDKEEPING BURDEN [1]

| Activity | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Write New SOPs | 15 | 1 | 15 | 20 | 300 |
| Training | 15 | 1 | 15 | 20 | 300 |
| Total | | | 30 | | 600 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 2 shows the estimated one-time recordkeeping burden associated with the proposed rule. This burden includes both the one-time burden of creating new SOPs to submit the reports electronically and the one-time cost of training employees to electronically submit postmarketing safety reports to CVM in accordance with the new SOPs. In section II.E. of the PRIA, we estimated that approximately 15 firms would be affected by this proposed rule, if finalized. We also estimated that it would take approximately 20 hours per firm to create new SOPs for electronic submission of postmarketing safety reports and approximately 20 hours per firm to complete the training of employees to electronically submit postmarketing safety reports in accordance with the new SOPs. Together, this results in a total of 600 hours and 30 records. We assume that there are no capital costs associated with firms implementing this proposed rule (*i.e.,* applicants and nonapplicants in the pharmaceutical industry already have the computer and internet capacity necessary to electronically submit postmarketing safety reports).

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

## IX. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have

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

**List of Subjects in 21 CFR Part 514**

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 514 be amended as follows:

## PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for part 514 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 354, 356a, 360b, 360ccc, 371, 379e, 381.

■ 2. Section 514.80 is amended as follows:

■ a. Revise the entries in the table for paragraphs (b)(4), (d), (e), and (g);

■ b. Add a fifth sentence to paragraph (b)(1); and

■ c. Revise the last sentence of paragraph (b)(2)(i); the third sentence of paragraph (b)(2)(ii); the last sentence of paragraph (b)(3); paragraphs (b)(4)(iv)(A) and (C); paragraph (b)(4)(v); and paragraphs (d) and (g).

The addition and revisions read as follows:

**§ 514.80 Records and reports concerning experience with approved new animal drugs.**

* * * * *

| Purpose | 21 CFR paragraph and title |
|---|---|
| * * * * * | * |
| What are the general requirements for submission of periodic drug experience reports, *e.g.,* method of submission, submission date and frequency, when is it to be submitted, how many copies?<br>How do I petition to change the date of submission or frequency of submissions? | 514.80(b)(4) Periodic drug experience report. |
| * * * * * | * |
| What reports must be submitted to FDA electronically?<br>How can I apply for a waiver from the electronic reporting requirements?<br>How do I obtain Form FDA 1932 and Form FDA 2301? | 514.80(d) Format for Submissions. |
| How long must I maintain records and reports required by this section? | 514.80(e) Records to be maintained. |
| * * * * * | * |
| Where do I mail reports that are not required to be submitted electronically? | 514.80(g) Mailing addresses. |
| * * * * * | * |

* * * * *

(b) * * *

(1) * * * If the applicant elects to also report directly to the FDA's Center for Veterinary Medicine (CVM), the applicant must submit the report to CVM in electronic format as described in paragraph (d)(1) of this section, unless the applicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format.

(2) * * *

(i) * * * The report must be submitted to FDA in electronic format as described in paragraph (d)(1) of this section, unless the applicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format.

(ii) * * * A followup report must be submitted to FDA in electronic format as described in paragraph (d)(1) of this section, unless the applicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format. * * *

(3) * * * If the nonapplicant elects to also report directly to FDA, the nonapplicant must submit the report to FDA in electronic format as described in paragraph (d)(1) of this section, unless the nonapplicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format.

(4) * * *

(iv) * * *

(A) Product/manufacturing defects and adverse drug experiences not previously reported under § 514.80(b)(1) and (b)(2) must be reported individually to FDA in electronic format as described in paragraph (d)(1) of this section, unless the applicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format.

(B) * * *

(C) Reports of previously not reported adverse drug experiences that occur in postapproval studies must be reported individually to FDA in electronic format as described in paragraph (d)(1) of this section, unless the applicant obtains a waiver under paragraph (d)(2) of this section or FDA requests the report in an alternate format.

(v) * * * The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any reports previously submitted under paragraphs (b)(1), (b)(2), (b)(3), and (b)(4)(iv)(A) and (C) of this section, the method of analysis, and the interpretation of the results. The summaries must be submitted in a separate section within the periodic drug experience report.

* * * * *

(d) *Format for submissions.*—(1) *Electronic submissions.* Except as provided in paragraph (d)(2), reports submitted to FDA under paragraphs (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) of this section and reports submitted to CVM under paragraph (b)(1) of this section must be submitted in an electronic format that FDA can process, review, and archive. Data provided in electronic submissions must be in conformance with the data elements in Form FDA 1932 and FDA technical documents describing transmission. As necessary, FDA will issue updated technical documents on

how to provide the electronic submission (*e.g.,* method of transmission and processing, media, file formats, preparation, and organization of files). Unless requested by FDA, paper copies of reports submitted electronically should not be submitted to FDA.

(2) *Waivers.* An applicant or nonapplicant may request, in writing, a temporary waiver of the electronic submission requirements in paragraph (d)(1) of this section. The initial request may be by telephone or email to CVM's Division of Veterinary Product Safety, with prompt written followup submitted as a letter to the application(s). FDA will grant waivers on a limited basis for good cause shown. If FDA grants a waiver, the applicant or nonapplicant must comply with the conditions for reporting specified by FDA upon granting the waiver.

(3) *Paper forms.* If approved by FDA before use, a computer-generated equivalent of Form FDA 1932 may be used for reports submitted to the appropriate FDA District Office or local FDA resident post under paragraph (b)(1) and to FDA under (d)(2), and a computer-generated equivalent of Form FDA 2301 may be used for reports submitted to FDA under paragraph (b)(4). Form FDA 1932 may be obtained on the FDA website, by telephoning CVM's Division of Veterinary Product Safety, or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Veterinary Product Safety (HFV–240), 7500 Standish Pl., Rockville, MD 20855–2764. Form FDA 2301 may be obtained on the FDA website, by telephoning CVM's Division of Surveillance (HFV–210), or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance (HFV–210), 7500 Standish Pl., Rockville, MD 20855–2764.

* * * * *

(g) *Mailing addresses.* Three-day alert reports must be submitted to the appropriate FDA District Office or local FDA resident post. Addresses for District Offices and resident posts may be obtained on the FDA website. Other reports not required to be submitted to FDA in electronic format must be submitted to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855–2764.

* * * * *

Dated: February 6, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–02757 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50 and 51

**[EPA–HQ–OAR–2016–0347; FRL–9974–55–OAR]**

**RIN 2060–AT35**

## Response to June 1, 2016, Clean Air Act Section 126(b) Petition From Connecticut

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

**ACTION:** Notice of public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that a public hearing will be held on the EPA's proposed response to a June 1, 2016, petition submitted by the state of Connecticut pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that the Brunner Island Steam Electric Station located in York County, Pennsylvania, emits air pollution in amounts that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone national ambient air quality standard (NAAQS) in Connecticut. The hearing will be held on February 23, 2018, in Washington, DC. The EPA will issue its proposed response in the near future.

**DATES:** The public hearing will be held on February 23, 2018, in Washington, DC. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing.

**ADDRESSES:**

*Public Hearing.* The February 23, 2018 public hearing will be held at the EPA, William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW, Washington, DC 20004. Identification is required. If your driver's license is issued by Michigan, Minnesota, New York, Vermont or the state of Washington, you must present an additional form of identification to enter (*see* **SUPPLEMENTARY INFORMATION** for additional information on this location).

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA Docket Center Reading Room, William Jefferson Clinton West Building, 1301 Constitution Avenue NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** If you would like to speak at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS), Air Quality Planning Division (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than February 21, 2018. If you have any questions relating to the public hearing, please contact Ms. Long at the above number.

If you have questions concerning the June 1, 2016 petition, please contact Mr. Lev Gabrilovich, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS), Air Quality Planning Division, (C539–01), Research Triangle Park, NC 27711, telephone (919) 541–1496, email address *gabrilovich.lev@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the EPA's proposed response to the June 1, 2016, petition. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information that are submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period.

The public hearing will convene at 9:00 a.m. and end at 6:00 p.m. Eastern Time (ET) or at least two hours after the last registered speaker has spoken. The EPA will make every effort to accommodate all individuals interested in providing oral testimony. A lunch break is scheduled from 12:00 p.m. until 1:00 p.m. Please note that this hearing will be held at a U.S. government facility. Individuals planning to attend the hearing should be prepared to show valid picture identification to the

security staff in order to gain access to the meeting room. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by the states of Michigan, Minnesota, New York, Vermont or Washington, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. For additional information for the status of your state regarding REAL ID, go to *http://www.dhs.gov/real-id-enforcement-brief.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, and demonstrations will not be allowed on federal property for security reasons.

If you would like to present oral testimony at the hearing, please notify Ms. Pamela Long, U.S. Environmental Protection Agency, OAQPS, Air Quality Planning Division, (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than 4:00 p.m. ET on February 21, 2018. Ms. Long will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing.

Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Ms. Long if they will need specific equipment. Commenters should also notify Ms. Long if they need specific translation services for non-English speaking commenters.

The hearing schedule, including the list of speakers, will be posted on the EPA's Web at site *https://www.epa.gov/ozone-pollution/connecticut-126-petition* prior to the hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the action.

**How can I get copies of this document and other related information?**

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0347 (available at *http://www.regulations.gov*). The EPA has made available information related to the proposed action at this website: *https://www.epa.gov/ozone-pollution/connecticut-126-petition.*

**Panagiotis E. Tsirigotis,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2018–03171 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2017–0124; FRL–9973–35—Region 6]**

## Approval and Promulgation of Implementation Plans; Texas; Revisions to Permitting and Public Participation for Air Quality Permit Applications

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve four revisions to the Texas State Implementation Plan (SIP) on December 12, 2016 and February 21, 2017, specific to air quality permitting and public notice for air quality permit applications.

**DATES:** Written comments should be received on or before March 16, 2018.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0124, at *http://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

### I. Background

The Act at Section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160–51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified at 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. This proposed approval action will address four separate revisions to the Texas NSR SIP submitted on December 12, 2016 and February 21, 2017. On December 12, 2016, the Texas Commission on Environmental Quality (TCEQ) submitted a revision to the major NSR program to remove from the Texas SIP the Compliance History provisions at 30

TAC Sections 116.120–116.123, 116.125 and 116.126. On February 21, 2017, the TCEQ submitted three separate revisions to the Texas SIP revising the public notice provisions applicable to air quality permit applications.

## II. The EPA's Evaluation

The accompanying Technical Support Documents for this action include a detailed analysis of the submitted revisions to the Texas SIP. In many instances the revisions are minor or non-substantive in nature and do not change the intent of the originally approved SIP requirements. Following is a summary of our analysis for the submitted revisions.

### *A. Evaluation of the Repeal of Chapter 116 Compliance History Requirements*

The Chapter 116 Compliance History provisions were initially adopted by the State on June 17, 1998, at 30 TAC Sections 116.120–116.126. These revisions were submitted to the EPA as a SIP revision on July 22, 1998. The EPA approved these requirements into the SIP on September 18, 2002 at 67 FR 58697.

The TCEQ repealed the requirements of 30 TAC Section 116.124 on September 2, 1999. The EPA approved this repeal on January 6, 2014 at 79 FR 551. The TCEQ repealed the remaining provisions at 30 TAC Sections 116.120–116.123, 116.125 and 116.126 on August 7, 2002 and replaced the requirements with media neutral compliance history requirements under 30 TAC Chapter 60 pursuant to the requirements of Texas House Bill 2912. The TCEQ did not submit the repeal of 30 TAC Sections 116.120–116.123, 116.125 and 116.126 at the time of the state rulemaking. The repeal of these requirements was submitted on December 12, 2016 as Rule Project Number 2016–028–SIP–NR.

The repeal of the remaining compliance history provisions at 30 TAC Sections 116.120–116.123, 116.125 and 116.126 is approvable. This repeal was developed in accordance with the CAA and the State provided reasonable notice and public hearing. The repeal of these provisions will remove obsolete requirements from the Texas SIP. The EPA has determined it is appropriate to approve the repeal and removal of these provisions from the SIP since there are no federal requirements to include comparable provisions in a SIP. This repeal will have no negative impact on the Texas New Source Review program because the SIP-approved permit programs do not rely on the repealed Compliance History provisions. Therefore, we conclude that this repeal maintains consistency with federal requirements for SIP development and New Source Review permitting, and therefore, will not interfere with attainment or reasonable further progress.

### *B. Evaluation of the Revisions to Texas Public Notice Requirements*

On February 21, 2017, the TCEQ submitted three separate revisions to the Texas SIP revising the public notice provisions applicable to air quality permit applications. The revisions to 30 TAC Chapters 39 and 55 submitted under Rule Project No 2015–018–080–LS make non-substantive revisions to the existing SIP requirements. The revisions to repeal the Chapter 116 public notice provisions submitted under Rule Project No. 2016–026–116–AI remove obsolete requirements that have been replaced with the existing SIP public notice provisions in Chapter 39. The revisions to 30 TAC Chapter 39 and 55 submitted under Rule Project No. 2016–030–039–LS substantively revise the existing public notice SIP requirements for concrete batch plant standard permits such that the notice requirements are consolidated into one 30-day notice period that satisfies the requirements of minor NSR public participation. The EPA has determined it is appropriate to approve these three revisions to the Texas SIP because these revisions continue to be consistent with federal requirements for public notice and therefore, will not interfere with attainment or reasonable further progress.

## III. Proposed Action

We are proposing to approve revisions to the Texas SIP that revise the NSR permitting and public notice requirements. We have determined that the revisions submitted on December 12, 2016 were developed in accordance with the CAA and EPA's regulations, policy and guidance for NSR permitting. Therefore, under section 110 of the Act, the EPA proposes approval of the following revisions to the Texas SIP:

- Repeal of 30 TAC Section 116.120—Applicability—adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.121—Exemptions—adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.122—Contents of Compliance History—adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.123—Effective Dates—adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.125—Preservation of Existing Rights and Procedures—adopted on November 2, 2016, and submitted on December 12, 2016; and
- Repeal of 30 TAC Section 116.126—Voidance of Permit Applications—adopted on November 2, 2016, and submitted on December 12, 2016.

Additionally, we have determined that the revisions submitted on February 21, 2017, were developed in accordance with the CAA and EPA's regulations, policy and guidance for public notice for air permitting. Under section 110 of the Act, the EPA proposes to approve the following revisions into the Texas SIP:

- Revisions to 30 TAC Section 39.405 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.411 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.419 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.603 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 55.152 adopted on December 7, 2016, and submitted on February 21, 2017;
- Withdrawal of 30 TAC Section 55.156(e) from the Texas SIP as adopted on December 9, 2015, and submitted on February 21, 2017; and the
- Repeal of 30 TAC Sections 116.130–116.134, 116.136, and 116.137 from the Texas SIP as adopted on November 2, 2016 and submitted on February 21, 2017.

We also propose to revise the amendatory language at 40 CFR 52.2270(c) to identify specific provisions adopted by the State were not submitted for inclusion in the Texas SIP. We propose to revise the language at 40 CFR 52.2270(c) to clearly indicate that the Texas SIP does not include the revisions to 30 TAC Sections 39.405(h(1)(A) and 39.602(c) as adopted on December 9, 2015, or 30 TAC Section 39.411(e)(10) as adopted on December 7, 2016.

## IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* or at the EPA

Region 6 Office (please contact Adina Wiley for more information).

**V. Statutory and Executive Order Reviews**

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

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

Dated: February 7, 2018.

**Anne Idsal,**

*Regional Administrator, Region 6.*

[FR Doc. 2018–02891 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2016–0716; FRL–9973–42—Region 6]**

### Approval and Promulgation of Implementation Plans; Texas; Interstate Transport Requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve portions of three Texas State Implementation Plan (SIP) submittals pertaining to CAA requirements to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) in other states.

**DATES:** Written comments must be received on or before March 16, 2018.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0716, at *http://www.regulations.gov* or via email to *young.carl@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Carl Young, 214–665–6645, *young.carl@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

**FOR FURTHER INFORMATION CONTACT:** Carl Young, 214–665–6645, *young.carl@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Young or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

**I. Background**

*A. The $PM_{2.5}$ NAAQS and Interstate Transport of Air Pollution*

Under section 109 of the CAA, we establish NAAQS to protect human health and public welfare. In 1997, we established a new annual NAAQS for $PM_{2.5}$ of 15 micrograms per cubic meter ($\mu g/m^3$), and a new 24-hour NAAQS for $PM_{2.5}$ of 65 $\mu g/m^3$ (62 FR 38652, July 18, 1997). In 2006, we revised the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ (71 FR 61144, October 17, 2006).[1] The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to

[1] In 2012, we revised the annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$ (78 FR 3086, January 15, 2013). This proposal pertains to the 1997 and 2006 $PM_{2.5}$ NAAQS only.

contain ''good neighbor'' provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action reviews how the first two sub-elements of the good neighbor provisions at CAA section 110(a)(2)(D)(i)(I) were addressed in an infrastructure SIP submission from Texas for the 1997 and 2006 $PM_{2.5}$ NAAQS. These sub-elements require that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the applicable air quality standard in any other state.

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to $PM_{2.5}$ in several past regulatory actions. Most recently, in 2011 we promulgated the Cross-State Air Pollution Rule (CSAPR) in order to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to several NAAQS, including the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.[2]

CSAPR replaced the Clean Air Interstate Rule (CAIR) which was promulgated in 2005 for the 1997 $PM_{2.5}$ and 1997 ozone NAAQS (May 12, 2005, 70 FR 25172). CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more discussion on CSAPR and CAIR, please see EPA's August 8, 2011 CSAPR final rulemaking action (76 FR 48208).

To address Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS, CSAPR established Federal Implementation Plan (FIP) requirements for affected electric generating units (EGUs) in Texas, including emissions budgets that apply to the EGUs' collective annual emissions of sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_X$).[3] In July 2015, the D.C. Circuit issued a decision on a range of challenges to CSAPR in *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II)* denying most claims but remanding several CSAPR emissions budgets to the EPA for reconsideration, including the Phase 2 $SO_2$ budget for Texas.[4] To address the Phase 2 $SO_2$ budget remand we issued a final rule withdrawing the FIP provisions that required affected EGUs in Texas to participate in Phase 2 of the CSAPR trading programs for annual emissions of $SO_2$ and $NO_X$ (82 FR 45481, September 29, 2017). In that final rule we also determined that emissions [5] from sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 $PM_{2.5}$ NAAQS and that we therefore have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under CAA section 110(a)(2)(D)(i)(I) with regard to that NAAQS.

### *B. Texas SIP Submittals Pertaining to the $PM_{2.5}$ NAAQS and Interstate Transport of Air Pollution*

Relevant to this proposed action, Texas made the following SIP submittals to address CAA requirements to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states: (1) An April 4, 2008 submittal stating that the State had addressed any potential CAA section 110(a)(2) infrastructure issues associated with the 1997 $PM_{2.5}$ NAAQS, including the four sub-elements for interstate transport (CAA section 110(a)(2)(D)(i)), (2) a separate but similar May 1, 2008 submittal which discussed how the four sub-elements of the good neighbor provision were addressed with respect to the 1997 $PM_{2.5}$ NAAQS, and (3) a November 23, 2009 submittal which addressed all the CAA section 110(a)(2) infrastructure elements, including the four sub-elements of the good neighbor provision, for the 2006 $PM_{2.5}$ NAAQS. The SIP submittals may be accessed through the *www.regulations.gov* website (Docket EPA–R06–OAR–2016–0716). In these SIP revisions, Texas relied on its participation in the CAIR program to conclude that the State had addressed its obligation to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states.

For the reasons described below, this action proposes to approve the state's three SIP submittals with respect to the state's conclusions regarding the first two sub-elements of the good neighbor provisions at CAA section 110(a)(2)(D)(i)(I) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In 2011, we originally proposed to disapprove the portion of the November 23, 2009 submittal that intended to demonstrate that the SIP met the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS (71 FR 20602, April 13, 2011). However, in a separate **Federal Register** action published in conjunction with this current proposal we are withdrawing that original proposal and in this notice we now are proposing to approve the same portion of the submittal. *See* Docket No. EPA–R06–OAR–2011–0335 in *www.regulations.gov.*

## II. The EPA's Evaluation

Each of the above-referenced Texas SIP submittals relied on the State's participation in the CAIR allowance trading programs to support a conclusion that the Texas SIP had adequate provisions to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state. While CAIR was still in place at the time the State submitted its SIPs, the CAIR rule had been remanded by the D.C. Circuit in 2008 based on the Court's conclusion that the rule was ''fundamentally flawed'' and must be replaced ''from the ground up.'' *North Carolina,* 531 F.3d 929–30, *modified,* 550 F.3d 1176 (2008). Moreover, we began implementation of CSAPR in 2015, and therefore neither the states nor EPA are currently implementing the annual $SO_2$ and $NO_X$ trading program promulgated in CAIR. Accordingly, we cannot approve the State's SIP submissions based on the implementation of CAIR that sought to address the provisions of the good neighbor provision for any NAAQS. However, more recent information discussed in detail below, provides support for our proposed approval of the conclusions in the SIP submittals that the State will not significantly

[2] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

[3] With regard to the 2006 24-hour $PM_{2.5}$ NAAQS, we noted in the CSAPR final rule that (1) analysis shows that Texas would significantly contribute to nonattainment of the 24-hour $PM_{2.5}$ NAAQS in another state, but we did not promulgate a CSAPR FIP for Texas EGUs with respect to that standard; and (2) the CSAPR FIP requirements for Texas with regard to the 1997 annual standard would address the emissions in Texas that significantly contribute to nonattainment and interfere with maintenance of the 24-hour $PM_{2.5}$ NAAQS in another state (76 FR at 48243, 48214, August 8, 2011).

[4] *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* 795 F.3d 118, 138 (D.C. Cir. 2015). The court also remanded the Phase 2 $SO_2$ budgets for three other states and the Phase 2 ozone-season $NO_X$ budgets for eleven states, including Texas. *Id.*

[5] The term ''emissions'' refers to all anthropogenic emissions originating from the state, including EGU emissions.

contribute to nonattainment or interfere with maintenance of these NAAQS in any other state.

Air quality modeling conducted for the 2011 CSAPR rulemaking projected the effect of emissions on ambient air quality monitors (receptors). The modeling projected that a receptor located in Madison County, Illinois (monitor ID 171191007) would have difficulty attaining and maintaining both the 1997 and 2006 $PM_{2.5}$ NAAQS in 2012 (76 FR 48208, 48233 and 48235). The modeling also showed that Texas emissions were projected to contribute more than the threshold amount of $PM_{2.5}$ pollution necessary in order to be considered ''linked'' to the Madison County receptor for the 1997 and 2006 $PM_{2.5}$ NAAQS (76 FR 48208, 48239–43). This was the only $PM_{2.5}$ receptor with projected air quality problems to which Texas was found to be linked.

In CSAPR we used air quality projections for the year 2012, which was also the intended start year for implementation of the CSAPR Phase 1 EGU emission budgets, to identify receptors projected to have air quality problems. The CSAPR final rule record also contained air quality projections for 2014, which was the intended start year for implementation of the CSAPR Phase 2 EGU emission budgets. The 2014 modeling results projected that the Madison County receptor would have maximum ''design values'' of 15.02 μg/$m^3$ for annual $PM_{2.5}$ of and 35.3 μg/$m^3$ for 24-hour $PM_{2.5}$ before considering the emissions reductions anticipated from implementation of CSAPR.[6] These values are below the values of 15.05 and 35.5 μg/$m^3$ that we used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations in upwind states with regard to the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS, respectively (82 FR 45481, 45485–86, September 29, 2017).

As noted above, in our September 29, 2017 final rule addressing the remand for the annual $SO_2$ and $NO_X$ emissions budgets we determined that emissions from Texas sources will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 $PM_{2.5}$ NAAQS (82 FR 45481, September 29, 2017). As explained in the separate September 29, 2017 action, our 2014 base case modeling in the CSAPR final rule also showed that (1) the Madison County receptor was projected to no longer have air quality problems sufficient to trigger transport obligations with regard to the 2006 24-hour $PM_{2.5}$ NAAQS and (2) no other 24-hour $PM_{2.5}$ receptors with projected air quality problems were linked to Texas. Due to those findings, we now propose to determine that emissions from Texas sources will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. Given the determination for the 1997 annual $PM_{2.5}$ NAAQS made in the September 29, 2017 final rule and our proposed determination for the 2006 24 $PM_{2.5}$ NAAQS, we are now proposing to approve the portions of three Texas SIP submittals to the extent they conclude that the state has addressed interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states.

Based on our analysis of the modeling data from the 2011 CSAPR rulemaking provided above, we are proposing to approve the relevant portions of the Texas SIP submittals that Texas emissions will not significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states. It should be noted, as discussed above, that we are not proposing to approve the State's analyses to the extent they rely on the State's prior participation in the CAIR allowance trading program, nor are we are proposing to approve any Texas SIP revisions that pertain to implementation of CAIR.

## III. Proposed Action

We are proposing to approve portions of three Texas SIP submittals pertaining to the CAA section 110(a)(2)(D)(i)(I) requirements based on our conclusion, which is consistent with the state's ultimate conclusion, that emissions from Texas will not significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in other states. Specifically, we propose to approve (1) the portions of the April 4, 2008 and May 1, 2008 SIP submittals for the 1997 $PM_{2.5}$ NAAQS and (2) the portion of the November 23, 2009 submittal for the 2006 $PM_{2.5}$ NAAQS, as they pertain to CAA section 110(a)(2)(D)(i)(I).

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

[6] Design values are used to determine whether a NAAQS is being met. *See* projected 2014 base case maximum design values for Madison County, Illinois receptor 171191007 at pages B–41 and B–70 of the June 2011 Air Quality Modeling Final Rule Technical Support Document for CSAPR, Document ID No. EPA–HQ–OAR–2009–0491–4140, available in the docket for this proposed action.

tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

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

Dated: February 7, 2018.

**Anne Idsal,**

*Regional Administrator, Region 6.*

[FR Doc. 2018–02894 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2017–0389; FRL–9974–45—Region 4]**

## Air Plan Approval; KY: Removal of Reliance on Reformulated Gasoline in the Kentucky Portion of the Cincinnati-Hamilton Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted on September 13, 2017, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) in support of the Commonwealth's separate petition requesting that EPA remove the federal reformulated gasoline (RFG) requirements for Boone, Campbell, and Kenton counties in the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hr ozone maintenance area (hereinafter referred to as the ''Northern Kentucky Area'' or ''Area''). The SIP revision revises the Commonwealth's maintenance plan emissions inventory and associated motor vehicle emissions budgets (MVEBs) to remove reliance on emissions reductions from the federal RFG program requirements; a program that the Commonwealth voluntarily opted into in 1995. The SIP revision also includes a non-interference demonstration evaluating whether removing reliance on the RFG requirements in the Northern Kentucky Area would interfere with the requirements of the Clean Air Act (CAA or Act). EPA is proposing to approve this SIP revision and the corresponding non-interference demonstration because EPA has preliminarily determined that the revision is consistent with the applicable provisions of the CAA.

**DATES:** Comments must be received on or before March 7, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0389 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Myers can be reached via telephone at (404) 562–9207 or via electronic mail at *Myers.Dianna@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. What action is being proposed?

This rulemaking proposes to approve Kentucky's September 13, 2017, SIP revision in support of Kentucky's petition to opt-out of the federal RFG requirements in Boone, Campbell, and Kenton Counties.[1] Specifically, EPA is proposing to approve Kentucky's changes to the maintenance plan mobile emissions inventory and the associated MVEBs related to its redesignation request for the Kentucky portion of the Cincinnati-Hamilton 2008 8-hour ozone maintenance area to reflect removal of reliance on federal RFG requirements. As part of this proposed approval, EPA is also proposing to find that the Commonwealth has demonstrated that removing the federal RFG requirements in Boone, Campbell, and Kenton Counties will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standard) or with any other applicable requirement of the CAA.

On August 26, 2016, Kentucky submitted a 2008 8-hour ozone redesignation request and maintenance plan for the Cincinnati-Hamilton Area, which EPA approved on July 5, 2017 (82 FR 30976).[2] With its redesignation request, Kentucky included a maintenance demonstration plan that estimates emissions through 2030 that modeled RFG because Kentucky previously opted into the RFG program. However, through this SIP revision, KDAQ is updating the mobile (on-road and non-road) emissions inventory for that maintenance plan (including the MVEBs) to reflect Kentucky's petition to opt-out of the RFG requirements for Boone, Campbell, and Kenton counties in the Northern Kentucky Area. The updates are summarized in Kentucky's submittal.

In support of the September 13, 2017, SIP revision, Kentucky has evaluated whether removing reliance on the federal RFG requirements would interfere with air quality in the Area. To make this demonstration of noninterference, Kentucky completed a technical analysis, including modeling, to estimate the change in emissions that would result from removing RFG from Boone, Campbell, and Kenton Counties in the Northern Kentucky Area.

In the noninterference demonstration, Kentucky used EPA's Motor Vehicle Emissions Simulator (MOVES) to develop its projected emissions inventory according to EPA's guidance for on-road mobile sources using

[1] Pursuant to 40 CFR 80.72(b), the Governor must submit a petition to the EPA Administrator requesting removal of any opt-in areas from the federal RFG program. The petition must include certain specified information and any additional information requested by the Administrator. As fully described in section III below, if RFG is relied upon as a control measure in any approved SIP or plan revision, the federal RFG program opt-out regulations require that a SIP revision must be submitted. Kentucky's maintenance plan relied upon RFG; as a result, Kentucky submitted this SIP revision. The decision on whether to grant the opt-out petition pursuant to 40 CFR 80.72(b) is at the discretion of the Administrator and will be made through a separate action.

[2] The Cincinnati-Hamilton, OH-KY-IN Area is composed of portions of Boone, Campbell, and Kenton Counties in Kentucky; Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. This action only pertains to the Kentucky portion of the maintenance area.

MOVES version 2014a.[3] Future-year on-road mobile source emissions estimates for volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) for years 2020 and 2030 were generated with MOVES2014a without RFG. Emissions estimates were interpolated for the year 2025. The noninterference demonstration showed compliance with and maintenance of the 2008 8-hour ozone NAAQS by showing that current and future emissions of $NO_X$ and VOC remain at or below the 2014 base year emissions inventory without the use of RFG. For more detailed information on the current approved maintenance plan, see EPA's May 1, 2017 (82 FR 20297), proposed approval of Kentucky's maintenance plan for the 2008 8-hour ozone NAAQS.

In this action, EPA is proposing to approve the revision to the Commonwealth's maintenance plan emissions inventory and associated MVEBs to remove reliance on emissions reductions from the federal RFG program requirements, and to find that Kentucky's noninterference demonstration supports the conclusion that removal of reliance on federal RFG requirements in Boone, Campbell, and Kenton Counties in the Northern Kentucky Area will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

## II. What is the background for the Northern Kentucky area?

Northern Kentucky was included in the Cincinnati-Hamilton Area which was originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). In 1995, Kentucky voluntarily opted into the RFG program under Phase I of a two-phase nationwide program to reduce the volatility of commercial gasoline during the summer ozone season. Kentucky elected to stay in the program under Phase II which was more stringent than Phase I.

On July 18, 1997, EPA promulgated a revised 8-hr ozone standard of 0.08 parts per million (ppm). This standard was more stringent than the 1-hour ozone standard. On June 19, 2000 (65 FR 37879), the Cincinnati-Hamilton 1-hour nonattainment Area was redesignated as attainment for the 1-hour ozone NAAQS, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour ozone NAAQS. On April 30, 2004, EPA designated the Cincinnati-Hamilton OH-KY-IN Area under subpart 1 as a ''basic'' 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857).[4] On August 5, 2010 (75 FR 47218), the Kentucky portion of the Cincinnati-Hamilton 1997 8-hour ozone area was redesignated to attainment. On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm to provide increased protection of public health and the environment. *See* 73 FR 16436 (March 27, 2008). The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15.

Effective July 20, 2012, EPA designated any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data as a nonattainment area. *See* 77 FR 30088 (May 21, 2012). The Cincinnati-Hamilton, OH-KY-IN Area was designated as a marginal ozone nonattainment area.[5] *See* 40 CFR 81.318. Areas that were designated as marginal nonattainment areas were required to attain the 2008 8-hour ozone NAAQS as expeditiously as possible but no later than July 20, 2015, based on 2012–2014 monitoring data. On May 4, 2016 (81 FR 26697), EPA published its determination that the Cincinnati-Hamilton, OH-KY-IN Area had attained the 2008 8-hour ozone NAAQS by the attainment deadline.

## III. What is the history of the reformulated gasoline requirement?

The 1990 amendments to the CAA designed the RFG program to reduce ozone levels in the largest metropolitan areas in the country with the worst ground-level ozone or smog problems by reducing vehicle emissions of compounds that form ozone, specifically VOC. The 1990 CAA amendments, specifically section 211(k)(5), directed EPA to issue regulations that specify how gasoline can be ''reformulated'' so as to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants relative to the 1990 baseline fuel, and to require the use of such reformulated gasoline in certain ''covered areas.'' The Act defined certain nonattainment areas as ''covered areas'' which are required to use RFG and provided other areas with an ability to ''opt-in'' to the federal RFG program.[6] Of relevance here is CAA section 211(k)(6), which provides that upon application of the Governor of a State, the Administrator shall apply the prohibition contained in section 211(k)(5) for areas to ''opt-in'' to the federal RFG program. In 1993,[7] the Governor of the Commonwealth of Kentucky petitioned the Administrator to ''opt-in'' to the RFG program for the Northern Kentucky Area which consisted of Boone, Campbell, and Kenton Counties.

EPA first published regulations for the federal RFG program on February 16, 1994 (59 FR 7716). These regulations constituted Phase I of a two-phase nationwide program. A current listing of the RFG requirements for states can be found on EPA's website at: *https://www.epa.gov/gasoline-standards.* The federal RFG regulations also contain provisions, at 40 CFR 80.72, establishing criteria and procedures for opting out of the program for those states that had previously voluntarily opted into the program (''opt-out provisions''). For example, the opt-out provisions require that a governor, or his or her authorized representative, submit an opt-out petition to the Administrator of the Agency. The opt-out petition must include certain information, including a description of how, if at all, reformulated gasoline has been relied upon as a control measure in any state or local implementation plan or in any proposed plan that is pending before EPA. This would include, for example, attainment as well as maintenance plans. The petition must also include an explanation of whether the state is

[3] Kentucky used the NONROAD 2008 model within MOVES2014a to develop the non-road emissions inventory to reflect the emissions changes from removing RFG from the Northern Kentucky Area. Table 1 reflects the emissions changes.

[4] The 1997 8-hour ozone area included in its entirety Boone, Campbell, and Kenton Counties in Kentucky and Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana.

[5] The 2008 8-hr ozone area included portions of Boone, Campbell, and Kenton Counties; Butler, Clermont, Clinton, Hamilton and Warren Counties in its entirety in Ohio; and a portion of Dearborn County in Indiana.

[6] CAA section 211(k)(5) prohibits the sale of conventional gasoline (*i.e.,* gasoline that the EPA has not certified as reformulated) in certain ozone nonattainment areas beginning January 1, 1995. CAA section 211(k)(10)(D) defines the areas initially covered by the federal RFG program as ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. In addition, under CAA section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under CAA section 181(b) is also included in the federal RFG program.

[7] A copy of Kentucky's letter is included in the docket.

intending to submit a revision to an approved or pending plan that does not use RFG as a control measure, and a description of alternative air quality measures, if any, that will replace the use of RFG; a description of the current status of any proposed revision to an approved or pending plan that uses RFG; and a projected schedule for the plan revision submission. *See* 40 CFR 80.72(b)(3) and (b)(4).

On April 18, 2017, Kentucky submitted a petition to the EPA Administrator requesting to opt-out of the federal RFG program in the Northern Kentucky Area and as stated above, this SIP revision is submitted in support of that petition (particularly the requirements of 40 CFR 80.72(b)(3) and (b)(4)).[8] Kentucky's opt-out petition will be acted on by the Administrator in a separate action, and if approved in that separate action, will establish the effective date of the opt-out, which cannot be less than 90 days from the effective date of the approval of the SIP revision that is the subject of today's proposal. EPA will also publish a notice in the **Federal Register** to notify the public of the effective date of any opt-out approval.

## IV. What are the section 110(l) requirements?

The modeling associated with KDAQ's maintenance plan for the 2008 8-hour ozone NAAQS is premised upon the future-year emissions estimates for 2017, 2020, and 2030, which are based on the RFG requirement. To support Kentucky's requested SIP revision to remove the maintenance plan's reliance on the federal RFG requirements in Boone, Campbell, and Kenton Counties, the Commonwealth must demonstrate that the requested change will satisfy section 110(l) of the CAA. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. Kentucky submitted a non-interference demonstration with this SIP revision and EPA is proposing to find that the analysis demonstrates noninterference based on an evaluation of current air quality monitoring data and the information provided in the noninterference demonstration.

EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. EPA's section 110(l) analysis of the noninterference demonstration included as part of Kentucky's September 13, 2017, SIP revision is provided below.

## V. What is EPA's analysis of Kentucky's submittal?

a. Overall Preliminary Conclusions Regarding Kentucky's Noninterference Analyses

The RFG program is designed to reduce ozone levels and air toxics in areas that are required to or volunteered to adopt the program. RFG gasoline reduces motor vehicle emissions of the ozone precursors, $NO_X$ and VOC (mainly VOC), through fuel reformulation. On September 13, 2017, KDAQ submitted a SIP revision along with a corresponding noninterference demonstration to support Kentucky's separate petition to opt-out of the RFG requirements for Boone, Campbell, and Kenton Counties. This noninterference demonstration includes an evaluation of the impact that removing RFG from these counties would have on the Area's ability to attain or maintain the 2008 ozone NAAQS and any other NAAQS in the Kentucky Area.[9] Kentucky's noninterference analysis also evaluated the impact of the removal of RFG on the Area's ability to attain or maintain the ozone, particulate matter (PM),[10] nitrogen dioxide ($NO_2$), sulfur dioxide ($SO_2$), and carbon monoxide (CO) NAAQS.

KDAQ's noninterference analysis utilized EPA's MOVES2014a emission modeling system to estimate emissions for years 2017, 2020, and 2030 for on-road and non-road mobile sources. *See* Appendix E–1 and E–2 of the September 13, 2017, submittal for detailed modeling protocol.[11] The NONROAD2008 model within MOVES2014a was used to model the non-road sources. These mobile source emissions are used as part of the evaluation of the potential impacts to the NAAQS that might result exclusively from removing the RFG requirements. $NO_X$ and VOC emissions were calculated for a typical summer July day.

As summarized in Tables 1 and 2, below, the MOVES model projects small increases in on-road mobile source VOC and $NO_X$ emissions in the Northern Kentucky portion of the Cincinnati-Hamilton OH-IN-KY 2008 8-hour Ozone Area from removing the federal RFG requirements. On-road mobile sources include vehicles used on roads for transportation of passengers or freight. Daily on-road mobile VOC emissions are projected to increase by 0.25 ton in 2017 down to 0.05 ton in 2030 during the high ozone season.[12] Daily on-road $NO_X$ emissions are projected to increase by 0.29 ton in 2017 down to 0.06 ton in 2030. The modeling shows an overall downward trend in on-road emissions from removing RFG from the area. Daily VOC emissions decrease by 64.5 percent and daily $NO_X$ emissions decrease by 74.6 percent.

TABLE 1—ON-ROAD VOC EMISSIONS RFG VS. NON-RFG TONS PER SUMMER DAY

[TSD]

| Counties | 2014 | 2017 | | 2020 | | 2025 | | 2030 | |
|---|---|---|---|---|---|---|---|---|---|
| | RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG |
| Boone | 2.53 | 2.00 | 2.09 | 1.53 | 1.58 | 1.19 | 1.23 | 0.86 | 0.87 |
| Campbell | 1.58 | 1.18 | 1.23 | 0.90 | 0.93 | 0.70 | 0.73 | 0.51 | 0.52 |
| Kenton | 2.39 | 2.10 | 2.21 | 1.61 | 1.66 | 1.25 | 1.29 | 0.90 | 0.92 |

[8] A copy of the opt-out petition is included in the docket.

[9] The six NAAQS for which EPA establishes health and welfare based standards are CO, lead, $NO_2$, ozone, PM, and $SO_2$. RFG requirements do not have an impact on actual or modeled lead emissions.

[10] PM is composed of $PM_{2.5}$ and $PM_{10}$.

[11] The modeling results and original emissions inventories for the 2008 8-hr Redesignation Request and Maintenance Plan is included in the docket.

[12] High ozone season begins June 1st and ends September 15th of each year.

TABLE 1—ON-ROAD VOC EMISSIONS RFG VS. NON-RFG TONS PER SUMMER DAY—Continued
[TSD]

| Counties | 2014 | 2017 | | 2020 | | 2025 | | 2030 | |
|---|---|---|---|---|---|---|---|---|---|
| | RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG |
| NKY Totals [13] | 6.50 | 5.28 | 5.53 | 4.03 | 4.18 | 3.14 | 3.25 | 2.26 | 2.31 |
| Emissions Increase | | 0.25 | | 0.15 | | 0.11 | | 0.05 | |

TABLE 2—ON-ROAD $NO_X$ EMISSIONS RFG VS. NON-RFG TONS PER SUMMER DAY
[TSD]

| Counties | 2014 | 2017 | | 2020 | | 2025 | | 2030 | |
|---|---|---|---|---|---|---|---|---|---|
| | RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG | RFG | Non-RFG |
| Boone | 5.46 | 4.49 | 4.58 | 3.20 | 3.26 | 2.28 | 2.32 | 1.36 | 1.38 |
| Campbell | 3.41 | 2.55 | 2.60 | 1.82 | 1.86 | 1.30 | 1.32 | 0.77 | 0.78 |
| Kenton | 5.17 | 4.54 | 4.69 | 3.24 | 3.30 | 2.30 | 2.35 | 1.37 | 1.40 |
| NKY Totals | 14.04 | 11.58 | 11.87 | 8.26 | 8.42 | 5.88 | 5.99 | 3.50 | 3.56 |
| Emissions Increase | | 0.29 | | 0.16 | | 0.11 | | 0.06 | |

Tables 3 and 4, below, show the total projected emissions of VOC and $NO_X$ from all sectors in the Northern Kentucky portion of the Cincinnati-Hamilton OH-KY-IN 2008 8-hour Ozone Area. Kentucky's emissions inventory for its portion of the Area provides 2011 anthropogenic emissions data for $NO_X$ and VOC for the following general source categories: Point (Electric Generating Units and Non-Electric Generating Units and aircraft emissions),[14] area, non-road mobile, and on-road mobile. All emissions information provided is based on the partial county boundaries, through the applicable census tracts, that comprise the Kentucky portion of the Area. Tables 3 and 4, below, provides a summary of the emissions inventory.

Emissions reported for 2014 assume the use of RFG for Boone, Campbell, and Kenton Counties whereas emissions from 2017 through 2030 assume no RFG.

TABLE 3—TOTAL VOC EMISSIONS PROJECTIONS ALL SECTORS NORTHERN KENTUCKY AREA
[TSD]

| VOC | 2014 | 2017 | 2020 | 2025 | 2030 |
|---|---|---|---|---|---|
| BOONE: | | | | | |
| EGU | 0.16 | 0.16 | 0.16 | 0.16 | 0.16 |
| Non-EGU | 1.57 | 1.57 | 1.57 | 1.57 | 1.57 |
| Air | 0.42 | 0.44 | 0.45 | 0.26 | 0.06 |
| Non-road | *1.30 | **2.25 | **2.06 | **2.04 | **2.01 |
| Area | 2.56 | 2.46 | 2.41 | 2.38 | 2.36 |
| On-road | *2.53 | **2.09 | **1.58 | **1.23 | **0.87 |
| Total | 8.54 | 8.97 | 8.23 | 7.63 | 7.03 |
| CAMPBELL: | | | | | |
| EGU | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-EGU | 0.22 | 0.22 | 0.22 | 0.22 | 0.21 |
| Air | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-road | *0.34 | **0.55 | **0.50 | **0.49 | **0.48 |
| Area | 1.26 | 1.23 | 1.22 | 1.21 | 1.19 |
| On-road | *1.58 | **1.23 | **.93 | **0.73 | **0.52 |
| Total | 3.4 | 3.23 | 2.87 | 2.65 | 2.40 |
| KENTON: | | | | | |
| EGU | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-EGU | 0.51 | 0.50 | 0.49 | 0.48 | 0.47 |
| Air | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-road | *0.55 | **1.01 | **1.00 | **1.05 | **1.09 |
| Area | 2.43 | 2.35 | 2.31 | 2.28 | 2.25 |

[13] The totals in the column may differ slightly from the submittal due to how the decimal places were truncated.

[14] The emissions inventories in Kentucky's submission identify aircraft emissions as a standalone category and refer to these emissions as ''air emissions'' for consistency with the inventories provided by Indiana and Ohio for their respective portions of the Area. Indiana Department of Environmental Management (IDEM) provided aircraft emissions data for Kentucky, and Kentucky included these emissions in Boone County where the Cincinnati/Northern Kentucky International Airport is located. EPA has included these emissions within the point source category per the AERR.

TABLE 3—TOTAL VOC EMISSIONS PROJECTIONS ALL SECTORS NORTHERN KENTUCKY AREA—Continued
[TSD]

| VOC | 2014 | 2017 | 2020 | 2025 | 2030 |
|---|---|---|---|---|---|
| On-road | * 2.39 | ** 2.21 | ** 1.66 | ** 1.29 | ** 0.92 |
| Total | 5.88 | 6.07 | 5.46 | 5.10 | 4.73 |
| NKY Total | 17.82 | 18.27 | 16.56 | 15.38 | 14.16 |

* With RFG.
** Without RFG.

TABLE 4—TOTAL $NO_X$ EMISSIONS PROJECTIONS ALL SECTORS NORTHERN KENTUCKY AREA
[TSD]

| $NO_X$ | 2014 | 2017 | 2020 | 2025 | 2030 |
|---|---|---|---|---|---|
| BOONE: | | | | | |
| EGU | 7.23 | 7.46 | 7.71 | 7.96 | 8.33 |
| Non-EGU | 0.14 | 0.15 | 0.15 | 0.18 | 0.18 |
| Air | 2.07 | 2.18 | 2.29 | 1.29 | 0.29 |
| Non-road | * 0.88 | ** 1.60 | ** 1.33 | ** 1.17 | ** 1.00 |
| Area | 0.43 | 0.43 | 0.43 | 0.44 | 0.44 |
| On-road | * 5.46 | ** 4.58 | ** 3.26 | ** 2.32 | ** 1.38 |
| Total | 16.21 | 16.40 | 15.17 | 13.35 | 11.62 |
| CAMPBELL: | | | | | |
| EGU | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-EGU | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 |
| Air | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-road | * 0.32 | ** 0.53 | ** 0.45 | ** 0.40 | ** 0.35 |
| Area | 0.49 | 0.49 | 0.49 | 0.49 | 0.49 |
| On-road | * 3.41 | ** 2.60 | ** 1.86 | ** 1.32 | ** 0.78 |
| Total | 4.39 | 3.79 | 2.97 | 2.38 | 1.79 |
| KENTON: | | | | | |
| EGU | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-EGU | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| Air | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Non-road | * 0.64 | ** 1.12 | ** 0.93 | ** 0.83 | ** 0.73 |
| Area | 1.02 | 1.02 | 1.02 | 1.02 | 1.02 |
| On-road | * 5.17 | ** 4.69 | ** 3.30 | ** 2.35 | ** 1.40 |
| Total | 6.84 | 6.84 | 5.26 | 4.20 | 3.15 |
| NKY Total | 27.44 | 27.03 | 23.40 | 19.93 | 16.56 |

* With RFG.
** Without RFG.

There were little to no changes in $NO_X$ and VOC emissions from the point source categories that would impact the RFG removal in the Northern Kentucky Area. The original point source categories inventory contains actual point source emissions data for facilities located within the nonattainment boundary for the Kentucky portion of the Area based on the Kentucky Emissions Inventory database.[15]

Area sources are small emission stationary sources which, due to their large number, collectively have significant emissions (*e.g.,* dry cleaners, service stations). The modeling results show a reduction in VOC emissions and little to no change in $NO_X$ emissions by removing RFG from these sources

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.,* lawn mowers, construction equipment, and railroad locomotives). Modeling results indicate there are slight VOC emissions increases from removing RFG. From 2017 to 2030, the VOC emissions increases fall within a range of 0.22 tsd to 0.24 tsd in the Northern Kentucky Area. The $NO_X$ emissions remain the same from 2017 to 2030 when RFG is removed. *See* Appendix E–2 of the submittal.[16]

Overall, the modeling shows VOC emissions decrease from the 2014 attainment year to the 2030 ''out year'' by 3.66 tsd which is a 20.5 percent reduction. $NO_X$ emissions also decrease from the 2014 attainment year to the 2030 ''out year'' by 10.88 tsd which is a 39.7 percent $NO_X$ reduction without RFG in the Northern Kentucky portion of the Cincinnati-Hamilton OH-KY-IN Area 2008 8-hour Ozone Area.

b. Noninterference Analysis for the Ozone NAAQS

As a previous 1-hour ozone nonattainment area, Kentucky opted Boone, Campbell, and Kenton Counties into the federal RFG requirements for high ozone season gasoline to help bring the area into attainment for the 1-hour ozone NAAQS. This control measure

[15] As discussed above, EPA has included aircraft emissions within the point source category per the AERR.

[16] Appendix E–2 of the September 13, 2017 submittal details the increases in non-road emissions with and without RFG.

continues to apply in the Northern Kentucky Area because the Commonwealth did not, until now, petition for the removal of the federal RFG requirements. The RFG program has contributed toward lowering VOC and $NO_X$ emissions in the Northern Kentucky Area. Implementation of federal control measures such as Tier 3 Motor Vehicle Emissions and Fuel Standards,[17] Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements,[18] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles-Phase 2,[19] and Model Year 2017 and Later Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards,[20] along with fleet turnover, further reduced $NO_X$ and VOC emissions in the area. As a result, the Northern Kentucky Area was redesignated to attainment for the 1-hour ozone NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. The Northern Kentucky Area is continuing to meet the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS, even though these NAAQS have been revoked,[21] as well as the 2008 8-hour ozone NAAQS, based on recent air quality monitoring data.[22] The 2008 ozone NAAQS is met when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years is 0.075 ppm or less. The 2015 ozone NAAQS, as published in a final rule on October 26, 2015 (80 FR 65292), is met when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years is 0.070 ppm or less. The trend in monitoring levels for ozone for the Northern Kentucky portion of the Cincinnati-Hamilton OH-KY-IN Area is shown in Table 5, with the current monitoring levels for the Boone and Kenton County monitors for the period of 2014–2016 being 0.062 ppm and 0.070 ppm, respectively.

TABLE 5—MONITORING LEVEL CONCENTRATIONS FOR THE NORTHERN KENTUCKY AREA

[ppm]

| Location | Site ID | 4th Highest 8-hour ozone value (ppm) | | | | 3-Year design values (ppm) | 3-Year design values (ppm) |
|---|---|---|---|---|---|---|---|
| | | 2013 | 2014 | 2015 | 2016 | 2013–2015 | 2014–2016 |
| Boone, KY | 21–015–0003 | 0.059 | 0.062 | 0.063 | 0.061 | 0.061 | 0.062 |
| Campbell, KY | 21–037–3002 | 0.072 | 0.071 | 0.071 | 0.068 | 0.071 | 0.070 |

EPA also evaluated the potential increase in the VOC and $NO_X$ precursor emissions and whether it is reasonable to conclude that the requested removal of the RFG requirements in Northern Kentucky during the high ozone season would cause the Area to violate any ozone NAAQS. Table 5 shows that there is an overall downward trend in ozone concentrations in the Northern Kentucky Area. This decline can be attributed to federal and state programs in addition to those mentioned above that have led to significant emissions reductions in ozone precursors, such as the federal interstate transport rule known as the Cross State Air Pollution Rule (CSAPR), federal standards in on-road and non-road mobile source sectors such as the Corporate Average Fuel Economy (CAFE) standards (*See* 75 FR 25324), and Tier Motor Vehicle Emissions and Fuel Standards (79 FR 23414). Given the results of Kentucky's emissions analysis, the downward trend in precursor emissions, and the current ozone concentrations in the Northern Kentucky Area, EPA is proposing to find that removing reliance on RFG requirements in Boone, Campbell, and Kenton Counties will not interfere with Kentucky's ability to maintain the 2008 8-hour ozone NAAQS.

c. Noninterference Analysis for the Carbon Monoxide NAAQS

EPA initially established NAAQS for CO on April 30, 1971 (36 FR 8186). The standards were set at 9 ppm as an 8-hour average and 35 ppm as a 1-hour average, neither to be exceeded more than once per year. On November 6, 1971 (56 FR 56694), EPA designated areas for the 8-hour CO NAAQS. The Northern Kentucky counties of Boone, Campbell, and Kenton have never been designated nonattainment for any CO NAAQS. EPA retained the 1-hour and 8-hour CO NAAQS on August 31, 2011, and Kentucky has continued to maintain compliance with the NAAQS due to non-RFG federal control measures put in place. RFG requirements will have little to no impacts on CO emissions because, as mentioned earlier, the RFG program was developed to address emissions of the ozone precursors, $NO_X$ and VOC. As a result, EPA is proposing to find that removing reliance on RFG requirements in Boone, Campbell, and Kenton Counties will not interfere with Kentucky's ability to continue attaining the CO NAAQS.

d. Noninterference Analysis for the Particulate Matter NAAQS

The main precursor pollutants for $PM_{2.5}$ are $NO_X$, $SO_2$, VOC, and ammonia. As mentioned above, the federal RFG requirements result in emissions benefits for VOC, $NO_X$ and air toxics. Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS a number of times. On July 16, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 62 FR 36852 (July 18, 1997). On September 21, 2006, EPA retained the 1997 Annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ but revised the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$, based again on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). The 1997 Annual $PM_{2.5}$ NAAQS has been revoked for all purposes effective October 24, 2016 (81 FR 58010). On December 14, 2012, EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ but revised the annual primary $PM_{2.5}$ NAAQS to 12.0 $\mu g/m^3$, based again on a 3-year average of annual mean $PM_{2.5}$

[17] 79 FR 23414.

[18] 66 FR 5002.

[19] 81 FR 73478.

[20] 77 FR 62624.

[21] 70 FR 44470 and 80 FR 12264, respectively.

[22] On May 4, 2016 (81 FR 26697), EPA determined the Cincinnati-Hamilton, OH-KY-IN Area attained the 2008 8-hr ozone NAAQS by the attainment date.

concentrations. *See* 78 FR 3086 (January 15, 2013). The Northern Kentucky area was designated as unclassifiable/attainment on April 15, 2015 (80 FR 18535).

$PM_{2.5}$ levels across Kentucky declined from 1999 to 2016. In 2016, there were 19 $PM_{2.5}$ monitors in Kentucky including one in Campbell County. The Campbell County $PM_{2.5}$ monitor calculated a 3-weighted average design value of 8.9 μg/m³. The largest sources of $PM_{2.5}$ in Kentucky are from fires, agriculture, dust, fuel combustion, and industrial processes.[23] Moreover, there have been a number of studies which have indicated that $SO_2$ is the primary driver of $PM_{2.5}$ formation in the Southeast.[24] Opting out of the RFG requirements in the Area will have little to no impact on the precursor emissions as indicated by the decline in VOC and $NO_X$ emissions in Tables 3 and 4 above.

Based on this information and the current attainment status of the Cincinnati-Hamilton OH-KY-IN 2012 p.m.$_{2.5}$ Area, EPA is proposing to find that removing reliance on RFG requirements in Boone, Campbell, and Kenton Counties will not interfere with Northern Kentucky's ability to maintain the 2012 $PM_{2.5}$ NAAQS.

e. Noninterference Analysis for the 2010 $NO_2$ NAAQS

On February 9, 2010 (75 FR 6474), EPA strengthen the $NO_2$ standards. All of the counties in Kentucky were designated unclassifiable/attainment for the 2010 $NO_2$ NAAQS on February 17, 2012 (77 FR 9532). There are both primary and secondary standards for $NO_2$. The primary NAAQS is an annual arithmetic mean that must not exceed 53 parts per billion (ppb). A 3-year average of the 98th percentile of daily maximum 1-hr averages must not exceed 100 ppb. The secondary standard is an annual arithmetic mean that must not exceed 53 ppb. In 2016, Kentucky operated seven $NO_2$ monitors, including one in Campbell County. The 2014–2016 1-hr average design value for the Campbell County $NO_2$ monitor is 30 ppb, with an annual mean of 2.31 ppb. Both of these values are significantly below the respective standards of 100 ppb and 53 ppb. Based on the technical analysis in Kentucky's September 13, 2017, noninterference demonstration, as shown in Table 4, there is a reduction in $NO_X$ emissions from the 2014 attainment year to the 2030 ''out year'' from 27.44 tsd to 16.56 tsd which is a 39.7 percent reduction overall.

Based on the amount of $NO_X$ reductions, the use of pollution control devices on power plants, industrial boilers, fleet turnover, and other federal control measures for motor vehicles, EPA is proposing to find that removing reliance on RFG requirements in Boone, Campbell and Kenton Counties will not interfere with Kentucky's ability to continue attaining the 2010 $NO_2$ NAAQS in the Northern Kentucky Area.

f. Noninterference Analysis for the $SO_2$ NAAQS

On June 22, 2010 (75 FR 35520), EPA revised the $SO_2$ standard. There are both primary and secondary standards for $SO_2$. The primary $SO_2$ NAAQS is a 3-year average of the 99th percentile of the daily maximum 1-hour concentration not to exceed 75 ppb. The secondary standard is a 3-hour concentration not to exceed 0.5 ppm more than once per year. In 2016, Kentucky operated 12 $SO_2$ monitors, including one in Campbell County. The Campbell County $SO_2$ monitor has a 2014–2016 design value of 30 ppb for the 1-hour $SO_2$ NAAQS.

Based on the monitoring/modeling data, EPA is proposing to find that removing reliance on RFG requirements in Boone, Campbell, and Kenton Counties will not interfere with Kentucky's ability to maintain the $SO_2$ NAAQS.

## VI. Proposed Action

EPA is proposing to approve Kentucky's revision to its maintenance plan and corresponding noninterference demonstration, submitted on September 13, 2017, in support of Kentucky's separate petition to opt-out of the federal RFG requirements for Boone, Campbell, and Kenton Counties. Specifically, EPA is proposing to find that this change in removing reliance on the federal RFG requirements for Boone, Campbell, and Kenton Counties will not interfere with attainment or maintenance of the NAAQS or with any other applicable requirement of the CAA. Kentucky's September 13, 2017, SIP revision updates its maintenance plan and the associated MVEBs related to Kentucky's redesignation request for the Kentucky portion of the 2008 Cincinnati-Hamilton OH-IN-KY 8-hour Ozone Area to reflect emissions changes for opting out of the federal RFG requirements. EPA is proposing to approve the changes to update the 2008 maintenance plan and associated 2020 and 2030 MVEBs. The same criteria used to develop the MVEBs in the original SIP are used for this SIP revision. *See* Table 6 below.

TABLE 6—UPDATED MVEBS FOR THE KENTUCKY PORTION OF CINCINNATI-HAMILTON, OH-KY-IN AREA

[TSD]

| | 2020 | | 2030 | |
|---|---|---|---|---|
| | $NO_X$ | VOC | $NO_X$ | VOC |
| On-Road Emissions | 8.42 | 4.17 | 3.56 | 2.31 |
| Safety Margin | .61 | .19 | 1.63 | .55 |
| MVEBs with Safety Margin | 9.03 | 4.36 | 5.19 | 2.86 |

EPA has preliminarily determined that Kentucky's September 13, 2017, SIP revision is consistent with the applicable provisions of the CAA, including section 110(l). In this action, EPA is not proposing to act on the Commonwealth's opt-out petition to the EPA Administrator to remove the federal RFG requirement for Boone, Campbell, and Kenton Counties. Any decision by the Administrator on the opt-out petition would occur in a separate action.

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

[23] *https://www.epa.gov/air-emissions-inventories/air-emissions-sources.*

[24] *See, e.g., Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States,* Journal of Environmental Engineering (June 24, 2009), available at: *http://www.sciencedirect.com/science/article/pii/S0301479709001893?via%3Dihub.*

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve changes to the Commonwealth's maintenance plan emissions inventory and associated MVEBs to remove reliance on emissions reductions from the federal RFG program requirements. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

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

Dated: February 6, 2018.

**Onis ''Trey'' Glenn, III,**

*Regional Administrator, Region 4.*

[FR Doc. 2018–03078 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2011–0335; FRL–9973–43—Region 6]**

### Approval and Promulgation of Implementation Plans; Texas; Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-hour $PM_{2.5}$ NAAQS; Withdrawal of Proposed Rule

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

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is withdrawing its proposed rule to disapprove the portion of the November 23, 2009 Texas State Implementation Plan (SIP) submittal that intended to demonstrate that the SIP met Clean Act (CAA) requirements to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) in other states.

**DATES:** The proposed rule published on April 13, 2011 (76 FR 20602) is withdrawn as of February 14, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0335. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, (214) 665–6645, *young.carl@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In an April 13, 2011 action EPA proposed to disapprove the portion of a November 23, 2009 Texas SIP submittal that intended to demonstrate that the SIP met the requirements of CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states (76 FR 20602). EPA is now withdrawing the proposal. In a separate **Federal Register** action published in conjunction with this withdrawal EPA is proposing to approve this portion of the SIP submittal. The rationale for the proposed approval is detailed in that proposal.

Dated: February 7, 2018.

**Anne Idsal,**

*Regional Administrator, Region 6.*

[FR Doc. 2018–02893 Filed 2–13–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Part 1304

**RIN 0970–AC63**

### Head Start Designation Renewal System Improvements

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Request for comments; re-issue.

**SUMMARY:** OHS issues this request for comments to invite public feedback on information we inadvertently omitted from the ''CLASS Condition of the Head Start Designation Renewal System,'' request for comments, published on December 8, 2017. The document withdrawing the ''CLASS Condition of the Head Start Designation Renewal System'' request for comments is published elsewhere in this issue of the **Federal Register**. This request for comments is similar to the withdrawn publication in that it invites the public to comment on specific changes OHS is considering for the CLASS condition, as well as other Designation Renewal System (DRS) conditions and processes more broadly. Additionally, OHS seeks

comments on ways it can: Incentivize robust competition to include new applicants, facilitate smooth transitions when there is a new grantee as a result of competition, and improve the DRS processes. The comment period is 30 days to allow for the public to address the additional issues in this reissued request for comments. We will consider comments submitted under the ''CLASS Condition of the Head Start Designation Renewal System'' request for comments.

**DATES:** Submit comments by March 16, 2018.

**ADDRESSES:** You may send comments, identified by [docket number and/or RIN number], by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow instructions for sending comments. We prefer to receive comments via this method.
- *Mail:* Office of Head Start, Attention: Colleen Rathgeb, Director, Division of Planning, Oversight and Policy, 330 C Street SW, Washington, DC 20024.

*Instructions:* All submissions received must include our agency name and the docket number or Regulatory Information Number (RIN) for this notice. All comments will be posted without change to *https://www.regulations.gov,* including any personal information provided. We accept anonymous comments. If you wish to remain anonymous, enter ''N/A'' in the required fields.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Director, Division of Planning, Oversight and Policy, Office of Head Start, [*colleen.rathgeb@acf.hhs.gov*], (202) 358–3263 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

**SUPPLEMENTARY INFORMATION:** Consistent with the December 8, 2017, publication (82 FR 57905), OHS invites public comment on several specific changes being considered for the CLASS condition of the DRS as outlined in the Head Start Program Performance Standards. We also invite public comment on other improvements to the DRS based on feedback from stakeholders, grantees, and the results of the DRS implementation evaluation. In particular, we are considering changes to the CLASS condition with a goal of improving implementation and transparency of the DRS. Changes being considered include removal of the ''lowest 10 percent'' provision of the CLASS condition, an increase of the minimum thresholds for the Emotional Support and Classroom Organization domains to a score of 5, removal of the minimum threshold for the Instructional Support domain, and establishment of authority for the Secretary to set an absolute minimum threshold for the Instructional Support domain prior to the start of each fiscal year to be applied for DRS CLASS reviews in the same fiscal year. OHS requests feedback on these possible changes and alternative changes to the CLASS condition. Particularly in ways the Instructional Support and other thresholds could be set and/or adjusted that would incentivize continuous program improvement while acknowledging the current state of the field. OHS also invites feedback on other conditions of the DRS and the way it is implemented.

## Background Information

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive education and child development services to economically disadvantaged children, from birth to age five, and families and to help young children develop the skills they need to be successful in school. Our agencies provide these families comprehensive services to support children's cognitive, social, and emotional development. In addition to education services, agencies provide children and their families with health, nutrition, social, and other services.

To drive program quality improvement, the *Improving Head Start for School Readiness Act of 2007,* Public Law 110–134, (the Act) required HHS to develop a system to facilitate designation of Head Start grantees delivering a high-quality and comprehensive program for a period of 5 years and required grantees not delivering high-quality and comprehensive services to enter open competition for continued funding. Prior to the Act, when HHS designated a Head Start agency, it remained a Head Start grantee indefinitely unless the grantee either relinquished funding or HHS terminated its grant.

To meet the requirement in the Act, HHS established the DRS, which is described in 45 CFR 1304.10 through 16. The DRS includes seven conditions. If an agency meets any of the seven conditions, it must compete with other providers in the community for renewed grant funding. The seven conditions are: (1) A deficiency under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, utilize, and analyze children's progress on agency-established School Readiness goals; (3) scores below minimum thresholds in the Classroom Assessment Scoring System: Pre-K (CLASS) domains or in the lowest 10 percent in any of the three domains of the agencies monitored in a given year unless the average score is equal to or above the standard of excellence; (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualified from the Child and Adult Care Food Program; or (7) an audit finding of at risk for failing to continue as ''a going concern.'' The Act also requires HHS to periodically evaluate whether or not the DRS criteria are applied in a manner that is transparent, reliable, and valid.

Section 641(c)(1)(D) of the Act requires the DRS to be based in part on classroom quality as measured under section 641A(c)(2)(F), which refers to a valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability that assesses classroom quality. To include assessing multiple dimensions of teacher-child interactions that is linked to positive child development and later achievement. The third condition of the DRS is based on use of the CLASS, which is an observational measurement tool for assessing the quality of teacher-child interactions and classroom processes in three broad domains that support children's learning and development: Emotional Support, Classroom Organization, and Instructional Support.

## Changes to DRS Under Consideration

Since HHS established the DRS, all grantees that had indefinite project periods have completed the DRS process. Based on CLASS data, observations collected throughout these cohorts, results of a recent evaluation, and feedback from the community, we are considering changes to the DRS in order to better improve implementation of the system, including changes to the CLASS condition.

## The CLASS Condition

There are concerns about some aspects of the CLASS condition of the DRS that have been raised by Head Start grantees as well as in the recent evaluation. First, the requirement for grantees with the lowest 10 percent of scores on any of the three CLASS domains to compete may not be optimally targeting the grantees for competition with the lowest measures of classroom quality. For example, grantees have been required to compete due to an Emotional Support score of

5.69, which is very close to the Standard of Excellence (a 6—which developers of the CLASS deem the highest quality). In addition, grantees scoring slightly higher than the minimum threshold in Instructional Support (*e.g.,* score of 2.3) do not have to compete unless they fall into the lowest 10 percent of all grantees' scores for Instructional Support, which has been very close to the minimum threshold. We are considering an approach to establish higher specific thresholds that demonstrate an established acceptable level of quality in Emotional Support and Classroom Organization and an adjustable threshold for the Instructional Support domain where there is the greatest potential and need for program improvement.

Second, we understand that the delay between completion of the CLASS review and grantees knowing their DRS designation status, due to the need to collect and analyze a full monitoring year's CLASS scores to determine the lowest 10 percent. This creates uncertainty, stress, and concern among grantees, grantee staff, and families. Because classroom quality in Head Start programs is improving as demonstrated by recent analysis of data from the 2006, 2009, and 2014, cohorts of the Head Start Family and Child Experiences Survey (FACES),[1] we are exploring options for the CLASS condition that would better balance an ability to drive quality improvement over time with an approach that would be more transparent, timely, and less burdensome for programs.

To inform our development of a notice of proposed rulemaking to change the DRS CLASS condition to meet the objectives described above, we are requesting public comments on several specific changes being considered. The changes under consideration are as follows:

1. Remove the ''lowest 10 percent'' provision of the CLASS condition described in 45 CFR 1304.11(c)(2).

2. Increase the minimum threshold described in 45 CFR 1304.11(c)(1)(i) for the Emotional Support domain from 4 to 5.

3. Increase the minimum threshold described in 45 CFR 1304.11(c)(1)(ii) for Classroom Organization from 3 to 5.

4. Remove the minimum threshold for the Instructional Support domain described in 45 CFR 1304.11(c)(1)(iii) and instead provide authority for the Secretary to set an absolute minimum threshold for the Instructional Support domain, considering the most recent CLASS data, by August 1 of each year to be used for CLASS Reviews conducted in the following fiscal year (October 1 through September 30).

Together, these changes would allow grantees to know by August 1, before CLASS Reviews are conducted for the coming fiscal year, the exact threshold of classroom quality in each of the three domains that will be used to determine which grantees will be subject to an open competition for funding and which grantees will receive renewed funding non-competitively. Grantees would no longer have to wait until several months following the conclusion of the CLASS reviews for the fiscal year (September 30) to learn the lowest 10 percent cutoff in each of the 3 domains. Setting minimum thresholds of 5 in the Emotional Support and Classroom Organization domains would set a clear and consistent expectation of quality for all Head Start programs. Allowing the Secretary to set the minimum threshold in the Instructional Support domain prior to the start of each program year and monitoring year would allow for consideration of the most recent CLASS data for Head Start grantees while still supporting continuous quality improvement across the program as a whole.

**Other Areas of Improvement**

In addition to the CLASS condition, we are interested in receiving feedback about other conditions and improvements that could be made to DRS. This includes actions we can take without regulatory changes to ensure the DRS process is transparent, timely, and results in higher quality programs.

To inform our development of a notice of proposed rulemaking and continue improving the DRS, we are specifically requesting comments on:

- Changes OHS can make to incentivize robust competition, including ways OHS can ensure there are new and quality applicants at the local level;
- Changes OHS can make to facilitate an orderly transition between grantees without disrupting services for children (when recompetition is required and the incumbent does not regain its grant); and,
- Any other administrative changes OHS can make to the system that do not require regulatory changes, including changes to monitoring processes and timing of notifications and awards.

**What We Are Looking for in Public Comments**

We invite comments about the specific changes being considered for the DRS CLASS condition as well as alternatives to these changes that would continue to improve program quality, while balancing the need to continue to provide transparency to grantees about what they will be measured on and being mindful of burden on grantees. We also invite comments about any unintended consequences of removing the lowest 10 percent condition and whether an absolute threshold could influence scores. We are particularly interested in recommendations related to how the Secretary would consider establishing the minimum threshold for Instructional Support, including in what increments to raise the threshold, what data to base the absolute thresholds on, and how often to revise the threshold. For example, the regulation could establish an initial Instructional Support threshold (*e.g.,* 2.3 or 2.5) that could be raised in increments of 0.1 based on certain criteria related to the available CLASS data from all prior years of Head Start monitoring, or the threshold could be set one standard deviation below the mean Instructional Support score over the 3 or 5 previous fiscal years. We are interested in other ideas of ways the Instructional Support threshold could be set and/or adjusted that would incentivize program improvement while acknowledging the current state of the field. We are also interested in feedback on another potential change to establish or maintain a minimum absolute threshold (such as a 2) that would require competition and a higher threshold (such as 2.5 or 3) and require grantees to focus on quality improvement before they were reevaluated to see if their Instructional Support score has improved. Only grantees without improvement or still below the threshold would then have to compete. We are also interested in whether we should align the approach for Instructional Support with the other CLASS domains. We are interested in feedback on each of these possible approaches as well as others suggested by the field.

If commenters do not support the changes being considered, comments offering alternative proposals to the CLASS condition, whether changes to the absolute thresholds or the relative 10 percent threshold, or to other conditions of the DRS would be particularly helpful.

We are also particularly interested in soliciting feedback on other changes to DRS implementation that would spur

[1] Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). Tracking Quality in Head Start Classrooms: FACES 2006 to FACES 2014. Washington, DC: U.S. Department of Health and Human Services.

local competition and improve the DRS process for grantees.

**Ann Linehan,**

*Acting Director, Office of Head Start.*

[FR Doc. 2018–02902 Filed 2–13–18; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Part 1304

**RIN 0970–AC63**

## CLASS Condition of the Head Start Designation Renewal System

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Request for comments; withdrawal

**SUMMARY:** OHS withdraws the ''CLASS Condition of the Head Start Designation Renewal System'' request for comments, published in the **Federal Register** on December 8, 2017. OHS simultaneously issues the ''Head Start Designation Renewal System Improvements'' request for comments, located elsewhere in the same issue of the **Federal Register**. The ''Head Start Designation Renewal System Improvements'' request for comments contains information we inadvertently omitted from the ''CLASS Condition of the Head Start Designation Renewal System'' request for comment publication.

**DATES:** As of February 14, 2018, the proposed rule published December 8, 2017, at 82 FR 57905, is withdrawn.

**ADDRESSES:** Division of Planning, Oversight and Policy, Office of Head Start, 330 C Street SW, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Director, Division of Planning, Oversight and Policy, Office of Head Start, [*colleen.rathgeb@acf.hhs.gov*], (202) 358–3263 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

**SUPPLEMENTARY INFORMATION:** OHS published the ''CLASS Condition of the Head Start Designation Renewal System'' request for comments on December 8, 2017, to solicit comments from the public on changes we are considering to the Designation Renewal System (DRS). We unintentionally omitted language from the document that specifically asks the public to consider what changes OHS can make to incentivize robust competition and to facilitate orderly transitions between grantees when an incumbent does not regain its grant after competition, as well as any other administrative changes that do not require regulatory action.

We believe public feedback on the omitted language is important and can help us make better informed decisions about the DRS. For that reason, we withdraw the ''CLASS Condition of the Head Start Designation Renewal System'' request for comments, and we are publishing a new request for comments, titled ''Head Start Designation Renewal System Improvements,'' elsewhere in this issue of the **Federal Register**.

Dated: February 7, 2018.

**Ann Linehan,**

*Acting Director, Office of Head Start.*

[FR Doc. 2018–02901 Filed 2–13–18; 8:45 am]

**BILLING CODE 4184–01–P**

# Notices

Federal Register
Vol. 83, No. 31
Wednesday, February 14, 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.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2018–0005]**

### Notice of Request for Revision to and Extension of an Approval of an Information Collection; Importation of Eggplant From Israel

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision to and extension of an approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of eggplant from Israel into the continental United States.

**DATES:** We will consider all comments that we receive on or before April 16, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0005.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0005* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call 202–799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the importation of eggplant from Israel, contact Mr. Hesham Abuelnaga, Trade Director, Africa and the Middle East, PIM, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2010. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Eggplant From Israel.

*OMB Control Number:* 0579–0350.

*Type of Request:* Revision to and extension of approval of an information collection.

*Abstract:* The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–81).

Section 319.56–49 of the regulations provides the requirements for the importation of eggplant from Israel into the continental United States under specified conditions intended to prevent the introduction of certain quarantine pests. These requirements include the use of information collection activities such as trapping records, box labeling, grower registration and approval of production sites, inspection of pest-exclusionary structures, treatment approval, pest detection notification, and a phytosanitary certificate issued by the national plant protection organization (NPPO) of Israel with an additional declaration confirming that the eggplant has been produced in accordance with the regulations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 0.0008 hours per response.

*Respondents:* Eggplant importers and growers, packinghouses, and the NPPO of Israel.

*Estimated annual number of respondents:* 4.

*Estimated annual number of responses per respondent:* 5,003.

*Estimated annual number of responses:* 20,011.

*Estimated total annual burden on respondents:* 16 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of February 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–03084 Filed 2–13–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Seek Approval To Reinstate an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Farm and Ranch Irrigation Survey (FRIS). Revision to previous burden hours will be needed due to changes in the size of the target population, sampling design, and questionnaire length.

**DATES:** Comments on this notice must be received by April 16, 2018 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0234, by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* 2018 Farm and Ranch Irrigation Survey.

*OMB Control Number:* 0535–0234.

*Expiration Date of Previous Approval:* September 30, 2016.

*Type of Request:* Intent to Seek Approval to Reinstate and Revise an Information Collection.

*Abstract:* The 2018 Farm and Ranch Irrigation Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. 105–113). The 2018 Farm and Ranch Irrigation Survey (FRIS) will use a combined probability sample of all farms, ranches, greenhouses, nurseries, and other horticultural operations that reported irrigation on the 2017 Census of Agriculture. This irrigation survey aims to provide a comprehensive inventory of agricultural irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2018 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; cost of water received from off-farm water supplies; and questions related to water reuse and security. The irrigation questions for horticultural specialties will provide the area irrigated in the open and under protection, source of water, and the irrigation method used at the State level and by 20 Water Resource Regions (WRR). A table will be published showing the total estimated quantity of water applied for crops including horticultural specialties. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry and water use issues. This survey will provide the only source of dependable, comparable irrigation data by State and Water Resources Region (WRR). The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as aggregate totals. NASS is also considering a possible name change to this long running data collection. The proposed name that is being considered is ''Irrigation and Water Management Survey''.

*Authority:* The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' Pub. L. 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only aggregate data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, *i.e.,* soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30–60 minutes per response. Publicity materials and instruction sheets will account for about 15 minutes of additional burden per respondent. Respondents who refuse to complete the survey will be allotted 2 minutes of burden per attempt to collect the data.

*Respondents:* Farmers, Ranchers, Farm Managers, and producers of Nursery, Greenhouse and Floricultural Products.

*Estimated Number of Respondents:* 35,000.

*Estimated Total Annual Burden on Respondents:* 26,000 hours.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information 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, technological, or other forms of information technology collection methods; and (e) comments relating to the proposed name change.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 29, 2018.

**Kevin L. Barnes,**

*Associate Administrator.*

[FR Doc. 2018–02940 Filed 2–13–18; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

**[Docket No. NRCS–2017–0004]**

### South Branch Potomac River Subwatershed of the Potomac River Watershed, Highland County, Virginia and Pendleton and Grant Counties, West Virginia

**AGENCY:** Natural Resources Conservation Service, Department of Agriculture.

**ACTION:** Notice of intent to deauthorize Federal funding.

**SUMMARY:** Pursuant to the Flood Control Act and the Natural Resources Conservation Service (NRCS) Guidelines (7 CFR part 622), NRCS gives notice of the intent to deauthorize Federal funding for the South Branch Potomac River Subwatershed of the Potomac River Watershed project, Highland County, Virginia and Pendleton and Grant Counties, West Virginia.

**DATES:** Interested persons are invited to submit comments within 60 days of this notice being published in the **Federal Register**.

**ADDRESSES:** Comments submitted in response to this notice should be sent to either John Bricker, VA State Conservationist, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone: (804) 287–1691 or email: *Jack.Bricker@va.usda.gov* or Louis Aspey, WV State Conservationist, 1550 Earl L. Core Road, Suite 200, Morgantown, West Virginia 26505. Telephone: (304) 284–7540 or email: *Louis.Aspey@wv.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions about this notice, please contact Wade Biddix, (804) 287–1675 or *Wade.Biddix@va.usda.gov.*

**SUPPLEMENTARY INFORMATION:** A determination has been made by John Bricker, NRCS State Conservationist in Virginia, and Louis Aspey, NRCS State Conservationist in West Virginia, that the proposed works of improvement for the South Branch Potomac River Subwatershed of the Potomac River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from John Bricker, NRCS State Conservationist in Virginia, and Louis Aspey, NRCS State Conservationist in West Virginia, at the above addresses and telephone numbers.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and project is applicable)

Dated: December 21, 2017.

**John A. Bricker,**

*VA State Conservationist.*

Dated: December 14, 2017.

**Louis Aspey,**

*WV State Conservationist.*

[FR Doc. 2018–02944 Filed 2–13–18; 8:45 am]

**BILLING CODE 3410–16–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Montana Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Montana Advisory Committee (Committee) to the Commission will be held at 11:00 a.m. (Mountain Time) Wednesday, February 21, 2018. The purpose of the meeting is for the Committee to discuss preparations to hear testimony on border town discrimination.

**DATES:** The meeting will be held on Wednesday, February 21, 2018 at 11:00 a.m. MT.

Public Call Information: Dial: 888–713–3590, Conference ID: 2355188.

**FOR FURTHER INFORMATION CONTACT:** Angelica Trevino at *atrevino@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 888–713–3590, conference ID number: 2355188. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=259.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome and Rollcall
II. Approval of minutes from February 1, 2018 meeting
III. Discussion of panelists and logistics for hearing testimony on border town discrimination
IV. Public Comment
V. Adjournment

*Exceptional Circumstance:* Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee preparing for its upcoming public meeting to hear testimony.

Dated: February 9, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–03053 Filed 2–13–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–25–2018]**

### Foreign-Trade Zone 76—Bridgeport, Connecticut; Application for Subzone; SDI USA, LLC; Meriden, Connecticut

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Bridgeport Port Authority, grantee of FTZ 76, requesting subzone status for the facilities of SDI USA, LLC, located in Meriden, Connecticut. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 8, 2018.

The proposed subzone (27 acres) is located at 160 Corporate Court, Meriden, Connecticut. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 76.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 26, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 10, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: February 8, 2018.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2018–03050 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–66–2017]**

### Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Authorization of Production Activity; (Passenger Motor Vehicles); Chattanooga, Tennessee

On October 13, 2017, Volkswagen Group of America—Chattanooga Operations, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 134—Site 3, in Chattanooga, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 49177–49178, October 24, 2017). On February 9, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 9, 2018.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2018–03051 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–29–2018]**

### Foreign-Trade Zone 102—St. Louis, Missouri; Application for Subzone; Orgill, Inc.; Sikeston, Missouri

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Louis County Port Authority, grantee of FTZ 102, requesting subzone status for the facility of Orgill, Inc., located in Sikeston, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 9, 2018.

The proposed subzone (73 acres) is located at 2727 North Main Street in Sikeston, Missouri. The proposed subzone would be subject to the existing activation limit of FTZ 102. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 26, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 10, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 9, 2018.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2018–03049 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Justin Gage Jangraw, P.O. Box 601, Key West, Florida 33041; Order Denying Export Privileges

On November 21, 2014, in the U.S. District Court for the District of Columbia, Justin Gage Jangraw (''Jangraw'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Jangraw was convicted of knowingly and willfully exporting, attempting to export, and causing to be exported from the United States to Austria three Magpul angled fore grips and two Magpul battery-assisted device levers designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Jangraw was sentenced to eight months in prison, one year of supervised release, and a $125 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://*

part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the the Export Administration Act (''EAA'' or ''the Act''), 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR. 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Act or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Jangraw's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Jangraw to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Jangraw.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Jangraw's export privileges under the Regulations for a period of five years from the date of Jangraw's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Jangraw had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until November 21, 2019, Justin Gage Jangraw, with a last known address of P.O. Box 601, Key West, FL 33041, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Jangraw by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with Part 756 of the Regulations, Jangraw may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Jangraw and shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until November 21, 2019.

Issued this 7th day of February 2018.

**Karen H. Nies-Vogel,**

*Director, Office of Exporter Services.*

[FR Doc. 2018–03071 Filed 2–13–18; 8:45 am]

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*uscode.house.gov*) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–817]**

### Oil Country Tubular Goods From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on oil country tubular goods (OCTG) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2015, through December 31, 2015. We have determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), the only mandatory respondent, received countervailable subsidies at *de minimis* levels during the POR.

**DATES:** Applicable February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Shore or Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2778 or (202) 482–0697, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 6, 2017, Commerce published the *Preliminary Results* of this CVD administrative review in the **Federal Register**.[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.[3]

## Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

## Analysis of Comments Received

The only issue raised by interested parties, ''Whether to Include Exchange Rate Income or Loss in the Sales Denominator,'' is addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov;* the Issues and Decision Memorandum is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

## Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable during the POR, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

## Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rate for Borusan, for the period January 1, 2015, through December 31, 2015:

| Company | Subsidy rate (percent *ad valorem*) |
|---|---|
| Borusan Mannesmann Boru Sanayi ve Ticaret A.S.[6]. | 0.48 percent (*de minimis*). |

## Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[7]

## Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review, to liquidate shipments of subject merchandise produced by Borusan entered, or withdrawn from warehouse, for consumption on or after January 1, 2015, through December 31, 2015, without regard to countervailing duties.

## Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits at a rate of zero percent, because the rate calculated for Borusan in these final results is *de minimis.* For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Administrative Protective Orders

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: February 6, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I—List of Topics Discussed in the Issues and Decision Memorandum



[1] *See Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Review and Rescission of Countervailing Duty Administrative Review, in Part,* 82 FR 46767 (October 6, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review of Oil Country Tubular Goods from the Republic of Turkey; 2015,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Issues and Decision Memorandum at 2–3.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[6] As discussed in the Issues and Decision Memorandum, Commerce has found the following company to be cross-owned with Borusan: Borusan Istikbal Ticaret.

[7] *See* 19 CFR 351.224(b).

IX. Recommendation

[FR Doc. 2018–02898 Filed 2–13–18; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–985]**

## Xanthan Gum From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd. (collectively, Deosen) made sales of xanthan gum from the People's Republic of China (China) at prices below normal value (NV) and that Neimenggu Fufeng Biotechnologies Co., Ltd./Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng) did not. We continue to find that the four companies which were not selected for individual examination have demonstrated their eligibility for separate rates in the final results. These four companies are CP Kelco (Shandong) Biological Company Limited (CP Kelco Shandong, Jianlong Biotechnology Co., Ltd. (a.k.a. Inner Mongolia Jianlong Biochemical Co., Ltd.) (Jianlong), Meihua Group International Trading (Hong Kong) Limited/Xinjiang Meihua Amino Acid Co., Ltd./Langfang Meihua Bio-Technology Co., Ltd. (collectively, Meihua), and Shanghai Smart Chemicals Co., Ltd. (Shanghai Smart). We also continue to find that A.H.A. International Co., Ltd. (AHA) made no shipments of subject merchandise during the period of review (POR), *i.e.,* July 1, 2015, through June 30, 2016.

**DATES:** Applicable February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 and (202) 482–0768, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 7, 2017, Commerce published the *Preliminary Results.*[1] For events occurring subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.[3]

### Scope of the Order [4]

The product covered by the order includes dry xanthan gum, whether or not coated or blended with other products. Xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Merchandise covered by the scope of the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, follows as an appendix to this notice. The Issues and Decision Memorandum is a public document, and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The paper copy and electronic copy of the Issues and Decision Memorandum are identical in content.

### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we made one change to our preliminary calculation of the weighed-average dumping margin for the mandatory respondent, Fufeng.[5]

### Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that AHA had no shipments of subject merchandise during the POR.[6] As we have not received any information to contradict our preliminary finding, we determine that AHA had no shipments of subject merchandise during the POR, and we intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) that are consistent with our ''automatic assessment'' clarification for these final results of review.[7] [8]

### Methodology

In the *Preliminary Results,* Commerce determined that two mandatory respondents, Deosen and Fufeng, and four other companies [9] not selected for individual review demonstrated their eligibility for separate rates. We continue to find that these six companies, listed in the table in the ''Final Results'' section of this notice, are eligible for separate rate status. We

[1] *See Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016,* 82 FR 36746 (August 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Xanthan Gum from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review,'' dated concurrently with this notice (Issues and Decision Memorandum).

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum) dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] A full description of the scope of the order is contained in the Issues and Decision Memorandum.

[5] *See* Issues and Decision Memorandum at Comment 6.

[6] *See Preliminary Results,* 82 FR at 36746.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*Assessment Notice); see also* ''Assessment Rates'' section of this notice.

[8] For any shipment made by Deosen during the POR, which involved AHA, we intend to liquidate those entries at Deosen's importer-specific assessment rate. *See* Issues and Decision Memorandum for further discussion.

[9] These four companies are: CP Kelco Shandong, Jianlong, Meihua, and Shanghai Smart.

assigned the non-selected companies a weighted-average dumping margin of 9.30 percent—the rate calculated for Deosen in this review.[10] Fufeng has a weighted-average margin of zero; accordingly, no antidumping duty liability will apply to Fufeng for the POR. Additionally, the Department relied, in part, on facts otherwise available with an adverse inference pursuant to sections 776(a) and (b) of the Act in determining Deosen's weighted-average dumping margin for the POR. *See* Issues and Decision Memorandum for further discussion.

**Final Results of Review**

We determine that the following weighted-average dumping margins exist for the period July 1, 2015, through June 30, 2016:

| Exporters | Weighted-average dumping margin (percent) |
|---|---|
| Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd | 9.30 |
| Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd | 0.00 |
| CP Kelco (Shandong) Biological Company Limited | 9.30 |
| Jianlong Biotechnology Co., Ltd. (aka Inner Mongolia Jianlong Biochemical Co., Ltd.) | 9.30 |
| Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Bio-Technology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd | 9.30 |
| Shanghai Smart Chemicals Co., Ltd | 9.30 |

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results.

For Deosen, which has a weighted-average dumping margin above zero or *de minimis* (*i.e.,* less than 0.5 percent), we calculated importer- (or customer-) specific duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's (or customer's) examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). For Fufeng, whose weighted-average dumping margin is zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate is equal to the weighted-average dumping margin assigned to Deosen, or 9.30 percent.

Consistent with Commerce's assessment practice in non-market economy cases, for entries that were not reported in the U.S. sales databases submitted by Deosen or Fufeng, Commerce will instruct CBP to liquidate such entries at the China-wide rate.[11] Additionally, as noted above, Commerce determines that AHA had no shipments of the subject merchandise during the POR. As a result, any suspended entries of subject merchandise from AHA (which do not involve Deosen) will be liquidated at the China-wide rate.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then the cash deposit rate will be zero required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 154.07 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

[10] *See Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review,* 77 FR 39467 (July 3, 2012), and accompanying Issues and Decision Memorandum at 12.

[11] For a full discussion of this practice, *see Assessment Notice.*

Dated: February 6, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Issues and Decision Memorandum**



[FR Doc. 2018–02915 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

## Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments in Part; 2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 11, 2017, the Department of Commerce (Commerce) published its *Preliminary Results* for the January 1, 2016, through December 31, 2016, administrative review of the antidumping duty order on wooden bedroom furniture (WBF) from the People's Republic of China (China). Although invited to do so, interested parties did not comment on our *Preliminary Results.* We have adopted the *Preliminary Results* as the final results.

**DATES:** Applicable February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1593.

### Background

On October 11, 2017, Commerce published its *Preliminary Results* of the review of the antidumping duty order on WBF from China for one mandatory respondent, Decca Furniture Ltd. (Decca), and twelve other companies covering the period January 1, 2016, through December 31, 2016 (the period of review (POR)).[1] No parties commented on the *Preliminary Results.*

Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 15, 2018.[2]

### Scope of the Order

The product covered by the *Order* is wooden bedroom furniture, subject to certain exceptions.[3] Based on a U.S. Customs and Border Protection (CBP) ruling indicating that CBP would no longer use certain harmonized tariff schedule subheadings to classify items that are within the scope of the *Order,*[4] Commerce preliminarily revised the scope to include the harmonized tariff schedule numbers under which subject merchandise is entered.[5] No parties commented on this revision. Hence, we have adopted this revision in these final results. Under this revision, imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9403.90.7005, 9403.90.7080, 9403.50.9041, 9403.60.8081, 9403.20.0018, 9403.90.8041, 7009.92.1000 or 7009.92.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[6]

### Analysis

As noted above, no parties commented on the *Preliminary Results.* Therefore, we are adopting the decisions in the Preliminary Decision Memorandum for these final results of review. In the *Preliminary Results,* Commerce: (1) Determined that four companies, including Decca, did not establish their eligibility for a separate rate and are part of the China-wide entity; [7] (2) determined that eight companies had no shipments of subject merchandise; [8] and (3) rescinded the review for Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial, Ltd. (HK Ltd.) (collectively, Fortune Glory), for whom all review requests were withdrawn.[9] For these final results of review, we have continued to treat the four companies, including Decca, as part of the China-wide entity and have continued to find that eight companies had no shipments during the POR. Because no party requested a review of the China-wide entity, we are not conducting a review of the China-wide entity.[10] Thus, there is no change to the rate for the China-wide entity from the *Preliminary Results.* The existing rate

[1] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments in Part; 2016,* 82 FR 47172 (October 11, 2017) (*Preliminary Results*).

[2] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[4] *See* letter from the petitioners, re: ''Wooden Bedroom Furniture from China: Petitioners' Comments Regarding the Upcoming Preliminary Results,'' dated August 29, 2017.

[5] *See Preliminary Results,* at 47173.

[6] For a complete description of the scope of the *Order* and a discussion of the revisions to the HTSUS numbers in the scope, *see Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Wooden Bedroom Furniture from the People's Republic of China,* from James Maeder, Senior Director, performing the duties of Deputy Assistant Secretary for Antidumping Duty and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance (Preliminary Decision Memorandum), dated October 11, 2017.

[7] The other three companies are: (1) Changshu HTC Import & Export Co., Ltd.; (2) Starwood Industries Ltd.; and (3) U-Rich Furniture (Zhangzhou) Co., Ltd.; U-Rich Furniture Ltd.

[8] The eight companies/company groupings are: (1) Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs; (2) Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Taicang Fairmont Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.; (3) Eurosa (Kunshan) Co., Ltd.; Eurosa Furniture Co., (PTE) Ltd.; (4) Golden Well International (HK) Limited; Zhangzhou Xym Furniture Product Co., Ltd.; (5) RiZhao Sanmu Woodworking Co., Ltd.; (6) Shenyang Shining Dongxing Furniture Co., Ltd.; (7) Woodworth Wooden Industries (Dong Guan) Co., Ltd.; and (8) Yeh Brothers World Trade Inc.

[9] *See Preliminary Results,* at 47172.

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

for the China-wide entity is 216.01 percent.

For additional details, *see* the Preliminary Decision Memorandum, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Assessment Rates**

Pursuant to section 751(a)(2)(C) Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), the Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Commerce intends to instruct CBP to liquidate any entries of subject merchandise exported during this POR by Decca and the other three companies noted above which did not qualify for separate rate status, at the China-wide rate.

Additionally, pursuant to Commerce's practice in NME cases, if there are any suspended entries of subject merchandise during the POR under the case numbers of the eight companies that claimed no shipments of subject merchandise, they will be liquidated at the China-wide rate.[11]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed China and non-China exporters which are not under review in this segment of the proceeding but which received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 216.01 percent; and (3) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice of the final results of this antidumping duty administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: January 24, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2018–02896 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] For a full discussion of this practice, *see* Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–805]**

### Certain Pasta From Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Mutlu Makarnacilik Sanayi ve Ticaret A.S. (Mutlu), an exporter of certain pasta (pasta) from Turkey and the sole respondent subject to this administrative review, had no *bona fide* sales during the period of review (POR) July 1, 2015 through June 30, 2016. Therefore, we are rescinding this administrative review.

**DATES:** Applicable February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 7, 2017, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] We invited parties to comment on the *Preliminary Results.* On September 6, 2017, we received case briefs from petitioners American Italian Pasta Company, Dakota Growers Pasta Company, and New World Pasta Company (the petitioners) and from the respondent, Mutlu. On September 19, 2017, we received rebuttal briefs from the petitioners and Mutlu. On September 21, 2017, Commerce rejected Mutlu's case brief because it contained new factual information after the deadline for such information.[2] Mutlu subsequently removed the new factual information from its case brief, and resubmitted the case brief on September 23, 2017.

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice,

[1] *See Certain Pasta from Turkey: Preliminary Results of Antidumping Duty Administrative Review,* 82 FR 36737 (August 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Commerce Letter dated September 21, 2017.

the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.[3]

Commerce conducted this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white.[4]

**Analysis of the Comments Received**

All issues raised in the case and rebuttal briefs submitted in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

***Bona Fides* Analysis**

For the *Preliminary Results,* the Department analyzed the *bona fides* of Mutlu's single sale and preliminarily found it was not a *bona fide* sale.[5] Based on Commerce's complete analysis of all the information and comments on the record of this review, Commerce continues to find that Mutlu's sale is not a *bona fide* sale. Commerce reached this conclusion based on its consideration of the totality of circumstances, including: (a) The atypical nature of both the sales price and quantity; (b) reason to question the arm's-length nature of the transaction; and (c) the atypical sales terms. In addition to the above factors, which Commerce determined are a sufficient basis to find Mutlu's sale to be non-*bona fide,* it determined that additional factors—*i.e.,* the lack of record information normally considered in making a *bona fides* determination due to the importer's failure to respond to the importer questionnaire (*e.g.,* whether a profit was realized on the resale of the subject merchandise, whether there were any unusual expenses), and the limited history from which to infer the respondent's future selling practices due to there being only one sale during the POR—constituted additional support for its non-*bona fides* finding. Because much of the factual information used in our analysis of Mutlu's sale involves business proprietary information, a full discussion of the basis for our final determination is set forth in the *Bona Fides* Analysis Memorandum.[6]

Because we have determined that Mutlu had no *bona fide* sales during the POR, we are rescinding this administrative review.

**Assessment**

As Commerce is rescinding this administrative review, we have not calculated a company-specific dumping margin for Mutlu. Mutlu's entries will be liquidated at the ''all-others'' rate applicable to Turkish exporters who do not have their own company-specific rate. That rate is 51.49 percent.[7]

**Cash Deposit Requirements**

Because we did not calculate a dumping margin for Mutlu, Mutlu continues to be subject to the ''all-others'' rate. The all-others cash deposit rate is 51.49 percent.[8] These cash deposit requirements shall remain in effect until further notice.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in these segments of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: February 6, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Issues and Decision Memorandum**



[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] A full written description of the scope of the order is contained in the memorandum to Gary Taverman, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Pasta from Turkey,'' (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

[5] *See* Memorandum, ''2015–2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Preliminary *Bona Fides* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.,'' dated August 1, 2017.

[6] *See* Memorandum, ''2015–2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Final *Bona Fides* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.,'' dated February 5, 2018. *See also* Issues and Decision Memorandum.

[7] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 38545 (July 24, 1996).

[8] *Id.*

1. Whether ''*Bona Fides*'' Testing is Statutorily Limited to New Shipper Reviews, and is Not Applicable in an Administrative Review
2. Whether Record Evidence Confirms that Mutlu's Sale was a *Bona Fide* Sale
3. Whether Rescinding the Administrative Review Amounts to an Imposition of Adverse Facts Available Based on the Failure to Cooperate of an Unaffiliated Third Party

Recommendation

[FR Doc. 2018–02899 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

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

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* West Coast Region U.S. Pacific Highly Migratory Species Hook and Line Logbook.

*OMB Control Number:* 0648–0223.

*Form Number(s):* NOAA 88–197.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 850.

*Average Hours per Response:* One hour.

*Burden Hours:* 3,400.

*Needs and Uses:* This request is for extension of a currently approved collection.

Under the Fishery Management Plan for United States (U.S.) West Coast Fisheries for Highly Migratory Species (HMS FMP) U.S. fishermen, participating in the Pacific Hook and Line fishery (also known as the albacore troll and pole-and-line fishery), are required to obtain a Highly Migratory Species (HMS) permit. Permit holders are required to complete and submit logbooks documenting their daily fishing activities, including catch and effort for each fishing trip. Logbook forms must be completed within 24 hours of the completion of each fishing day and submitted to the Southwest Fisheries Science Center (SWFSC) within 30 days of the end of each trip. These data and associated analyses help the SWFSC provide fisheries information to researchers and the needed management advice to the U.S. in its negotiations with foreign fishing nations exploiting HMS.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* For each fishing trip.

*Respondent's Obligation:* Mandatory.

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

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

Dated: February 8, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–02947 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Hydrographic Services Review Panel Meeting

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of open public meeting.

**SUMMARY:** The Hydrographic Services Review Panel (HSRP) will hold a meeting that will be open to the public and public comments are requested in advance and/or during the meeting. Information about the HSRP meeting, agenda, presentations, webinar registration, and other background documents will be posted online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.*

**DATES:** The meeting is April 4–5, 2018. The dates, agenda, and times are subject to change. For updates, please check online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.*

**ADDRESSES:** Miami, Florida, with meeting venue to be announced online in March at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.*

**FOR FURTHER INFORMATION CONTACT:** Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/NSD), 1315 East-West Highway, SSMC3 #6305, Silver Spring, Maryland 20910; telephone: 301–533–0064; email: *Lynne.Mersfelder@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public, seating will be available on a first-come, first-served basis, and public comment is encouraged. There are public comment periods scheduled each day and noted in the agenda. Each individual or group making verbal comments will be limited to a total time of five (5) minutes and will be recorded. For those not onsite, comments can be submitted via the webinar chat function or via email in writing. Individuals who would like to submit written statements in advance, during or after the meeting should email their comments to *Lynne.Mersfelder@noaa.gov.* The HSRP will provide webinar capability. Pre-registration is required to access the webinar and is at the following: *https://attendee.gotowebinar.com/register/6210294947783426818.*

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter and other information are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/CharterBylawsHSIAStatute.htm.* Past HSRP public meeting summary reports, agendas, presentations, transcripts, webinars, and other information is available online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

*Matters to be considered:* The panel is convening to hear federal, state, regional and local partners and stakeholders on issues relevant to NOAA's navigation services, focusing on Florida and the U.S. Caribbean region as well as national issues. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, and marine modeling. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear from state and federal agencies, non-federal organizations, and partners about their missions and use of NOAA's navigation services, the value these services bring, and what improvements could be made. Other administrative matters may be

considered. The agenda is subject to change.

*Special accommodations:* This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Lynne.Mersfelder@noaa.gov* by March 15, 2018.

Dated: February 1, 2018.

**Kathryn Ries,**

*Deputy Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2018–02968 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Hydrographic Services Review Panel

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of membership solicitation for Hydrographic Services Review Panel.

**SUMMARY:** The National Oceanic and Atmospheric Administration is seeking nominations for members to serve on the Hydrographic Services Review Panel.

**DATES:** Nominations are sought to fill five vacancies that occur on January 1, 2019. Nominations should be submitted by no later than May 25, 2018. Nominations will be accepted and kept on file on an ongoing basis regardless of date submitted for use with current and future vacancies. HSRP maintains a pool of candidates and advertises once a year to fulfill the HSIA requirements on membership solicitation. Current members who may be eligible for a second term must reapply.

**ADDRESSES:** Nominations will be accepted by email and should be sent to: *Hydroservices.panel@noaa.gov* and *Lynne.Mersfelder@noaa.gov.* You will receive a confirmation response.

**FOR FURTHER INFORMATION CONTACT:** Lynne Mersfelder-Lewis, NOAA HSRP program manager, email *Lynne.Mersfelder@noaa.gov* or phone: 240–523–0064.

**SUPPLEMENTARY INFORMATION:** In accordance with the Hydrographic Service Improvements Act Amendments of 2002, Public Law 107–372, the Administrator of the National Oceanic and Atmospheric Administration (NOAA) is required to solicit nominations for membership at least once a year for the Hydrographic Services Review Panel (HSRP). The HSRP, a Federal advisory committee, advises the Administrator on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act and such other appropriate matters as the Administrator refers to the Panel for review and advice. Those responsibilities and authorities include, but are not limited to: Acquiring and disseminating hydrographic data and providing hydrographic services, as those terms are defined in the Act; promulgating standards for hydrographic data and services; ensuring comprehensive geographic coverage of hydrographic services; and testing, developing, and operating vessels, equipment, and technologies necessary to ensure safe navigation and maintain operational expertise in hydrographic data acquisition and hydrographic services.

The Act states ''the voting members of the Panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields relating to hydrographic data and hydrographic services, marine transportation, port administration, vessel pilotage, coastal and fishery management, and other disciplines as determined appropriate by the Administrator.'' The NOAA Administrator seeks and encourages individuals with expertise in marine navigation and technology, port administration, marine shipping or other intermodal transportation industries, cartography and geographic information systems, geodesy, physical oceanography, coastal resource management, including coastal preparedness and emergency response, and other related fields. To apply for membership, applicants are requested to submit five items including a cover letter that responds to the five questions below. The entire package should be a maximum length of eight pages or fewer. NOAA is an equal opportunity employer.

(1) A cover letter that responds to the five questions listed below and serves as a statement of interest to serve on the panel. Please see ''Short Response Questions'' below.

(2) Highlight the nominee's specific area(s) of expertise relevant to the purpose of the Panel from the list in the **Federal Register** Notice.

(3) A short biography of 300 to 400 words.

(4) A current resume.

(5) The nominee's full name, title, institutional affiliation, mailing address, email, phone, fax and contact information.

**Short Response Questions**

(1) List the area(s) of expertise, as listed above, which you would best represent on this Panel.

(2) List the geographic region(s) of the country with which you primarily associate your expertise.

(3) Describe your leadership or professional experiences which you believe will contribute to the effectiveness of this panel.

(4) Describe your familiarity and experience with NOAA NOS navigation data, products, and services.

(5) Generally describe the breadth and scope of your knowledge of stakeholders, users, or other groups who interact with NOAA and whose views and input you believe you can share with the panel.

Under 33 U.S.C. 883a, *et seq.,* NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The HSRP provides advice on current and emerging oceanographic and marine science technologies relating to operations, research and development; and dissemination of data pertaining to:

(a) Hydrographic surveying;
(b) Shoreline surveying;
(c) Nautical charting;
(d) Water level measurements;
(e) Current measurements;
(f) Geodetic measurements;
(g) Geospatial measurements;
(h) Geomagnetic measurements; and
(i) Other oceanographic/marine related sciences.

The Panel has fifteen voting members appointed by the NOAA Administrator in accordance with 33 U.S.C. 892c. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Co-Directors of the Center for Coastal and Ocean Mapping/Joint Hydrographic Center and two other NOAA employees serve as nonvoting members of the Panel. The Director, NOAA Office of Coast Survey, serves as the Designated Federal Official (DFO).

Voting members are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, coastal

or fishery management, and other oceanographic or marine science areas as deemed appropriate by the Administrator. Full-time officers or employees of the United States may not be appointed as a voting member. Any voting member of the Panel who is an applicant for, or beneficiary of (as determined by the Administrator) any assistance under 33 U.S.C. 892c shall disclose to the Panel that relationship, and may not vote on any other matter pertaining to that assistance.

Voting members of the Panel serve a four-year term, except that vacancy appointments are for the remainder of the unexpired term of the vacancy. Members serve at the discretion of the Administrator and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns. Meetings occur at least twice a year, and at the call of the Chair or upon the request of a majority of the voting members or of the Administrator. Voting members receive compensation at a rate established by the Administrator, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when engaged in performing duties for the Panel. Members are reimbursed for actual and reasonable expenses incurred in performing such duties.

Past HSRP public meeting summary reports, agendas, presentations, transcripts, webinars, and other information is available online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

### Individuals Selected for Panel Membership

Upon selection and agreement to serve on the HSRP Panel, you become a Special Government Employee (SGE) of the United States Government. 18 U.S.C. 202(a) an SGE (s) is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a fulltime or intermittent basis. After the selection process is complete, applicants selected to serve on the Panel must complete the following actions before they can be appointed as a Panel member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and

(b) Confidential Financial Disclosure Report—As an SGE, you are required to file a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Report at the following website. *http://www.usoge.gov/forms/form_450.aspx.*

Dated: February 1, 2018.

**Kathryn Ries,**

*Deputy Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2018–02969 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG008**

### Meeting of the Advisory Committee to the United States Delegation to the International Commission for the Conservation of Atlantic Tunas

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

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting to be held March 5–6, 2018.

**DATES:** The open sessions of the Committee meeting will be held on March 5, 2018, 8:30 a.m. to 2:30 p.m. and March 6, 2018, 9 a.m. to 4 p.m. Closed sessions will be held on March 5, 2018, 3 p.m. to 6 p.m., and on March 6, 2018, 8 a.m. to 9 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Terra Lederhouse at (301) 427–8360.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on recreational fisheries in ICCAT; management strategy evaluation and harvest control rules; ICCAT stock assessment methods; the 2017 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required consultation on any identification of countries that are diminishing the effectiveness of ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment. The agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups for part of the afternoon of March 5, 2018, and for one hour on the morning of March 6, 2018. These sessions are not open to the public, but the results of the Species Working Group discussions will be reported to the full Advisory Committee during the Committee's open session on March 6, 2018.

### Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 427–8360 at least 5 days prior to the meeting date.

Dated: February 9, 2018.

**John Henderschedt,**

*Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2018–03081 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Documentation of Fish Harvest

**AGENCY:** National Marine Fisheries Service (NMFS), 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 by April 16, 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 *pracomments@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Adam Bailey, National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701, or *adam.bailey@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a currently approved information collection. The seafood dealers who process red porgy, greater amberjack, gag grouper, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby or coney during seasonal fishery closures for applicable species must maintain documentation, as specified in 50 CFR part 300 subpart K and 50 CFR 622.192(i), that such fish were harvested from areas other than state or Federal waters in the South Atlantic. The documentation includes information on the vessel that harvested the fish, and where and when the fish were offloaded. NMFS requires the information for the enforcement of fishery regulations.

**II. Method of Collection**

The information is in the form of a paper affidavit, which remains with the respondent.

**III. Data**

*OMB Control Number:* 0648–0365.

*Form Number(s):* None.

*Type of Review:* Regular submission—extension of a current information collection.

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

*Estimated Number of Respondents:* 25.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 50.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

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

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

Dated: February 8, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–02946 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF988**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 56 Assessment Webinars III.

**SUMMARY:** The SEDAR 56 assessment of the South Atlantic stock of Black Seabass will consist of a series webinars. See **SUPPLEMENTARY INFORMATION**.

**DATES:** SEDAR 56 Assessment webinar III will be held on Friday, March 2, 2018 from 9 a.m. until 1 p.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email*: julia.byrd@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment webinars are as follows:

1. Participants will continue discussions to develop population models to evaluate stock status, estimate population benchmarks, and project future conditions, as specified in the Terms of Reference.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

3. Participants will prepare a workshop report and determine whether the assessment(s) are adequate for submission for review.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: February 9, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–03015 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG020**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council's (Council) will hold a meeting.

**DATES:** The meeting will be held on Tuesday, March 13, 2018, from 1 p.m. through 5:30 p.m. and on Wednesday, March 14, 2018, from 8:30 a.m. to 12:30 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

**ADDRESSES:** The meeting will take place at the Royal Sonesta Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202; telephone: (410) 234–0550.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to make multi-year ABC recommendations for the blueline tilefish stock north of the VA/NC border based on updated stock assessment results and recommendations from the blueline tilefish Working Group. A review the most recent survey, fishery data, and the currently implemented 2019 ABC for golden tilefish will also be conducted. The SSC will also review and provide recommendations regarding the Northeast Fisheries Science Center clam dredge survey redesign, approve the OFL CV discussion document that would establish decision rules for specifying the CV of the OFL distribution, and review the most recent Mid-Atlantic State of the Ecosystem report. In addition, other topics the SSC may discuss include outcomes from the most recent National SSC meeting, SSC species and topic leads and any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 9, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–03016 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF470**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy 2018 Ice Exercise Activities in the Beaufort Sea and Arctic Ocean

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the United States Department of the Navy (Navy) to incidentally harass, by Level B harassment, marine mammals during Ice Exercise 2018 (ICEX18) activities within the Beaufort Sea and Arctic Ocean north of Prudhoe Bay, Alaska. The Navy's activities are considered a military readiness activity pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

**DATES:** This authorization is applicable from February 1, 2018 through May 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8408. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at *www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

The MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, or sheltering (Level B harassment).The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review the proposed action (*i.e.* the issuance of an incidental harassment authorization) with respect to environmental consequences on the human environment.

The Navy has prepared an environmental assessment (EA) titled *Environmental Assessment/Overseas Environmental Assessment for Ice Exercise.* NMFS has adopted the Navy's EA/OEA, after an independent evaluation of the document found that it included adequate information analyzing the effects on the human environment of issuing incidental take authorizations. NMFS issued a Finding of No Significant Impact (FONSI), which is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.*

**Summary of Request**

On April 12, 2017, NMFS received a request from the Navy for the taking of marine mammals incidental to submarine training and testing activities including establishment of a tracking range on an ice floe in the Beaufort Sea and Arctic Ocean north of Prudhoe Bay, Alaska. The Navy's request is for take of ringed seals (*Pusa hispida hispida*) by Level B harassment. Neither the Navy nor NMFS expects Level A harassment or mortality to result from this activity and, therefore, an IHA is appropriate.

**Description of Specified Activity**

*Overview*

The Navy proposes to conduct submarine training and testing activities from an ice camp stationed on an ice floe in the Beaufort Sea and Arctic Ocean for six weeks between February and April 2018. Submarine activities associated with ICEX18 are classified, but generally entail safety maneuvers, active sonar use and exercise torpedo use. These maneuvers and sonar use are similar to submarine activities conducted in other undersea environments. They are being conducted in the Arctic to test their performance in a cold environment. A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (82 FR 48683; October 19, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

**Comments and Responses**

A notice of NMFS's proposal to issue an IHA to the Navy was published in the **Federal Register** on October 19, 2017 (82 FR 48683). That notice describes the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and the Office of the Mayor of North Slope Borough (NSB).

*Comment 1:* The Commission noted that the Navy did not use Bayesian biphasic dose response functions (BRFs) to inform take estimates, but used cut-off distances instead. The Commission stated that the cut-off distances used by the Navy are unsubstantiated and the Navy arbitrarily set a cut-off distance of 10 kilometers (km) which could effectively eliminate a large portion of the estimated numbers of takes. The Commission, therefore, recommended that the Navy refrain from using cut-off distances in conjunction with the Bayesian BRFs.

*Response:* The derivation of the behavioral response functions and associated cut-off distances is provided in the Phase III technical report (Navy, 2017a). The consideration of proximity (distance cutoff) was part of the criteria developed in consultation with NMFS and was applied within the Navy's acoustic effects model. Distance cutoffs beyond which the potential of significant behavioral responses were considered to be unlikely were used in conducting analysis for ringed seals for ICEX 18.

As stated in the Criteria and Thresholds Technical Report (Navy, 2017a), Southall *et al.* (2007) report that pinnipeds do not exhibit strong reactions to sound pressure levels (SPLs) up to 140 decibels (dB) re 1 micro Pascal (μPa) (which occurs at about 400m from the sources used here) from steady state (non-impulsive) sources. In some cases, pinnipeds tolerate impulsive exposures up to 180 dB re 1 μPa with limited avoidance noted (Southall *et al.,* 2007), and no avoidance noted at distances as close as 42 m (Jacobs & Terhune, 2002). Though there are limited data on pinniped behavioral responses beyond about 3 km in the water, there is evidence that there is a lack of strong reactions at shorter distances. The available data suggest that most pinnipeds likely do not exhibit significant behavioral reactions to sonar and other transducers beyond a few kilometers, independent of received levels of sound. Further, 160 dB rms, which is used as the behavioral harassment threshold for non-tactical intermittent sonar use, will not be received farther than a couple of hundred meters from the source (140 dB is received at 400m). Therefore, NMFS believes that the 10 km distance cutoff for pinnipeds is both conservative and adequate to evaluate the Level B harassment impacts for military readiness activities.

*Comment 2:* Although the Office of Naval Research funded seal tagging studies indicate that most ice seals migrate southward at the onset of winter; NSB is aware of traditional ecological knowledge that provides evidence that there are resident ringed and bearded seal populations in the Beaufort Sea.

*Response:* The Navy reached out to the Inupiat Community of the Arctic Slope (ICAS), Nuiqsut, and Kaktovic communities on September 28, 2017, providing them a CD containing the draft Environmental Assessment/Overseas Environmental Assessment (EA/OEA) for ICEX 2018 and also sent emails to tribal representatives with an internet link to the document. The Navy was not provided with any information or data pertaining to resident and bearded seal populations in the Beaufort Sea that far offshore in late winter. There was also a public comment

period, which ran from September 29 to October 16, 2017. A complete discussion of potential impacts from ICEX 18 is contained in the ICEX 2018 (EA/OEA) (*http://www.aftteis.com/ICEX*). The Navy used the best available science and data to assess potential impacts in the EA/OEA. NMFS also used best available science and data to make their determination regarding the issuance of the IHA. The Navy and NMFS are not aware of other data that would alter their findings.

Furthermore, the Navy is funding Duke University to develop species density models for the Arctic region and would welcome any data the NSB and Arctic research community have available to incorporate into density models and impacts analysis.

*Comment 3:* NSB expressed concern that potential creation of unseasonal leads due to submarine surfacing, possible destruction of winter lairs of ringed seals during encampment preparation, and use of motorized vehicles during the exercises may impact seals.

*Response:* As part of the planned ICEX18 activities submarines will surface through the ice. In the area where the submarines will surface, ice leads are a frequent and natural occurrence, opening up and refreezing due to ocean currents and shifting ice. Submarine surfacing will occur in either open leads or first year ice as there is less potential to damage a submarine. While surfacing submarines may create small leads in some instances, each U.S. Navy submarine will surface no more than five times per ICEX. Therefore, potential impacts to seals would be minor and temporary. Furthermore, seal lairs are not expected to occur close to open leads or on first year ice. Additionally, mitigation and monitoring requirements listed in the IHA (*e.g.* no ice camp construction near ice ridges; avoidance of pressure ridges by snowmobiles and researchers) should prevent destruction of lairs and adverse impacts to seals. These issues were also evaluated in the EA/OEA were not found to be not significant.

*Comment 4:* NSB feels that the lack of available species-specific data (*e.g.* ice seal, arctic fish species, polar bears) precludes assessment of the consequences of sonar use on Arctic protected marine mammal species.

*Response:* The Navy conducts numerous types of research to better understand how sound may affect marine mammals, and though not specifically Arctic species, the knowledge gained from those studies is transferable to Arctic species. This type of research has focused on the development of better tags and attachment mechanisms for monitoring, development and testing of new autonomous hardware platforms for detection of marine mammals, and ways to better understand and characterize the behavioral, physiological (hearing and stress response), and potentially population-level consequences of sound exposure on marine life.

The Navy uses the best available science when analyzing the impacts of training and testing on the environment, including animals. To do this the Navy continually reviews published scientific literature, incorporates data from regulatory agencies such as National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife Service, and funds or conducts research where data gaps exist. Furthermore, NMFS utilizes the best available science when making determinations regarding the issuance of IHAs and concluded that there was adequate information available to support the findings.

*Comment 5:* NSB is concerned that the planned submarine exercises, which will employ sonar, have the potential to negatively impact marine mammals and affect the food chain. As a result, the Inupiaq subsistence life style may also be affected. Therefore, NSB recommends that the Navy initiate engagement with the North Slope leadership and the Arctic research community to develop studies that address the missing information needed for a better understanding of the effects of military sonar use on Arctic marine mammals and their prey.

*Response:* The Navy's marine species monitoring website provides information on current and past monitoring projects and allows for the submittal of ideas or concepts for projects to be considered under the U.S Navy's Marine Species Monitoring Program at: *https://www.navymarinespeciesmonitoring.us/project-submission-form/.* The Navy's Living Marine Resources Program also solicits proposals for funding of research projects (*http://greenfleet.dodlive.mil/environment/lmrproposals/*), as well as the Office of Naval Research (*https://www.onr.navy.mil/Science-Technology/Departments/Code-32/All-Programs/Atmosphere-Research-322/Marine-Mammals-Biology*). These sites include a list of research projects the Navy is currently funding to improve the Navy's understanding of marine species and how Navy activities may affect those species. These websites offer NSB and the Arctic research community the opportunity to engage with the Navy through the submission of research proposals.

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of ringed seals (*Pusa hispida hispida*), which is the only potentially affected species. Total sea ice coverage is expected across the study area during the study period which precludes the presence of other arctic marine mammal species. Ringed seals temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and therefore we have authorized take after considering the anticipated amount and type of take and making the required findings. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (Muto *et al.,* 2016; *www.nmfs.noaa.gov/pr/sars/*) and more general information about this species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| **Family Balaenidai** | | | | | | |
| *Bowhead whale* | *Balaena mysticetus* | Western Arctic | E/D;Y | 16,982 (0.058, 16,091, 2011). | 161 | 44 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| **Family Delphinidae** | | | | | | |
| *Beluga whale* | Delphinapterus leucas. | Beaufort Sea | -/-;N | 39,258 (0.229, 32,453, 1992). | 649 | 166 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| **Family Phocidae (earless seals)** | | | | | | |
| Ringed seal | *Pusa hispida hispida* | Alaska | -/-;N | 170,000 (Bering Sea and Sea of Okhotsk only)—2013). | 5,100 (Bearing Sea-U.S. portion only). | 1,054 |
| *Bearded seal* | *Erignathus barbatus nauticus.* | Alaska | -/-;N | 299,174 (-, 273,676, 2012) (Bearing Sea-U.S. portion only). | 8,210 (Bearing Sea-U.S. portion only). | 1.4 |

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

**Note**—*Italicized species are not expected to be taken.*

### Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from Navy's testing and training activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 48683; October 19, 2017) included a discussion of the effects of anthropogenic noise on marine mammals and no new information has been received since publication of the proposed IHA, therefore that information is not repeated here; please refer to the **Federal Register** notice (82 FR 48683; October 19, 2017) for that information.

### Estimated Take

This section provides an estimate of the number of incidental takes anticipated to occur and therefore authorized through this IHA, which will inform the negligible impact determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and TTS, for individual marine mammals resulting from exposure to acoustic transmissions. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. In addition, no serious injury or mortality is anticipated or authorized for this activity. Source levels of acoustic transmission will not be at levels which would cause serious injury, or mortality. Deployment of the ice camp could potentially affect ringed seal habitat by physically damaging or crushing subnivean lairs, resulting in seal injury or mortality. However, seals usually choose to locate lairs near pressure ridges and the ice camp will be deployed in an area without pressure ridges in order to allow operation of an aircraft runway. Further, portable tents will be erected for lodging and operations purposes. Tents do not require building materials or typical construction methods. The tents are relatively easy to mobilize and will not be situated near areas featuring pressure ridges. Finally, the camp buildup will be gradual, with activity increasing over the first five days. This approach allows seals to move to different lair locations outside the ice camp area. Based on this information, we do not anticipate any damage to subnivean lairs that could result in ringed seal injury or mortality.

Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. For the proposed IHA, the Navy employed a sophisticated model known as the Navy Acoustic Effects Model (NAEMO) for assessing the impacts of underwater sound.

*Acoustic Thresholds*

Using the best available science, NMFS recommends acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to incur PTS of some degree (equated to Level A harassment), TTS, or behavioral harassment (Level B harassment). The thresholds used to predict occurrences of each type of take are described below.

Behavioral harassment—In coordination with NMFS, the Navy developed behavioral harassment thresholds to support Phase III environmental analyses for the Navy's testing and training military readiness activities; these behavioral harassment thresholds are used here to evaluate the potential effects of this planned action. The response of a marine mammal to an anthropogenic sound will depend on the frequency, duration, temporal pattern and amplitude of the sound as well as the animal's prior experience with the sound and the context in which the sound is encountered (*i.e.* what the animal is doing at the time of the exposure). The distance from the sound source and whether it is perceived as approaching or moving away can also affect the way an animal responds to a sound (Wartzok *et al.,* 2003). For marine mammals, a review of responses to anthropogenic sound was first conducted by Richardson *et al.* (1995). Reviews by Nowacek *et al.* (2007) and Southall *et al.* (2007) address studies conducted since 1995 and focus on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Multi-year research efforts have conducted sonar exposure studies for odontocetes and mysticetes (Miller *et al.,* 2012; Sivle *et al.,* 2012). Several studies with captive animals have provided data under controlled circumstances for odontocetes and pinnipeds (Houser *et al.,* 2013a; Houser *et al.,* 2013b). Moretti *et al.* (2014) published a beaked whale dose-response curve based on passive acoustic monitoring of beaked whales during U.S. Navy training activity at Atlantic Underwater Test and Evaluation Center during actual Anti-Submarine Warfare exercises. This new information necessitated the update of the Navy's behavioral response criteria for the Phase III environmental analyses.

Southall *et al.* (2007) synthesized data from many past behavioral studies and observations to determine the likelihood of behavioral reactions at specific sound levels. While in general, the louder the sound source the more intense the behavioral response, it was clear that the proximity of a sound source and the animal's experience, motivation, and conditioning were also critical factors influencing the response (Southall *et al.,* 2007). After examining all of the available data, the authors felt that the derivation of thresholds for behavioral response based solely on exposure level was not supported because context of the animal at the time of sound exposure was an important factor in estimating response. Nonetheless, in some conditions, consistent avoidance reactions were noted at higher sound levels depending on the marine mammal species or group allowing conclusions to be drawn. Phocid seals showed avoidance reactions at or below 190 dB re 1 µPa @1m; thus, seals may actually receive levels adequate to produce TTS before avoiding the source.

The Navy's Phase III proposed pinniped behavioral threshold has been updated based on controlled exposure experiments on the following captive animals: hooded seal, gray seal, and California sea lion (Götz *et al.,* 2010; Houser *et al.,* 2013a; Kvadsheim *et al.,* 2010). Overall exposure levels were 110–170 dB re 1 µPa for hooded seals, 140–180 dB re 1 µPa for gray seals and 125–185 dB re 1 µPa for California sea lions; responses occurred at received levels ranging from 125 to 185 dB re 1 µPa. However, the means of the response data were between 159 and 170 dB re 1 µPa. Hooded seals were exposed to increasing levels of sonar until an avoidance response was observed, while the grey seals were exposed first to a single received level multiple times, then an increasing received level. Each individual California sea lion was exposed to the same received level ten times. These exposure sessions were combined into a single response value, with an overall response assumed if an animal responded in any single session. Because these data represent a dose-response type relationship between received level and a response, and because the means were all tightly clustered, the Bayesian biphasic Behavioral Response Function for pinnipeds most closely resembles a traditional sigmoidal dose-response function at the upper received levels and has a 50 percent probability of response at 166 dB re 1 µPa. Additional details regarding the Phase III criteria may be found in the technical report, Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (2017a) which may be found at: *http://aftteis.com/Portals/3/docs/newdocs/Criteria%20and%20Thresholds_TR_Submittal_05262017.pdf.* This technical report was as part of the Navy's Atlantic Fleet Training and Testing Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) (Navy 2017b) which is located at: *http://www.aftteis.com/.* NMFS is proposing the use of this dose response function to predict behavioral harassment of pinnipeds for this activity.

Level A harassment and TTS—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

The PTS/TTS analyses begins with mathematical modeling to predict the sound transmission patterns from Navy sources, including sonar. These data are then coupled with marine species distribution and abundance data to determine the sound levels likely to be received by various marine species. These criteria and thresholds are applied to estimate specific effects that animals exposed to Navy-generated sound may experience. For weighting function derivation, the most critical data required are TTS onset exposure levels as a function of exposure frequency. These values can be estimated from published literature by examining TTS as a function of sound

exposure level (SEL) for various frequencies.

To estimate TTS onset values, only TTS data from behavioral hearing tests were used. To determine TTS onset for each subject, the amount of TTS observed after exposures with different SPLs and durations were combined to create a single TTS growth curve as a function of SEL. The use of (cumulative) SEL is a simplifying assumption to accommodate sounds of various SPLs, durations, and duty cycles. This is referred to as an ''equal energy'' approach, since SEL is related to the energy of the sound and this approach assumes exposures with equal SEL result in equal effects, regardless of the duration or duty cycle of the sound. It is well known that the equal energy rule will over-estimate the effects of intermittent noise, since the quiet periods between noise exposures will allow some recovery of hearing compared to noise that is continuously present with the same total SEL (Ward 1997). For continuous exposures with the same SEL but different durations, the exposure with the longer duration will also tend to produce more TTS (Finneran *et al.,* 2010; Kastak *et al.,* 2007; Mooney *et al.,* 2009a).

As in previous acoustic effects analysis (Finneran and Jenkins 2012; Southall *et al.,* 2007), the shape of the PTS exposure function for each species group is assumed to be identical to the TTS exposure function for each group. A difference of 20 dB between TTS onset and PTS onset is used for all marine mammals including pinnipeds. This is based on estimates of exposure levels actually required for PTS (*i.e.* 40 dB of TTS) from the marine mammal TTS growth curves, which show differences of 13 to 37 dB between TTS and PTS onset in marine mammals. Details regarding these criteria and thresholds can be found in NMFS' Technical Guidance (NMFS 2016).

Table 3 below provides the weighted criteria and thresholds used in this analysis for estimating quantitative acoustic exposures of marine mammals from the planned action.

TABLE 3—INJURY (PTS) AND DISTURBANCE (TTS, BEHAVIORAL) THRESHOLDS FOR UNDERWATER SOUNDS

| Group | Species | Behavioral criteria | Physiological criteria | |
|---|---|---|---|---|
| | | | Onset TTS | Onset PTS |
| Phocid (in water) ..... | Ringed seal ..... | Pinniped Dose Response Function. | 181 dB SEL cumulative .... | 201 dB SEL cumulative. |

*Quantitative Modeling*

The Navy performed a quantitative analysis to estimate the number of mammals that could be harassed by the underwater acoustic transmissions during the planned action. Inputs to the quantitative analysis included marine mammal density estimates, marine mammal depth occurrence distributions (Navy 2017a), oceanographic and environmental data, marine mammal hearing data, and criteria and thresholds for levels of potential effects.

The density estimate used to estimate take is derived from habitat-based modeling by Kaschner *et al.,* (2006) and Kaschner (2004). The area of the Arctic where the action will occur (100–200 nm north of Prudhoe Bay, Alaska) has not been surveyed in a manner that supports quantifiable density estimation of marine mammals. In the absence of empirical survey data, information on known or inferred associations between marine habitat features and the likelihood of the presence of specific species have been used to predict densities using model-based approaches. These habitat suitability models include relative environmental suitability (RES) models. Habitat suitability models can be used to understand the possible extent and relative expected concentration of a marine species distribution. These models are derived from an assessment of the species occurrence in association with evaluated environmental explanatory variables that results in defining the RES suitability of a given environment. A fitted model that quantitatively describes the relationship of occurrence with the environmental variables can be used to estimate unknown occurrence in conjunction with known habitat suitability. Abundance can thus be estimated for each RES value based on the values of the environmental variables, providing a means to estimate density for areas that have not been surveyed. Use of the Kaschner's RES model resulted in a value of 0.3957 animals per $km^2$ in the cold season (defined as December through May). The density numbers are assumed static throughout the ice camp action area for this species. The density data generated for this species was based on environmental variables known to exist within the planned ice camp action area during the late winter/early springtime period.

Note that while other surveys by Frost *et al.* (2004) and Bengston *et al.* (2005) provided ringed seal density estimates for areas near or within the Beaufort Sea, the Navy felt that those findings were not applicable to the planned action area. Frost *et al.* (2004) only surveyed ringed seals out to 40 km from shore in the Beaufort Sea. A small portion of the surveys from Bengston *et al.* (2005) were out to a maximum extent of 185 km (100 nm) from shore, but the surveys were located within the Chukchi Sea, not the Beaufort Sea. Frost *et al.* (2004) also stated the highest densities of ringed seals were in water depths from 5–25 m (1–1.33 seals per $km^2$). Lower densities were seen in waters greater than 35 m in depth (0–0.77 seals per $km^2$). The planned action area where acoustic transmissions would occur is 3,000 to 4,000 m deep (International Bathymetric Chart of the Arctic Ocean 2015), which makes the bathymetric nature of the areas different enough to be non-comparable. Furthermore, the ice camp is located on multi-year ice and would not be located near the ice edge. Frost *et al.* (2004), and Bengston *et al.* (2005) both had a high percentage of fast or pack ice in their survey area which would not be present in the planned action area. Additionally, there were areas of cracked ice that were part of the surveys. As previously noted, the ice camp needs to be situated in an area without cracks in the ice. After reviewing both Frost *et al.* (2004) and Bengston *et al.* (2005) NMFS agrees with the Navy that the density data from the RES model provides the most appropriate density values to be assessed for acoustic transmissions during ICEX18.

The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential animal exposures. The model calculates sound energy propagation from the planned active acoustic sources, the sound received by animat (virtual animal) dosimeters representing marine mammals distributed in the area around the

modeled activity, and whether the sound received by a marine mammal exceeds the thresholds for effects.

The Navy developed a set of software tools and compiled data for estimating acoustic effects on marine mammals without consideration of behavioral avoidance or Navy's standard mitigations. These tools and data sets serve are integral components of NAEMO. In NAEMO, animats are distributed non-uniformly based on species-specific density, depth distribution, and group size information and animats record energy received at their location in the water column. A fully three-dimensional environment is used for calculating sound propagation and animat exposure in NAEMO. Site-specific bathymetry, sound speed profiles, wind speed, and bottom properties are incorporated into the propagation modeling process. NAEMO calculates the likely propagation for various levels of energy (sound or pressure) resulting from each source used during the training event.

NAEMO then records the energy received by each animat within the energy footprint of the event and calculates the number of animats having received levels of energy exposures that fall within defined impact thresholds. Predicted effects on the animats within a scenario are then tallied and the highest order effect (based on severity of criteria; *e.g.,* PTS over TTS) predicted for a given animat is assumed. Each scenario or each 24-hour period for scenarios lasting greater than 24 hours is independent of all others, and therefore, the same individual marine animal could be impacted during each independent scenario or 24-hour period. In few instances, although the activities themselves all occur within the study area, sound may propagate beyond the boundary of the study area. Any exposures occurring outside the boundary of the study area are counted as if they occurred within the study area boundary. NAEMO provides the initial estimated impacts on marine species with a static horizontal distribution.

There are limitations to the data used in the acoustic effects model, and the results must be interpreted within these context. While the most accurate data and input assumptions have been used in the modeling, when there is a lack of definitive data to support an aspect of the modeling, modeling assumptions believed to overestimate the number of exposures have been chosen:

- Animats are modeled as being underwater, stationary, and facing the source and therefore always predicted to receive the maximum sound level (*i.e.* no porpoising or pinnipeds' heads above water);
- Animats do not move horizontally (but change their position vertically within the water column), which may overestimate physiological effects such as hearing loss, especially for slow moving or stationary sound sources in the model;
- Animats are stationary horizontally and therefore do not avoid the sound source, unlike in the wild where animals would most often avoid exposures at higher sound levels, especially those exposures that may result in PTS;
- Multiple exposures within any 24-hour period are considered one continuous exposure for the purposes of calculating the temporary or permanent hearing loss, because there are not sufficient data to estimate a hearing recovery function for the time between exposures; and
- Mitigation measures that are implemented were not considered in the model. In reality, sound-producing activities would be reduced, stopped, or delayed if marine mammals are detected by submarines via passive acoustic monitoring.

Because of these inherent model limitations and simplifications, model-estimated results must be further analyzed, considering such factors as the range to specific effects, avoidance, and the likelihood of successfully implementing mitigation measures. This analysis uses a number of factors in addition to the acoustic model results to predict acoustic effects on marine mammals.

For non-impulsive sources, NAEMO calculates the sound pressure level (SPL) and SEL for each active emission over the entire duration of an event. These data are then processed using a bootstrapping routine to compute the number of animats exposed to SPL and SEL in 1 dB bins across all track iterations and population draws. (Bootstrapping is a type of resampling where large numbers of smaller samples of the same size are repeatedly drawn, with replacement, from a single original sample.) SEL is checked during this process to ensure that all animats are grouped in either an SPL or SEL category. A mean number of SPL and SEL exposures are computed for each 1 dB bin. The mean value is based on the number of animats exposed at that dB level from each track iteration and population draw. The behavioral risk function curve is applied to each 1 dB bin to compute the number of behaviorally exposed animats per bin. The number of behaviorally exposed animats per bin is summed to produce the total number of behavior exposures.

Mean 1 dB bin SEL exposures are then summed to determine the number of PTS and TTS exposures. PTS exposures represent the cumulative number of animats exposed at or above the PTS threshold. The number of TTS exposures represents the cumulative number of animats exposed at or above the TTS threshold and below the PTS threshold. Animats exposed below the TTS threshold were grouped in the SPL category.

Platforms such as a submarine using one or more sound sources are modeled in accordance with relevant vehicle dynamics and time durations by moving them across an area whose size is representative of the training event's operational area. For analysis purposes, the Navy uses distance cutoffs, which is the maximum distance a Level B take would occur, beyond which the potential for significant behavioral responses is considered unlikely. For animals located beyond the range to effects, no significant behavioral responses are predicted. This is based on the Navy's Phase III environmental analysis (Navy 2017a). The Navy referenced Southall *et al.* (2007) who reported that pinnipeds do not exhibit strong reactions to SPLs up to 140 dB re 1 µPa from steady state (non-impulsive) sources. In some cases, pinnipeds tolerate impulsive exposures up to 180 dB re 1 µPa with limited avoidance noted (Southall *et al.,* 2007), and no avoidance noted at distances as close as 42 m (Jacobs & Terhune 2002). While limited data exists on pinniped behavioral responses beyond 3 km in the water, the data that is available suggest that most pinnipeds likely do not exhibit significant behavioral reactions to sonar and other transducers beyond a few kilometers, independent of received levels of sound (Navy 2017a). Therefore, in the Navy's Phase III environmental analysis, the range to effects for pinnipeds is set at 5 km for moderate source level, single platform training and testing events and 10 km for all other events with multiple sonar platforms or sonar with source levels at or exceeding 215 dB re 1 µPa @1 m. Regardless of the source level, take beyond 10 km is not anticipated. These ranges are expected to reasonably contain the anticipated effects predicted by the behavioral response dose curve threshold reference above.

For ICEX18 unclassified sources (*i.e.* Autonomous Reverberation Measurement System and MIT/Lincoln Labs continuous wave/chirp), the Navy models calculated a propagation loss measurement of 13.5 km from the

source to the 120 dB re 1 μPa SPL isopleth; 1.5 km from the source to the 130 dB re 1 μPa SPL isopleth; and 400 m from the source to the 140 dB dB re 1 μPa SPL isopleth. Propagation loss measurements cannot be provided for classified sources. However, the ranges in Table 4 provide realistic maximum distances over which the specific effects from the use of all active acoustic sources during the planned action would be possible. Based on the information provided, NMFS is confident that the 10km zone safely encompasses the area in which Level B harassment can be expected from all active acoustic sources.

TABLE 4—RANGE TO TEMPORARY THRESHOLD SHIFT AND BEHAVIORAL EFFECTS IN THE ICEX18 STUDY AREA

| Source/exercise | Maximum range to Level B takes cold season (m) | |
|---|---|---|
| | Behavioral | TTS |
| Submarine Exercise | 10,000 | 100 |
| Autonomous Reverberation Measurement System | 10,000 | <50 |
| Massachusetts Institute of Technology/Lincoln Labs Continuous Wave/chirp | 10,000 | <50 |
| Naval Research Laboratory Synthetic Aperture Sonar | 10,000 | 90 |

As discussed above, within NAEMO animats do not move horizontally or react in any way to avoid sound. Furthermore, mitigation measures that are implemented during training or testing activities that reduce the likelihood of physiological impacts are not considered in quantitative analysis. Therefore, the current model overestimates acoustic impacts, especially physiological impacts near the sound source. The behavioral criteria used as a part of this analysis acknowledges that a behavioral reaction is likely to occur at levels below those required to cause hearing loss (TTS or PTS). At close ranges and high sound levels approaching those that could cause PTS, avoidance of the area immediately around the sound source is the assumed behavioral response for most cases.

In previous environmental analyses, the Navy has implemented analytical factors to account for avoidance behavior and the implementation of mitigation measures. The application of avoidance and mitigation factors has only been applied to model-estimated PTS exposures given the short distance over which PTS is estimated. Given that no PTS exposures were estimated during the modeling process for this planned action, the implementation of avoidance and mitigation factors were not included in this analysis.

Utilizing the NAEMO model, the Navy projected that there will be 1,665 behavioral Level B harassment takes and an additional 11 Level B takes due to TTS for a total of 1,676 takes of ringed seals. All takes would be underwater. Note that these quantitative results should be regarded as conservative estimates that are strongly influenced by limited marine mammal population data.

**Mitigation**

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully weigh two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (16 U.S.C. 1371(a)(5)(A)(ii)).

*Mitigation for Marine Mammals and Their Habitat*

The following general mitigation actions are planned for ICEX18 to avoid any take of ringed seals on the ice floe:

- Camp deployment would begin in mid-February and would be completed by March 15. Based on the best available science, Arctic ringed seal whelping is not expected to occur prior to mid-March. Construction of the ice camp would be completed prior to whelping in the area of ICEX18. As such, pups are not anticipated to be in the vicinity of the camp at commencement, and mothers would not need to move newborn pups due to construction of the camp. Additionally, if a seal had a lair in the area they would be able to relocate. Completing camp deployment before ringed seal pupping begins will allow ringed seals to avoid the camp area prior to pupping and mating seasons, reducing potential impacts;
- Camp location will not be in proximity to pressure ridges in order to allow camp deployment and operation of an aircraft runway. This will minimize physical impacts to subnivean lairs;
- Camp deployment will gradually increase over five days, allowing seals to relocate to lairs that are not in the immediate vicinity of the camp;

• Passengers on all on-ice vehicles would observe for marine and terrestrial animals; any marine or terrestrial animal observed on the ice would be avoided by 328 ft (100 m). On-ice vehicles would not be used to follow any animal, with the exception of actively deterring polar bears if the situation requires;

• Personnel operating on-ice vehicles would avoid areas of deep snowdrifts near pressure ridges, which are preferred areas for subnivean lair development; and

• All material (*e.g.,* tents, unused food, excess fuel) and wastes (*e.g.,* solid waste, hazardous waste) would be removed from the ice floe upon completion of ICEX18.

The following mitigation actions are planned for ICEX18 activities involving acoustic transmissions:

For activities involving active acoustic transmissions from submarines and torpedoes, passive acoustic sensors on the submarines will listen for vocalizing marine mammals for 15 minutes prior to the initiation of exercise activities. If a marine mammal is detected, the submarine will delay active transmissions, including the launching of torpedoes, and not restart until after 15 minutes have passed with no marine mammal detections. If there are no animal detections, it is assumed that the vocalizing animal is no longer in the immediate area and is unlikely to be subject to harassment. Ramp up procedures will not be required as they would result in an unacceptable impact on readiness and on the realism of training.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the planned mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

The U.S. Navy has coordinated with NMFS to develop an overarching program plan in which specific monitoring would occur. This plan is called the Integrated Comprehensive Monitoring Program (ICMP) (U.S. Department of the Navy 2011). The ICMP has been created in direct response to Navy permitting requirements established in various MMPA Final Rules, ESA consultations, Biological Opinions, and applicable regulations. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations. The ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort based on set of standardized research goals, and in acknowledgement of regional scientific value and resource availability.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly as those areas have the greatest potential for being impacted. ICEX18 in comparison is a short duration exercise that occurs approximately every other year. Due to the location and expeditionary nature of the ice camp, the number of personnel onsite is extremely limited and is constrained by the requirement to be able to evacuate all personnel in a single day with small planes. As such, a dedicated monitoring project would not be feasible as it would require additional personnel and equipment to locate, tag and monitor the seals.

The Navy is committed to documenting and reporting relevant aspects of training and research activities to verify implementation of mitigation, comply with current permits, and improve future environmental assessments. All sonar usage will be collected via the Navy's Sonar Positional Reporting System database and reported. If any injury or death of a marine mammal is observed during the ICEX18 activity, the Navy will immediately halt the activity and report the incident consistent with the stranding and reporting protocol in the Atlantic Fleet Training and Testing stranding response plan (Navy 2013). This approach is also consistent with other Navy documents including the Atlantic Fleet Training and Testing Environmental Impact Statement/ Overseas Environmental Impact Statement.

The Navy will provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the planned activity. The draft exercise monitoring report will include data regarding sonar use and any mammal sightings or detection will be documented. The report will also include information on the number of sonar shutdowns recorded. If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.* population-level effects). An estimate of the number

of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Underwater acoustic transmissions associated with ICEX18, as outlined previously, have the potential to result in Level B harassment of ringed seals in the form of TTS and behavioral disturbance. No serious injury, mortality or Level A takes are anticipated to result from this activity. At close ranges and high sound levels approaching those that could cause PTS, avoidance of the area immediately around the sound source would be ringed seals' likely behavioral response. NMFS anticipates that there will be 11 Level B takes due to TTS and 1,665 Level B behavioral harassment takes, for a total of 1,676 ringed seal takes.

Note that there are only 11 Level B takes due to TTS since the TTS range to effects is small at only 100 meters or less while the behavioral effects range is significantly larger extending up to 10 km. TTS is a temporary impairment of hearing and TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, however, hearing sensitivity recovers rapidly after exposure to the sound ends. Though TTS may occur in up to 11 animals out of a stock of 170,000 animals, the overall fitness of these individuals is unlikely to be affected and negative impacts to the entire stock are not anticipated.

Effects on individuals that are taken by Level B harassment could include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight. More severe behavioral responses are not anticipated due to the localized, intermittent use of active acoustic sources and mitigation by passive acoustic monitoring which will limit exposure to sound sources. Most likely, individuals will simply be temporarily displaced by moving away from the sound source. As described previously in the behavioral effects section seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures, (142–193 dB re 1 µPa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.,* 2010; Kvadsheim *et al.,* 2010). Although a minor change to a behavior may occur as a result of exposure to the sound sources associated with the planned action, these changes would be within the normal range of behaviors for the animal (*e.g.,* the use of a breathing hole further from the source, rather than one closer to the source, would be within the normal range of behavior). Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and would not result in any adverse impact to the stock as a whole.

The Navy's planned activities are localized and of relatively short duration. While the total project area is large, the Navy expects that most activities will occur within the ice camp action area in relatively close proximity to the ice camp. The larger study area depicts the range where submarines may maneuver during the exercise. The ice camp will be in existence for up to six weeks with acoustic transmission occurring intermittently over four weeks. The Autonomous Reverberation Measurement System would be active for up to 30 days; the vertical line array would be active for up to four hours per day for no more than eight days, and; the unmanned underwater vehicle used for the deployment of a synthetic aperture source would transmit for 24 hours per day for up to eight days.

The project is not expected to have significant adverse effects on marine mammal habitat. The project activities are limited in time and would not modify physical marine mammal habitat. While the activities may cause some fish to leave a specific area ensonified by acoustic transmissions, temporarily impacting marine mammals' foraging opportunities, these fish would likely return to the affected area.. As such, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

For on-ice activity, serious injury and mortality are not anticipated. Level B harassment could occur but is unlikely due to mitigation measures followed during the exercise. Foot and snowmobile movement on the ice will be designed to avoid pressure ridges, where ringed seals build their lairs; runways will be built in areas without pressure ridges; snowmobiles will follow established routes; and camp buildup is gradual, with activity increasing over the first five days providing seals the opportunity to move to a different lair outside the ice camp area. The Navy will also employ its standard 100-meter avoidance distance from any arctic animals. Implementation of these measures should ensure that ringed seal lairs are not crushed or damaged during ICEX18 activities and minimize the potential for seals and pups to abandon lairs and relocate.

The ringed seal pupping season on the ice lasts for five to nine weeks during late winter and spring. Ice camp deployment would begin in mid-February and be completed by March 15, before the pupping season. This will allow ringed seals to avoid the ice camp area once the pupping season begins, thereby reducing potential impacts to nursing mothers and pups. Furthermore, ringed seal mothers are known to physically move pups from the birth lair to an alternate lair to avoid predation. If a ringed seal mother perceives the acoustic transmissions as a threat, the local network of multiple birth and haul-out lairs would allow the mother and pup to move to a new lair.

The estimated population of the Alaska stock of ringed seals in the Bering Sea is 170,000 animals (Muto *et al.,* 2016). The estimated population in the Alaska Chukchi and Beaufort Seas is at least 300,000 ringed seals, which is likely an underestimate since the Beaufort Sea surveys were limited to within 40 km from shore (Kelly *et al.,* 2010). Given these population estimates, only a limited percent of the stock affected would be taken (*i.e.* between 0.98 and 0.56 percent).

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Impacts will be limited to Level B harassment;
- A small percentage (<1 percent) of the Alaska stock of ringed seals would be subject to Level B harassment;

• TTS is expected to affect only a limited number of animals;

• There will be no loss or modification of ringed seal habitat and minimal, temporary impacts on prey;

• Physical impacts to ringed seal subnivean lairs will be avoided; and

• Mitigation requirements for ice camp activities would minimize impacts to animals during the pupping season.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

Impacts to subsistence uses of marine mammals resulting from the planned action are not anticipated. The planned action would occur outside of the primary subsistence use season (*i.e.* summer months), and the study area is 100–200 nmi seaward of known subsistence use areas. Harvest locations for ringed seals extend up to 80 nmi from shore during the summer months while winter harvest of ringed seals typically occurs closer to shore. Based on this information, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from the Navy's planned activities.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally with our ESA Interagency Cooperation Division whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

**Authorization**

NMFS has issued an IHA to the Navy for the potential harassment of ringed seals incidental to the ICEX18 submarine test and training activities in the Beaufort Sea and Arctic Ocean, provided the previously described mitigation, monitoring and reporting requirements are incorporated.

Dated: February 8, 2018.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2018–03080 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Patent Prosecution Highway Program

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), invites comments on a proposed extension of an existing information collection: 0651–0058 (Patent Prosecution Highway (PPH) Program).

**DATES:** Written comments must be submitted on or before April 16, 2018.

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

• *Email: InformationCollection@uspto.gov.* Include ''0651–0058 comment'' in the subject line of the message.

• *Federal Rulemaking Portal: http://www.regulations.gov.*

• *Mail:* Marcie Lovett, Director, Records and Information Governance Division, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *Raul.Tamayo@upsto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Patent Prosecution Highway (PPH) is a framework in which an application whose claims have been determined to be patentable by an Office of Earlier Examination (OEE) is eligible to go through an accelerated examination in an Office of Later Examination with a simple procedure upon an applicant's request. By leveraging the search and examination work product of the OEE, PPH programs (1) deliver lower prosecution costs, (2) support applicants in their efforts to obtain stable patent rights efficiently around the world, and (3) reduce the search and examination burden, while improving the examination quality, of participating patent offices.

Originally, the PPH programs were limited to the utilization of search and examination results of national applications between cross filings under the Paris Convention. Later, the potential of the PPH was greatly expanded by Patent Cooperation Treaty-Patent Prosecution Highway (PCT–PPH) programs, which permitted participating patent offices to draw upon the positive results of the PCT work product from another participating office. The PCT–PPH programs used international written opinions and international preliminary examination reports developed within the framework of the PCT, thereby making the PPH available to a larger number of applicants. Information collected for the PCT is approved under OMB control number 0651–0021.

In 2014, the USPTO and several other offices acted to consolidate and replace existing PPH and PCT–PPH programs, with the goal of streamlining the PPH process for both offices and applicants. To that end, the USPTO and other offices established the Global PPH pilot program and the IP5 PPH pilot program. The Global PPH and IP5 PPH pilot programs are running concurrently and are substantially identical, differing only with regard to their respective participating offices. The USPTO is participating in both the Global PPH pilot program and the IP5 PPH pilot program. For USPTO applications, the Global PPH and IP5 PPH pilot programs supersede any prior PPH program between the USPTO and each Global PPH and IP5 PPH participating office. Any existing PPH programs between the USPTO and offices that are not participating in either the Global PPH pilot program or the IP5 PPH pilot program remain in effect. Regardless of the pilot program used, the Global PPH pilot program, the IP5 PPH pilot program, and the other existing PPH programs, all provide pathways for patent applications to receive the benefits of coordinated patent review across intellectual property offices.

The information gathered in this collection is integral to the PPH programs that USPTO participates in by identifying patent applications being

filed at multiple intellectual property offices across the globe, including at the USPTO. This includes declaring the OEE with whom the application has been filed, identifying information for the application at the OEE, and providing the necessary supporting documentation for the application. The forms also identify the correspondence between the claims being made at the USPTO with claims filed in the OEE and an explanation for that correspondence.

The ten forms used to gather the information described above are: The Global Form (PTO/SB/20GLBL) and nine individual country forms allowing participants to file in a U.S. application to request to make the U.S. applicants special under a PPH or PCT–PPH program. The thirty-four forms in this collection that previously operated under individual countries' Requests for Participation are being removed as they have been consolidated under the Global Form (PTO/SB/20GLBL).

For more complete information on the PPH, including (1) a complete identification of participating countries and offices and the programs under which each country's patent office is participating, (2) the forms needed to request entry into the PPH, both at the USPTO and other participating offices, and (3) information as to which of the PPH program remain pilots and which have been made permanent, please visit *http://www.uspto.gov/patents/init_events/pph/index.jsp.*

## II. Method of Collection

Requests to participate in the PPH program must be submitted online under EFS-Web, the USPTO's web-based electronic filing system.

## III. Data

*OMB Number:* 0651–0058.

*IC Instruments and Forms:* PTO/SB/20GLBL, PTO/SB/20AR, PTO/SB/20BR, PTO/SB/20CZ, PTO/SB/20EA, PTO/SB/20MX, PTO/SB/20NI, PTO/SB/20PH, PTO/SB/20RO, and PTO/SB/20TW.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; business or other for-profits; and not-for-profit institutions.

*Estimated Number of Respondents:* 8,110 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately two hours to gather the necessary information, prepare the appropriate form, and submit a completed request to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 16,200 hours.

*Estimated Total Annual Respondent Cost Burden:* $7,104,360. The USPTO expects that the information in this collection will be prepared by attorney. The professional hourly rate for attorneys is $438. The rate is established by estimates in the 2017 Report on the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $7,104,360 per year.

| IC No. | Item | Response time (hours) (a) | Responses (b) | Burden hours (c) = (a) × (b) | Rate (d) | Respondent cost burden; (e) = (c) × (d) |
|---|---|---|---|---|---|---|
| 1 | Request for Participation in the Global/IP5 PPH Pilot Program in the USPTO (PTO/SB/20GLBL). | 2 (120 minutes) | 8,000 | 16,000 | $438.00 | $7,008,000.00 |
| 2 | National Institute of Industrial Property of Argentina (INPI-Argentina (PTO/SB/20AR). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 3 | Instituto Nacional da Propriedade Industrial (Brazil) (INPI) (PTO/SB/20BR). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 4 | Industrial Property Office of the Czech Republic (IPOCZ) (PTO/SB/20CZ). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 5 | Eurasian Patent Office of the Eurasian Patent Organization (EAPO) (PTO/SB/20EA). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 6 | Mexican Institute of Industrial Property (TMPI) (PTO/SB/20MX). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 7 | Nicaraguan Registry of Intellectual Property (NRIP) (PTO/SB/20NI). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 8 | Intellectual Property Office of the Philippines (IPOPH) (PTO/SB/20PH). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 9 | Romanian State Office of Inventions and Trademarks (OSIM) (PTO/SB/20RO). | 2 (120 minutes) | 10 | 20 | 438.00 | 8,760.00 |
| 10 | Taiwan Intellectual Property Office (TIPO) (PTO/SB/20TW). | 2 (120 minutes) | 30 | 60 | 438.00 | 26,280.00 |
| Totals | | | 8,110 | 16,220 | | 7,104,360.00 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $0. There are no capital start-up, maintenance, or postage costs associated with this collection. This collection also has no filing fees or recordkeeping costs.

## IV. Request for Comments

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

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

**Marcie Lovett,**

*Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.*

[FR Doc. 2018–02988 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### National Medal of Technology and Innovation Nomination Application

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection: 0651–0060 (National Medal of Technology and Innovation Nomination Application).

**DATES:** Written comments must be submitted on or before April 16, 2018.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0060 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to John Palafoutas, Program Manager, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, by telephone at 571–272–8400, or by email at *nmti@uspto.gov* with ''0651–0060 comment'' in the subject line. Additional information about this information is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Medal of Technology and Innovation is the highest honor for technological achievement bestowed by the President of the United States of America's leading innovations. Established by an Act of Congress in 1980, the medal of Technology was first awarded in 1985. The Medal is awarded annually to individuals, teams (of up to four individuals), companies, or divisions of companies. The Medal recognizes outstanding contributions to the Nation's economic, environmental and social well-being through the development and commercialization of technology products, processes and concepts, technological innovation, and development of the Nation's technological workforce.

The purpose of the National Medal of Technology and Innovation is to recognize those who have made lasting contributions to America's competitiveness, standard of living, and quality of life through technological innovation, and to recognize those who have made substantial contributions to strengthening the Nation's technological workforce. By highlighting the national importance of technological innovation, the Medal also seeks to inspire future generations of Americans to prepare for and pursue technical careers to keep America at the forefront of global technology and economic leadership.

The National Medal of Technology and Innovation Nomination Evaluation Committee, a distinguished independent committee appointed by the Secretary of Commerce, reviews and evaluates the merit of all candidates nominated through an open, competitive solicitation process. The committee makes its recommendations for Medal candidates to the Secretary of Commerce who, in turn, makes recommendations to the President for final selection. The National Medal of Technology and Innovation Laureates are announced by the White House once the Medalists are notified of their selection.

The public uses the online National Medal of Technology and Innovation Nomination Application to nominate an individual's, team's, or company's extraordinary leadership and innovation in technological achievement and outstanding contribution to strengthening the nation's technological workforce. The application collects general and biographical information about the nominee, general information about the nominator, and a discussion of the nominee's contribution/achievements, and must be accompanied by six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

#### II. Method of Collection

The nomination application and instructions can be accessed from the USPTO website. All nominations should be submitted via the online portal on *www.uspto.gov/nmti.*

#### III. Data

*OMB Number:* 0651–0060.

*IC Instruments and Forms:* N/A.

*Type of Review:* Revision of an existing information collection.

*Affected Public:* Businesses or other for-profit organizations; not-for-profit institutions; individuals or households.

*Estimated Number of Respondents:* 50 responses per year.

*Estimated Time Per Response:* The USPTO estimates that it will take approximately 40 hours to gather the necessary information, prepare the nomination form, write the recommendations, and submit the request for the nomination to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 2000 hours.

*Estimated Total Annual Respondent (Hourly) Cost Burden:* $84,020. The USPTO expects that professors, public relations specialists, civil engineers and research managers will complete this information. The professional hourly rates for these occupations, based on the 2017 rates released by the Bureau of Labor Statistics, are $37.00 for professors (OES 25–1199), $31.99 for public relations specialists (OES 27–3031), $43.14 for civil engineers (OES 17–2051), and $55.92 for research managers (15–1111). Using the average combined hourly rate of $42.01, the USPTO estimates that the total respondent cost burden for this collection is $84,020 per year.

| IC No. | Item | Estimated time for response (a) | Estimated responses (b) | Estimated annual burden (c) = (a) × (b) | Rate ($/hr) (d) | Estimated annual respondent cost burden; (e) = (c) × (d) |
|---|---|---|---|---|---|---|
| 1 ..... | National Medal of Technology and Innovation Nomination Form. | 40 | 50 | 2,000 | $42.01 | $84,020.00 |
| Totals | ..... | ..... | 50 | 2,000 | ..... | 84,020.00 |

*Estimated Total Annual (Non-hour) Respondent Cost Burden:* $0.

There are no filing fees, capital start-up, maintenance, or operation costs associated with this collection. As the USPTO expects that 100% percent of the responses in this collection will be submitted electronically there are no postage costs associated with the collection.

**IV. Request for Comments**

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

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

**Marcie Lovett,**

*Records and Information Governance Division Director, OCTO United States Patent and Trademark Office.*

[FR Doc. 2018–02989 Filed 2–13–18; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2016–HQ–0004]**

### Proposed Collection; Comment Request

**AGENCY:** Department for Deployment Health, Naval Health Research Center, DON.

**ACTION:** 60-day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department for Deployment Health, Naval Health Research Center announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 16, 2018.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09B, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Naval Health Research Center, DoD Center for Deployment Health Research, Department 164, ATTN: Millennium Cohort Program Principal Investigators, 140 Sylvester Rd., San Diego, CA, 92106–3521, or call (619) 553–7335.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Prospective Department of Defense Studies of US Military Forces: The Millennium Cohort Study; OMB Control Number 0703–0064.

*Needs and Uses:* The information collection requirement is necessary to respond to recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service. The Millennium Cohort Family Study also evaluates the impact of military life on military families.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 100,764.

*Number of Respondents:* 134,352.

*Responses per Respondent:* 1.

*Average Burden per Response:* 45 minutes.

*Frequency:* On occasion.

Persons eligible to respond to this survey are those civilians now separated from military service who initially enrolled, gave consent and participated in the Millennium Cohort Study while on active duty in the Army, Navy, Air Force, Marine Corps, or US Coast Guard during the first, second, third, or fourth panel enrollment periods in 2001–2003, 2004–2006, 2007–2008, or 2011–2012 respectively, as well as those civilians that choose to participate in the Millennium Cohort Family Study.

Dated: February 9, 2018.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–03062 Filed 2–13–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2017–ICCD–0148]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Quarterly Cumulative Caseload Report

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), 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 March 16, 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–2017–ICCD–0148. Comments submitted in response to this notice should be submitted electronically through the

Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–44, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Melinda Giancola, 202–245–7312.

**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:* Quarterly Cumulative Caseload Report.

*OMB Control Number:* 1820–0013.

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

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 316.

*Total Estimated Number of Annual Burden Hours:* 316.

*Abstract:* State agencies that administer vocational rehabilitation programs provide key caseload data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and their program outcomes. The Rehabilitation Services Administration collects this information quarterly from states and reports it in the Annual Report to Congress on the Rehabilitation Act.

Dated: February 8, 2018.

**Tomakie Washington,**

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

[FR Doc. 2018–02970 Filed 2–13–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2017–ICCD–0151]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; OSERS Peer Review Data Form

**AGENCY:** Department of Education (ED).

**ACTION:** Notice.

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

**DATES:** Interested persons are invited to submit comments on or before March 16, 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–2017–ICCD–0151. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–44, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Patricia Wright, 202–245–7620.

**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:* OSERS Peer Review Data Form.

*OMB Control Number:* 1820–0583.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 1,500.

*Total Estimated Number of Annual Burden Hours:* 250.

*Abstract:* The OSERS Peer Reviewer Data Form (OPRDF) is used by OSERS staff to identify potential reviewers who would be qualified to review specific types of grant applications for funding; to provide background contact information for each potential reviewer; and to provide information on any reasonable accommodations that might be required by the individual. The previous version of the OPRDF, 1820–0583, expired on September 30, 2017. The revised version of the OSERS Peer Data Form included in this information collection request contains additional questions to better match field experts with the review of OSERS funding opportunities. There are also additional questions aimed to better meet the needs of peer reviewers who require reasonable accommodations.

Dated: February 8, 2018.

**Tomakie Washington,**

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

[FR Doc. 2018–02971 Filed 2–13–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2017–ICCD–0146]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Survey of Postgraduate Outcomes for the Foreign Language and Area Studies (FLAS) Fellowship Program (Survey)

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

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

**DATES:** Interested persons are invited to submit comments on or before March 16, 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–2017–ICCD–0146. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–34, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Sara Starke, 202–453–7681.

**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:* Survey of Postgraduate Outcomes for the Foreign Language and Area Studies (FLAS) Fellowship Program (Survey).

*OMB Control Number:* 1840–0829.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 2,400.

*Total Estimated Number of Annual Burden Hours:* 600.

*Abstract:* This survey is used by the Foreign Language and Area Studies (FLAS) grantee institutions and fellows to comply with 20 U.S.C. 1121(d). Fellows complete the survey online, and the Department accesses and reports on the collected data regarding fellows' postgraduate employment. The survey is required by statute.

Dated: February 8, 2018.

**Kate Mullan,**

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

[FR Doc. 2018–02959 Filed 2–13–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Eligibility Designations and Applications for Waiver of Eligibility Requirements; Programs Under Parts A and F of Title III of the Higher Education Act of 1965, as Amended (HEA), and Programs Under Title V of the HEA

**AGENCY:** Office of Postsecondary Education, Department of Education (Department).

**ACTION:** Notice.

**SUMMARY:** The Department announces the process for designation of eligible institutions and invites applications for waiver of eligibility requirements for fiscal year (FY) 2018, for the following programs:

1. *Programs authorized under Part A, Title III of the HEA:* Strengthening Institutions Program (Part A SIP), Alaska Native and Native Hawaiian-Serving Institutions (Part A ANNH), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part A AANAPISI).

2. *Programs authorized under Part F, Title III of the HEA:* Hispanic-Serving Institutions STEM and Articulation (Part F, HSI STEM and Articulation), Predominantly Black Institutions (Part F PBI), Alaska Native and Native Hawaiian-Serving Institutions (Part F ANNH), Native American-Serving Nontribal Institutions (Part F NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI).

3. *Programs authorized under Title V of the HEA:* Developing Hispanic-Serving Institutions (HSI) and Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA).

**DATES:**

*Applications Available:* February 14, 2018.

*Deadline for Transmittal of Applications:* March 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Christopher Smith, Institutional Service, U.S. Department of Education, 400 Maryland Avenue SW., Room 250–10, Washington, DC 20202. Telephone: (202)453–7946, or by email: *Christopher.smith@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

*Special Note:* Section 312 of the HEA and 34 CFR 607.2–607.5 include most of the basic eligibility requirements for

grant programs authorized under Titles III and V of the HEA. Section 312(b)(1)(B) of the HEA provides that, to be eligible for these programs, an institution of higher education's (IHE's or institution's) average ''educational and general expenditures'' (E&G) per full-time equivalent (FTE) undergraduate student must be less than the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction in that year.

Since 2004, the National Center for Educational Statistics (NCES) has calculated Core Expenses per FTE of institutions, a statistic similar to E&G per FTE. Both E&G per FTE and Core Expenses per FTE are based on regular operational expenditures of institutions (excluding auxiliary enterprises, independent operations, and hospital expenses). They differ only in that E&G per FTE is based on fall undergraduate enrollment, while Core Expenses per FTE is based on 12-month undergraduate enrollment for the academic year.

To avoid inconsistency in the data submitted to, and produced by, the Department, for the purpose of section 312(b)(1)(B) of the HEA, E&G per FTE is calculated using the same methodology as Core Expenses per FTE. Accordingly, with regard to this and future notices inviting applications for waivers of eligibility requirements, to calculate E&G per FTE for the purpose of determining institutional eligibility for programs under Title V and Part A and Part F of Title III of the HEA, the Department will apply the NCES methodology for calculating Core Expenses per FTE. Institutions requesting an eligibility waiver determination must use the Core Expenses per FTE data reported to NCES' Integrated Postsecondary Education Data System (IPEDS) for the most currently available academic year, in this case academic year 2015–2016.

**Full Text of Announcement**

*I. Funding Opportunity Description*

*Purpose of Programs:*

The Part A SIP, Part A ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under Title III, Part A, of the HEA. The HSI and PPOHA programs are authorized under Title V of the HEA. The Part F, HSI STEM and Articulation, Part F PBI, Part F AANAPISI, Part F ANNH, and Part F NASNTI programs are authorized under Title III, Part F of the HEA. Please note that certain programs in this notice have the same or similar names as other programs that are authorized under a different statutory authority. For this reason, we specify the statutory authority as part of the acronym for certain programs.

Under the programs discussed above, institutions are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An IHE that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-sharing requirements for one year under the Federal Supplemental Educational Opportunity Grant (FSEOG) program authorized by Part A, Title IV of the HEA and the Federal Work-Study (FWS) program authorized by section 443 of the HEA. Qualified institutions may receive the FSEOG and FWS waivers for one year even if they do not receive a grant under the Title III or Title V programs. An applicant that receives a grant from the Student Support Services (SSS) program that is authorized under section 402D of the HEA, 20 U.S.C. 1070a–14, may receive a waiver of the required non-Federal cost share for institutions for the duration of the grant. An applicant that receives a grant from the Undergraduate International Studies and Foreign Language (UISFL) program that is authorized under section 604 of the HEA, 20 U.S.C. 1124, may receive a waiver or reduction of the required non-Federal cost share for institutions for the duration of the grant.

*Special Note:* To qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria. For most of these programs, these criteria include those that relate to the enrollment of needy students and to Core Expenses per FTE student count for a specified base year. The most recent data available in IPEDS for Core Expenses per FTE are for base year 2015–2016. In order to award FY 2018 grants in a timely manner, we will use these data to evaluate eligibility.

Accordingly, all institutions interested in either applying for a new grant under the Title III or Title V programs addressed in this notice, or requesting a waiver of the non-Federal cost share, must be designated as an eligible institution for FY 2018. Under the HEA, any IHE interested in applying for a grant under any of these programs must first be designated as an eligible institution. (34 CFR 606.5 and 607.5).

*Eligible Applicants:*

The eligibility requirements for the programs authorized under Part A of Title III of the HEA are in sections 312 and 317–320 of the HEA (20 U.S.C. 1058, 1059d-1059g) and in 34 CFR 607.2 through 607.5. The regulations may be accessed at: *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.607&rgn=div5.*

The eligibility requirements for the programs authorized by Part F of Title III of the HEA are in section 371 of the HEA (20 U.S.C. 1067q). There are currently no specific regulations for these programs.

The eligibility requirements for the Title V HSI program are in Part A of Title V of the HEA and in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at: *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.606&rgn=div5l.*

The requirements for the PPOHA program are in Part B of Title V of the HEA and in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055), and in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

The Department has instituted a process known as the Eligibility Matrix (EM), under which we will use information submitted by IHEs to IPEDS to determine which institutions meet the basic eligibility requirements for the programs authorized by Title III or Title V of the HEA listed above. We will use enrollment and fiscal data for the 2015–2016 year submitted by institutions to IPEDS to make eligibility determinations for FY 2018. Beginning February 14, 2018, an institution will be able to review the Department's decision on whether it is eligible for the grant programs authorized by Titles III or V of the HEA through this process by checking the institution's eligibility in the Eligibility system linked through the Department's Institutional Service Eligibility website at: *http://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

The EM is part of the Department's Eligibility system. The EM is a read-only worksheet that lists all potentially eligible postsecondary institutions, as determined by the Department using the data described above. If the entry for your institution in the EM shows that your institution is eligible to apply for a grant for a particular program, and you plan to submit an application for a grant in that program, you will not need to apply for eligibility or for a waiver through the process described in this notice. Rather, you may print out the eligibility letter directly. However, if the EM does not show that your institution is eligible for a program in which you plan to apply for a grant, you must submit a waiver request as discussed in this notice before the March 16, 2018 deadline.

To check your institution's eligibility in the EM, go to the website *https://hepis.ed.gov/title3and5/,* click the ''Application for Designation as an Eligible Institution'' link, and then click the ''Check Eligibility'' link. You may search the EM by institution name, IPEDS unit ID number, or OPE ID number. If you are inquiring about general eligibility, look up your institution's name under the SIP column. If you are inquiring about specific program eligibility, look under that program's column.

If the EM does not show that your institution is eligible for a program, or if your institution does not appear in the EM data system, or if you disagree with the eligibility determination reflected in the EM data system, you can apply for a waiver or reconsideration through the process described in this notice. The waiver application process is the same as in previous years; you will choose the waiver option on the website at *https://hepis.ed.gov/title3and5/* and submit your institution's waiver request.

*Enrollment of Needy Students:* For the Title III and V programs (excluding the PBI programs), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree-seeking students received financial assistance under the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs; or (2) the percentage of its undergraduate degree-seeking students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the average percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2015–2016 must be more than the average for its category of comparable institutions provided in the 2015–2016 Average Pell Grant and Core Expenses per FTE Student table in this notice. If your institution qualifies under the first criterion, under which at least 50 percent of its degree-seeking students received financial assistance under one of several Federal student aid programs (the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs), but not the second criterion, under which an institution's Federal Pell Grant percentage for base year 2015–2016 must be more than the average for its category of comparable institutions provided in the 2015–2016 Average Pell Grant and Core Expenses per FTE Student table in this notice, you must submit a waiver request including the requested data, which is not available in IPEDS.

For the definition of ''Enrollment of Needy Students,'' for purposes of the Part A PBI program see section 318(b)(2) of the HEA, and for purposes of the Part F PBI program see section 371(c)(9)of the HEA.

*Core Expenses per FTE Student:* For the Title III, Part A SIP; Part A ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F PBI; Part F AANAPISI; Part F ANNH; Part F NASNTI; Title V, Part A HSI, and Title V, Part B PPOHA programs, an institution should compare its base year 2015–2016 Core Expenses per FTE student to the average Core Expenses per FTE student for its category of comparable institutions in the base year 2015–2016 Average Pell Grant and Average Core Expenses per FTE Student Table in this notice. The institution meets this eligibility requirement under these programs if its Core Expenses for the 2015–2016 base year are less than the average for its category of comparable institutions.

Core Expenses are defined as the total expenses for the essential education activities of the institution. Core Expenses for public institutions reporting under the Governmental Accounting Standards Board (GASB) requirements include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest, and other operating and non-operating expenses. Core Expenses for institutions reporting under the Financial Accounting Standards Board (FASB) standards (primarily private, not-for-profit, and for-profit) include expenses for instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. Do NOT include Federal student financial aid. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (*e.g.,* bookstores, dormitories), hospitals, and independent operations. The following table identifies the relevant average Federal Pell Grant percentages for the base year 2015–2016 and the relevant Core Expenses per FTE student for the base year 2015–2016 for the four categories of comparable institutions:

| Type of institution | Base year 2015–2016 average Pell Grant percentage | Base year 2015–2016 average core expenses per FTE student |
|---|---|---|
| Two-year Public Institutions | 38 | $13,154 |
| Two-year Non-profit Private Institutions | 59 | 14,349 |
| Four-year Public Institutions | 38 | 30,044 |
| Four-year Non-profit Private Institutions | 39 | 38,307 |

*Waiver Information:* IHEs that do not meet the needy student enrollment requirement or the Core Expenses per FTE requirement may apply to the Secretary for a waiver of these requirements, as described in sections 392 and 522 of the HEA, and the implementing regulations at 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

IHEs requesting a waiver of the needy student enrollment requirement or the Core Expenses per FTE requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The regulations at 34 CFR 606.3(c) and 607.3(c) define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Census Bureau.

For the purposes of this waiver provision, the following table sets forth the low-income levels (at 150%) for various sizes of families:

2016 ANNUAL LOW-INCOME LEVELS

| Size of family unit | Family income for the 48 contiguous states, DC, and outlying jurisdictions | Family income for Alaska | Family income for Hawaii |
|---|---|---|---|
| 1 | $17,820 | $22,260 | $20,505 |
| 2 | 24,030 | 30,030 | 27,645 |
| 3 | 30,240 | 37,800 | 34,785 |
| 4 | 36,450 | 45,570 | 41,925 |
| 5 | 42,660 | 53,340 | 49,065 |
| 6 | 48,870 | 61,110 | 56,205 |
| 7 | 55,095 | 68,880 | 63,345 |
| 8 | 61,335 | 76,680 | 70,515 |

*Note:* We use the 2016 annual low-income levels because those are the amounts that apply to the family income reported by students enrolled for the fall 2015 semester. For family units with more than eight members, add the following amount for each additional family member: $6,240 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; $7,800 for Alaska; and $7,170 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published on January 25, 2016, in the **Federal Register** by the U.S. Department of Health and Human Services (81 FR 4036).

Information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at:

*www.census.gov/prod/2010pubs/10smadb/appendixc.pdf,*

*www.census.gov/prod/2008pubs/07ccdb/appd.pdf.*

*Electronic Submission of Waiver Applications:*

If your institution does not appear in the EM data system as one that is eligible for the program under which you plan to apply for a grant, you must submit an application for a waiver of the eligibility requirements. To request a waiver, you must upload a waiver narrative at: *https://hepis.ed.gov/title3and5/.*

*Exception to the Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application electronically because—

- You do not have access to the internet; or
- You do not have the capacity to upload documents to the website; *and*
- No later than two weeks before the waiver application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

*Mail or fax your statement to:* Christopher Smith or Jason Cottrell, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–10, Washington, DC 20202. Fax: (202) 401–8466.

Your paper waiver application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: Christopher Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–10, Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

*Note:* The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider waiver applications postmarked after the application deadline date.

*Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Christopher Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–10, Washington, DC 20202.

We accept hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR

part 3474. (d) The regulations for certain Title III programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606. (e) The notice of final requirements for the PPOHA program, published in the **Federal Register** on July 27, 2010 (75 FR 44055).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**Note:** There are no program-specific regulations for the Part A AANAPISI, Part A NASNTI, and Part A PBI programs or any of the Part F, Title III programs. Also, there have been amendments to the HEA since the Department last issued regulations for the programs established under Titles III and V of the statute. Accordingly, we encourage each potential applicant to read the applicable sections of the HEA in order to fully understand the eligibility requirements for the program for which they are applying.

*II. Other Information*

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the waiver application in an accessible format (*e.g.,* braille, large print, audio tape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Frank T. Brogan,**

*Principal Deputy Assistant Secretary and delegated the duties of the Assistant Secretary, Office of Planning, Evaluation and Policy Development delegated the duties of the Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 2018–02955 Filed 2–13–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:**

Wednesday, March 7, 2018—8:30 a.m.–5:00 p.m.

Thursday, March 8, 2018—8:30 a.m.–12:00 p.m.

**ADDRESSES:** Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

**FOR FURTHER INFORMATION CONTACT:** Mark Heeter, Federal Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, H5–20, Richland, WA, 99352; Phone: (509) 373–1970; or Email: *mark.heeter@rl.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Potential Draft Advice
  - System 8 Planning
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Hanford Advisory Board Committee of the Whole Meeting
  - Hanford Advisory Board Committee Reports
  - Board Business

*Public Participation:* The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mark Heeter at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mark Heeter at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Mark Heeter's office at the address or phone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Issued at Washington, DC, on February 9, 2018.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–03037 Filed 2–13–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, February 28, 2018, 1:00 p.m.–4:00 p.m.

**ADDRESSES:** NNMCAB Office, 94 Cities of Gold Road, Pojoaque, NM 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@em.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental

remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

*Purpose of the Waste Management (WM) Committee:* The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

**Tentative Agenda**

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from October 25, 2017
- Old Business
- New Business
- Update from NNMCAB Chair
- Federal Advisory Committee Act Training from EM SSAB Designated Federal Officer
- Public Comment Period
- Update from Ad Hoc Committee on Energy Communities Alliance's Waste Disposition Report and Discussion of NNMCAB Recommendation(s)
- Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Issued at Washington, DC on February 9, 2018.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–03038 Filed 2–13–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, March 1, 2018, 6:00 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

**Tentative Agenda**

- Call to Order, Introductions, Review of Agenda
- Approval of January 2018 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following website: *http://www.ports-ssab.energy.gov/index.html.*

Issued at Washington, DC on February 9, 2018.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–03039 Filed 2–13–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2680–113]**

### Consumers Energy Company and DTE Electric Company; Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2680–113.

c. *Date filed:* June 28, 2017.

d. *Applicant:* Consumers Energy Company and DTE Electric Company

(Consumers Energy and DTE Companies).

e. *Name of Project:* Ludington Pumped Storage Project.

f. *Location:* The existing project is located on the east shore of Lake Michigan in the townships of Pere Marquette and Summit, Mason County, Michigan, and in Port Sheldon, Ottawa County, Michigan. The Ottawa County portion is a 1.8-acre satellite recreation site, located about 70 miles south of the project. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* David McIntosh, Consumers Energy Company, Hydro and Renewable Generation, 330 Chestnut Street, Cadillac, MI 49601; Telephone (231) 779–5506, email *David.McIntosh@cmsenergy.com*.

i. *FERC Contact:* Shana Wiseman, Telephone (312) 596–4468 and email *shana.wiseman@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2680–113.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Ludington Project is a pumped storage project that consists of:* (1) An 842-acre upper reservoir with a gross storage capacity of 82,300 acre-feet at an elevation of 942 feet National Geodetic Vertical Datum (NGVD); (2) a concrete intake structure located in the upper reservoir; (3) six, 1,300-foot-long steel penstocks varying in diameter from 28.5 feet at the intake to 24 feet at the powerhouse; (4) a concrete powerhouse with six bays each housing a pump-turbine/motor-generator unit; (5) a lower reservoir (Lake Michigan) with a surface area of about 22,300 square miles and a mean depth of 279 feet; (6) two 1,600-foot-long jetties; (7) an approximately 1,700-foot-long breakwater located about 2,700 feet from the shore; and (8) appurtenant facilities. Additionally, a satellite recreation site (Pigeon Lake North Pier) is located about 70 miles south of the project. The recreation facility includes a parking area and a 4,600-foot-long boardwalk.

The existing Ludington Project is operated to generate during peak demand periods. Generation usually occurs during the day with the upper reservoir partially replenished at night during pumping. The project has an installed capacity of 1,785 megawatts with an average annual generation of approximately 2,624,189 megawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, PRELIMINARY TERMS AND CONDITIONS, or PRELIMINARY FISHWAY PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions. | April 2018. |
| Commission issues Non-Draft Environmental Assessment (EA). | September 2018. |
| Comments on EA | October 2018. |
| Modified terms and conditions. | December 2018. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *A license applicants must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03010 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13212–005]**

### Kenai Hydro, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Application for Original License for Major Project—Unconstructed.

b. *Project No.:* P–13212–005.

c. *Date filed:* April 18, 2016, and amended on January 16, 2018.

d. *Applicant:* Kenia Hydro, LLC.

e. *Name of Project:* Grant Lake Hydroelectric Project.

f. *Location:* On Grant Creek, near the Town of Moose Pass, Kenai Peninsula Borough, Alaska. The proposed project would occupy 1,741.3 acres of federal land within the Chugach National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mikel Salzetti, Manager of Fuel Supply & Renewable Energy Development, 280 Airport Way, Kenai, AK 99611. (907) 283–2375.

i. *FERC Contact:* Kenneth Hogan, (202) 502–8434; *Kenneth.Hogan@ferc.gov* .

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–13212–005.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. *The proposed Grant Lake Hydroelectric Project would consists of:* (1) An intake structure within Grant Lake; (2) a 3,300-foot-long water conveyance; (3) a 72-inch-diameter, 150-feet-long, welded steel penstock; (3) a power house containing two 2.5 megawatt Francis turbine/generator units; (4) a 95-foot-long open channel tailrace; (5) a 3.6-acre tailrace detention pond; (6) a 1.1-mile-long, 115-kilovolt transmission line; and (7) appurtenant facilities. The project is estimated to generate an average of 18,600 megawatt hours (MWh) annually

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate *(project coordinator will replace the days with actual months/years according to the specific project).*

Commission issues draft EIS, October 2018.

Comments on draft EIS, December 2018.

Commission issues final EIS, April 2019.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03011 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Conference Call

| | Docket Nos. |
|---|---|
| American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc. | EL18–7–000 |
| Midwest Independent Transmission System Operator, Inc. | ER05–6–118 |
| Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, *et al.* | EL04–135–120 |
| Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, *et al.* | EL02–111–139 |
| Ameren Services Company, *et al.* | EL03–212–134 |
| Midwest Independent Transmission System Operator, Inc. | ER10–2283–000, ER10–2283–001 |

On Wednesday, February 14, 2018, Commission staff will hold a conference call with Midcontinent Independent System Operator, Inc. (MISO) beginning at 1:30 p.m. (Eastern Time). The call is intended to address factual questions related to the identification of replacement suppliers for the Nicor Energy, L.L.C., Engage Energy America LLC, and New Power Company Seams Elimination Charge/Cost Adjustments/Assignments (SECA) sub-zones and the calculation of MISO-assessed ''Variable SECA'' charges. The discussion at the conference call will be limited to informational, factual questions.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to listen to the conference call. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

The conference call will not be webcasted or transcribed. However, an audio listen-only line will be provided. Those wishing to access the listen-only line must email Andre Goodson (*andre.goodson@ferc.gov*) by 5:00 p.m. (Eastern Time) on Friday, February 9, 2018, with your name, email, and phone number, in order to receive the call-in information the day before the conference call. Please use the following text for the subject line, EL18–7–000 listen-only line registration.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For additional information, please contact Andre Goodson at (202) 502–8560, *andre.goodson@ferc.gov.*

Dated: February 7, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–02963 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

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

**Filings Instituting Proceedings**

*Docket Numbers:* RP18–415–000.
*Applicants:* Petition for Initiation of Show Cause Proceedings.
*Description:* Industry Petition for Initiation of Show Cause Proceedings Directed To Interstate Natural Gas Pipelines and Storage Companies.
*Filed Date:* 1/31/18.
*Accession Number:* 20180131–5345.
*Comments Due:* 5 p.m. ET 2/12/18.

*Docket Numbers:* RP18–413–001.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Tariff Amendment: Amendment to Filing in Docket No. RP18–413–000 to be effective 2/1/2018.
*Filed Date:* 2/1/18.
*Accession Number:* 20180201–5113.
*Comments Due:* 5 p.m. ET 2/13/18.

*Docket Numbers:* RP18–422–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rates—4–1–2018 releases to Twin Eagle to be effective 4/1/2018.
*Filed Date:* 2/5/18.
*Accession Number:* 20180205–5050.
*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–426–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Settlement Base Rates and CCRM 2017 Adjustment to be effective 1/1/2018.
*Filed Date:* 2/5/18.
*Accession Number:* 20180205–5101.
*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–427–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Adjusted CCRM 2018 to be effective 2/1/2018.
*Filed Date:* 2/5/18.
*Accession Number:* 20180205–5106.
*Comments Due:* 5 p.m. ET 2/20/18.

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: February 7, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03067 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14863–000]**

### BM Energy Park, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 29, 2017, BM Energy Park, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Banner Mountain Pumped Storage Hydro Project (project) to be located near Casper in Converse County, Wyoming. On January 19 and 29, 2018, the application was amended with a new project boundary. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will be closed-loop. Water to initially fill the reservoirs will be diverted from Deer Creek via a temporary diversion, pump system, and pipeline. Required make-up water will be provided from a new well that will be drilled near the lower reservoir. The proposed project would consist of upper and lower reservoirs, a penstock connecting the two reservoirs, a powerhouse, a transmission line, and an access road to each reservoir. Both reservoirs would be formed by earthen and/or roller compacted concrete embankments with a maximum height of 50–75 feet, and would be lined with impervious geotextile or pavement. The lower reservoir would have a storage capacity of 4,050 acre-feet at its normal maximum water surface elevation of 6,000 feet, and surface area of 80 acres. The upper reservoir would have a storage capacity of 4,050 acre-feet at its normal maximum water surface elevation of 7,125 feet and surface area of 50 acres. Water would be conveyed from the upper reservoir to the lower reservoir via a 5,000-foot-long, 18-foot diameter steel-lined penstock. The powerhouse would contain three Ternary turbine generator units with a total installed capacity of 400 MW. Project power would be transmitted through either a new single circuit 230-kilovolt (kV) transmission line from the proposed powerhouse 0.4 miles northwest to a new substation on the planned Energy Gateway West 500-kV transmission line, or via a new 230-kV transmission line running 16 miles north to PacifiCorp's Windstar substation.

The estimated average annual generation of the project would be 1,300 gigawatt-hours.

*Applicant Contact:* Carl Borgquist, President and CEO, BM Energy Park, LLC, 209 S. Willson Ave., P.O. Box 309, Bozeman, MT 59771, phone (406) 585–3006.

*FERC Contact:* Peter McBride, (202) 502–8132, *peter.mcbride@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14863–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of Commission's website at *http://www.ferc.gov/docs-filing/elibary.asp.* Enter the docket number (P–14863) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 7, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–02960 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–69–000]**

### Tristate NLA, LLC; Notice of Petition for Declaratory Order

Take notice that on January 26, 2018, Tristate NLA, LLC (Tristate), 9901 Valley Ranch Parkway East, Suite 2000, Irving, Texas 75063, filed in Docket No. CP18–69–000 a petition for declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), seeking a ruling that upon the abandonment and sale to Tristate of approximately 189.8 miles of various diameter pipelines and appurtenant facilities proposed by Gulf South Pipeline Company, LP (Gulf South) in Docket No. CP18–66–000 approximately (i) 155.8 miles of pipelines and appurtenant facilities will perform a gathering function, and therefore will be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA); (ii) 15.2 miles of pipelines and appurtenant facilities will be operated as Hinshaw, and therefore will be exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA; and (iii) 18.8 miles as intrastate pipelines subject to the jurisdiction of the Texas Railroad Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on March 1, 2018.

Dated: February 8, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03022 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

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

**Filings Instituting Proceedings**

*Docket Number:* PR18–28–000.

*Applicants:* Columbia Gas of Ohio, Inc.

*Description:* Tariff filing per 284.123(b),(e): COH Rates effective 1–31–2018.

*Filed Date:* 2/2/18.

*Accession Number:* 201802025058.

*Comments/Protests Due:* 5 p.m. ET 2/23/18.

*Docket Numbers:* RP18–298–001.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Compliance filing Adjusted CCRM 2018—Compliance to be effective 2/1/2018.

*Filed Date:* 2/6/18.

*Accession Number:* 20180206–5046.

*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–428–000.

*Applicants:* Enstor Energy Services, LLC, Castleton Commodities International LLC.

*Description:* Joint Petition of Enstor Energy Services, LLC, et al. for Temporary Waiver of Capacity Release Regulations and Policies and Request for Expedited Treatment.

*Filed Date:* 2/6/18.

*Accession Number:* 20180206–5129.

*Comments Due:* 5 p.m. ET 2/13/18.

*Docket Numbers:* RP18–429–000.

*Applicants:* Rover Pipeline LLC.

*Description:* § 4(d) Rate Filing: Non-Conforming Agreements—2 in compliance with CP15–93 Order to be effective 3/1/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5006.

*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–430–000.

*Applicants:* Rover Pipeline LLC.

*Description:* § 4(d) Rate Filing: Non-Conforming Agreement List—2 to be effective 3/1/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5005.

*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–431–000.

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

*Description:* Compliance filing Annual Report on Operational Transactions 2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5007.

*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–432–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* § 4(d) Rate Filing: Amended Negotiated Rate Agreement—Tenaska Mktg Ventures to be effective 2/7/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5008.

*Comments Due:* 5 p.m. ET 2/20/18.

*Docket Numbers:* RP18–433–000.

*Applicants:* Transcontinental Gas Pipe Line Company.

*Description:* § 4(d) Rate Filing: List of Non-Conforming Service Agreements (VSS II and Clean-Up) to be effective 8/1/2017.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5146.

*Comments Due:* 5 p.m. ET 2/20/18.

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: February 8, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03021 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ18–10–000]**

### ISO New England Inc.; Notice of Filing

Take notice that on January 30, 2018, ISO New England Inc. submitted its tariff filing: ISO–NE and VEC Service Agreement under Schedule 21–VEC of ISO–NE OATT to be effective 1/1/2018.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the 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.

*Comment Date:* 5:00 p.m. Eastern Time on February 20, 2018.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03009 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–66–000]**

### Gulf South Pipeline Company, LP; Notice of Application

Take notice that on January 26, 2018, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket No. CP18–66–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the

Commission's Regulations, requesting authorization to abandon by sale to Tristate NLA, LLC approximately 189.8 miles of various diameter gathering and transmission pipelines, associated meter and regulator stations, and appurtenant facilities located in Gregg, Harrison, and Panola Counties, Texas and Caddo, Bossier, and Webster Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to J. Kyle Stephens, Vice President, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; by telephone at (713) 479–8033; by fax at (713) 479–1846; or by email at *kyle.stephens@bwpmlp.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on March 1, 2018.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03006 Filed 2–13–18; 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:* EC18–23–000.

*Applicants:* Dynegy Inc., Vistra Energy Corp.

*Description:* Supplement to Joint Application of Dynegy Inc., et al. for Authorization for Merger of Jurisdictional Assets and Purchase of Securities (Delivered Price Test for MISO Region).

*Filed Date:* 2/5/18.

*Accession Number:* 20180205–5179.

*Comments Due:* 5 p.m. ET 2/26/18.

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

*Docket Numbers:* ER05–6–118.

*Applicants:* Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C.

*Description:* Update to September 18, 2017 Refund Report of Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.

*Filed Date:* 2/2/18.

*Accession Number:* 20180202–5222.

*Comments Due:* 5 p.m. ET 2/23/18.

*Docket Numbers:* ER18–816–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original WMPA SA No. 4916; Queue No. AC2–070 to be effective 1/26/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5009.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–817–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original WMPA SA No. 4918; Queue No. AC2–072 to be effective 1/30/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5040.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–818–000.

*Applicants:* KCP&L Greater Missouri Operations Company.

*Description:* § 205(d) Rate Filing: Rate Schedules 141 to be effective 4/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5050.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–819–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedules 141 to be effective 4/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5071.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–820–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revised ISA, Service Agreement No. 2181, Queue No. AB2–175 to be effective 1/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5076.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–821–000.

*Applicants:* Binghamton BOP LLC.

*Description:* Notice of Cancellation of Market-Based Rate Tariff of Binghamton BOP LLC.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5082.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–822–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedules 142 to be effective 4/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5105.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–823–000.

*Applicants:* ColGreen North Shore, LLC.

*Description:* Baseline eTariff Filing: Baseline new to be effective 2/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5110.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–824–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedules 143 to be effective 4/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5116.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–825–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedules 144 to be effective 4/8/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5120.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–827–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Cooperative Energy Second Amended and Restated NITSA Filing to be effective 4/1/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5122.

*Comments Due:* 5 p.m. ET 2/28/18.

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: February 7, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03066 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 4334–016]**

### EONY Generation Limited; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 4334–016.

c. *Date Filed:* December 13, 2017.

d. *Submitted By:* EONY Generation Limited (EONY).

e. *Name of Project:* Philadelphia Hydroelectric Project.

f. *Location:* On the Indian River, in the Village of Philadelphia in Jefferson County, New York. No Federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contacts:* Franz Kropp, Director, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 225–0418, ext. 7498. Murray Hall, Manager, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 382–7312.

i. *FERC Contact:* Emily Carter at (202) 502–6512; or email at *emily.carter@ferc.gov.*

j. EONY filed its request to use the Traditional Licensing Process on December 13, 2017. EONY provided public notice of its request on December 10, 2017. In a letter dated February 8, 2018, the Director of the Division of Hydropower Licensing approved EONY's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 C.F.R. part 402. We also are initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating EONY as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. EONY filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h. The licensee states its unequivocal intent to submit an application for a new license for Project No. 4334. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2021.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03008 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2593–031; 2823–020]**

### Algonquin Power (Beaver Falls), LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Major License.

b. *Project Nos.:* 2593–031 and 2823–020.

c. *Date filed:* December 30, 2015, supplemented by a settlement agreement filed August 24, 2017.

d. *Applicant:* Algonquin Power (Beaver Falls), LLC.

e. *Name of Project:* Upper Beaver Falls and Lower Beaver Falls Hydroelectric Projects.

f. *Location:* On the Beaver River, in the towns of Croghan and New Bremen, Lewis County, New York. The projects do not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Robert Gates, Executive Vice President, Eagle Creek Renewables Energy, LLC, 116 N. State Street P.O. Box 167, Neshkoro, WI 54960–0167; (973) 998–8400; *bob.gates@eaglecreekre.com.*

i. *FERC Contact:* Andy Bernick, (202) 502–8660 or *andrew.bernick@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–2593–031 and P–2823–020.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing project works are as follows:

The Upper Beaver Falls Project consists of: (1) A 328-foot-long, 25-foot-high concrete gravity dam with an uncontrolled overflow spillway; (2) a 48-acre reservoir with a storage capacity of 800 acre-feet at elevation 799.4 feet North American Vertical Datum of 1988 (NAVD 88); (3) a 17-foot-high, 26.5-foot-wide, 27.5-foot-long intake structure with a steel trash rack ; (4) a 90-foot-long, 16-foot-wide, 8-foot-high concrete penstock; (5) a powerhouse containing one turbine-generator with a nameplate rating of 1,500 kilowatts (kW); (6) a tailrace excavated in the riverbed; (7) a 2,120-foot-long, 2.4-kilovolt (kV) overhead transmission line connecting to an existing National Grid substation; and (8) other appurtenances. The project generates about 8,685 megawatt-hours (MWh) annually.

The Lower Beaver Falls Project consists of: (1) A 400-foot-long concrete gravity dam with a maximum height of 14 feet, including: (i) a 240-foot-long non-overflow section containing an 8-foot-wide spillway topped with flashboards ranging from 6 to 8 inches in height and (ii) a 160-foot-long overflow section with an ice sluice opening; (2) a 4-acre reservoir with a storage capacity of 27.9 acre-feet at a normal elevation of 769.6 feet NAVD 88; (3) an intake structure with a steel trash rack, integral with a powerhouse containing two 500-kW turbine and generator units; (4) a tailrace; (5) a 250-foot-long, 2.4-kV transmission line connected to the Upper Beaver Falls powerhouse; and (6) appurtenant facilities. The project generates about 5,617 MWh annually.

The Lower Beaver Falls Project is located approximately 600 feet downstream of the Upper Beaver Falls Project. The dams and existing project facilities for both projects are owned by the applicant. As described in its August 24, 2017, settlement agreement with the U.S. Fish and Wildlife Service (FWS) and New York State Department of Environmental Conservation (New York DEC), the applicant proposes the following changes to project facilities and operation: (1) both projects would be consolidated under a single license; (2) the consolidated project would operate in strict run-of-river mode; (3) a year-round minimum flow of 30 cubic feet per second (cfs) would be maintained in the Upper Project bypassed reach and at the Lower Project; (4) trash racks would be replaced at the Upper Project to provide 1-inch clear spacing, and a seasonal overlay system would be placed at the Lower Project; and (5) recreational enhancements, including a boat launch, fishing access, canoe take-out, and parking area, would be provided at a location determined through consultation with FWS and New York DEC.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Filing of comments, recommendations, terms and conditions, and prescriptions | April 2018. |
| Reply comments due | May 2018. |
| Commission issues EA | October 2018. |
| Comments on EA due | November 2018. |

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03007 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER18–814–000]**

### Carlsbad Energy Center 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 Carlsbad Energy Center 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 February 28, 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: February 8, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03023 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–70–000]**

### Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 29, 2018, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Houston, Texas 77002–2700, filed in Docket No. CP18–70–000 a prior notice request pursuant to sections 157.205 and 157.213(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA) and Columbia's blanket authorizations issued in Docket No. CP83–76–000. Columbia seeks authorization to construct and operate two new horizontal wells, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Columbia proposes to construct and operate in Ashland County, Ohio, two new horizontal storage wells, designated Well 12601 and Well 12602, and related pipelines and appurtenances at Columbia's Pavonia Storage Field, located in Ashland and Richland Counties, Ohio. Columbia states that the new wells are focused on improving the field's late season deliverability. There will be no change in the certificated physical parameters of the field, including existing boundary, total inventory, reservoir pressure, reservoir and buffer boundaries, or the certificated storage capacity, as a result of the proposed project. The total cost is approximately $6,000,000.

Any questions regarding this Application should be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, by phone (832) 320–5685,

by fax (832) 320–6685, or by email at *linda_farquhar@transcanada.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*www.ferc.gov*) under the e-Filing link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: February 7, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–02961 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM07–10–000]**

### Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Change to Filing Instructions

Take notice that the filing instructions for the *FERC Form No. 552: Annual Report of Natural Gas Transactions* [1] have been updated to clarify what transactions must be reported in Line 2 of Page 6 of FERC Form No. 552, consistent with the revised NAESB WGQ standards [2] incorporated by reference in Order No. 809.[3] Specifically, the filing instructions now clarify that next-day natural gas transactions must be reported in Line 2 of Page 6 of FERC Form No. 552 using the Timely Nomination Cycle deadline for scheduling natural gas transportation of 1:00 p.m. Central Clock Time (CCT) rather than 11:30 a.m. CCT. There are no other changes to the FERC Form No. 552 filing instructions.

The updated filing instructions are available at: *http://www.ferc.gov/docs-filing/forms/form-552/form-552.pdf.* For more information, please contact John Collins at (202) 502–8981, or email *Form552@ferc.gov.*

Dated: February 7, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–02966 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *See* 18 CFR 260.401 (2017).

[2] *See* 18 CFR 284.12(a) and (b) (2017).

[3] *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities,* Order No. 809, FERC Stats. & Regs. 31,368 (2015).

## 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:* EC18–54–000.

*Applicants:* Twin Eagle Resource Management, LLC,TERM Holdings, LLC.

*Description:* Application under FPA Section 203 of Twin Eagle Resource Management, LLC, et al.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5153.

*Comments Due:* 5 p.m. ET 2/28/18.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG18–45–000.

*Applicants:* ColGreen North Shore, LLC.

*Description:* Self-Certification of EWG Status of ColGreen North Shore, LLC.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5126.

*Comments Due:* 5 p.m. ET 2/28/18.

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

*Docket Numbers:* ER17–1567–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Amended Compliance Filing RE: November 9, 2017 Order in Docket No. ER17–1567–001 to be effective 12/31/9998.

*Filed Date:* 2/8/18.

*Accession Number:* 20180208–5047.

*Comments Due:* 5 p.m. ET 3/1/18.

*Docket Numbers:* ER18–815–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Errata to Attachment Q re: Regulation Resource Credit filing-Docket No. ER18–815 to be effective 4/9/2018.

*Filed Date:* 2/7/18.

*Accession Number:* 20180207–5128.

*Comments Due:* 5 p.m. ET 2/28/18.

*Docket Numbers:* ER18–828–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: E&P Agreement for Avenal Solar Holdings LLC to be effective 2/9/2018.

*Filed Date:* 2/8/18.

*Accession Number:* 20180208–5110.

*Comments Due:* 5 p.m. ET 3/1/18.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM18–9–000.

*Applicants:* Indiana Municipal Power Agency.

*Description:* Application of Indiana Municipal Power Agency to Terminate Mandatory Purchase Obligation Under the Public Utility Regulatory Policies Act of 1978.

*Filed Date:* 2/8/18.

*Accession Number:* 20180208–5088.

*Comments Due:* 5 p.m. ET 3/8/18.

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: February 8, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03020 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER18–823–000]**

### ColGreen North Shore, 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 ColGreen North Shore, 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 February 28, 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: February 8, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–03024 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–71–000]**

### Colorado Interstate Gas Company, L.L.C.; Notice of Application

Take notice that on January 30, 2018, Colorado Interstate Gas Company, L.L.C. (CIG), Post Office (P.O.) Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP18–71–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to El Paso Natural Gas Company, L.L.C. approximately 40.4 miles of three interconnected pipeline segments, certain metering stations, and ancillary facilities as part of its CIG-Big Blue South Abandonment Project located in Moore and Potter Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Francisco Tarin, Director, Regulatory Affairs, Colorado Interstate Gas Company, L.L.C., P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 667–7517, or by fax at (719) 520–4697; or Dave Dewey, Assistant General Counsel, Colorado Interstate Gas Company, L.L.C., P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 520–4227, or by fax at (719) 520–4898.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* February 28, 2018.

Dated: February 7, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–02962 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–11–000]**

### East Cheyenne Gas Storage, LLC; Notice of Schedule for Environmental Review of the Lewis Creek Amendment

On October 27, 2017, East Cheyenne Gas Storage, LLC (East Cheyenne) filed an application in Docket No. CP18–11–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project, known as the Lewis Creek Amendment Project (Project), would combine the working gas capacity and cushion gas capacity for the West Peetz and Lewis Creek Storage Fields and utilize the same maximum bottom-hole pressure, thus eliminating separately certified capacities for each field. East Cheyenne requests this amendment because recent geologic information shows that the West Peetz and Lewis Creek D-sands in the storage field are a single integrated reservoir. As part of this consolidation, East Cheyenne would reconfigure certain natural gas facilities in the Lewis Creek Storage Field; and expand the authorized buffer zone of the East Cheyenne Project.

On November 8, 2017, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

**Schedule for Environmental Review**

Issuance of EA, March 30, 2018.

90-day Federal Authorization Decision Deadline, June 28, 2018.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Project Description**

East Cheyenne is requesting authorization to amend its certificate previously issued in Docket No. CP10–34–000, for the East Cheyenne Gas Storage Project in Logan County, Colorado. As part of the West Peetz and Lewis Creek Field consolidation, East Cheyenne would reconfigure the well layout on the Lewis Creek portion of the Project by reducing the number of injection/withdrawal (I/W) wells by consolidating the wells on a single well pad, and reconfiguring the currently certificated Lewis Creek monitoring wells. Specifically, East Cheyenne would reconfigure the I/W well in the Lewis Creek portion of the project by converting one existing non-jurisdictional well to an I/W well (LC–D021) and collocating five directionally drilled I/W wells (LC–D022, LC–D023, LC–D024, LC–D025, and LC–D026) on the LC–2021 well pad. Additionally, East Cheyenne would decrease the total cushion gas capacity to 12.1 billion cubic feet and increase the total working gas capacity to 22.5 billion cubic feet. East Cheyenne would also reconfigure its existing pipelines and reduce the diameter of the existing 20-inch-diameter natural gas mainline to a 16-inch-diameter pipeline. Furthermore, East Cheyenne would reconfigure the existing 16-inch diameter Lewis Creek natural gas mainline and the 6-inch-diameter water disposal pipeline to connect directly to the reconfigured I/W wells LC–D021 through LC–D026 on a single well pad.

**Background**

On December 8, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lewis Creek Amendment and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Bureau of Land Management and the Logan County Economic Development Corporation support the applicant's request.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by

automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP18–11), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.*

The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03012 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos: CP18–39–000; CP18–40–000]**

### Questar Southern Trail Pipeline Company, Navajo Tribal Utility Authority; Notice of Intent To Prepare an Environmental Assessment for the Proposed Southern Trail Pipeline Abandonment Project Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Southern Trail Pipeline Abandonment Project (Project) involving abandonment in place and by sale of facilities by Questar Southern Trail Pipeline Company (Questar). On December 22, 2017, Questar Southern Trails Pipeline Company (Questar), filed an application, in Docket No. CP18–39–000, pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon its certificate of public convenience and necessity, including its blanket certificate authorities. Questar also requests to abandon, part by sale and part in-place, all of its certificated facilities dedicated to providing jurisdictional transportation service including approximately 488 miles of natural gas pipeline and related facilities located in California, Arizona, Utah, and New Mexico.

In a related filing, on December 22, 2017, the Navajo Tribal Utility Authority (NTUA), filed an application, in Docket No. CP18–40–000, pursuant to section 7(f) of the NGA and Part 157 of the Commission's regulations, requesting a service area determination within which NTUA may, without further Commission authorization, enlarge or expand its natural gas distribution facilities and a waiver of all reporting, accounting, and other rules and regulations normally applicable to natural gas companies. NTUA would utilize those acquired facilities to provide its own service, replacing the service historically provided to it by Questar. The remaining facilities not sold to the NTUA would be abandoned in-place.

About 220 miles of pipeline facilities that would be abandoned in place are in San Bernardino County, California; Mohave, Yavapai, Coconino and Apache Counties, Arizona; and San Yuan, Utah. About 268 miles would be abandoned by sale and are in Coconino, Navajo and Apache Counties, Arizona; San Yuan County, Utah; and San Yuan County, New Mexico. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 5, 2018.

If you sent comments on this project to the Commission before the opening of this docket on December 22, 2017, of the CP filing, you will need to file those comments in Docket No. CP18–39–000 and CP18–40–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the abandonment by sale and in place of the proposed facilities. The company would seek to negotiate a mutually acceptable agreement.

Questar provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

**Public Participation**

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–39–000 and CP18–40–000 with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

**Summary of the Proposed Project**

The Project would consist of abandonment by sale approximately 268 miles of pipeline facilities and abandon in-place another approximately 220 miles of pipeline facilities, totaling approximately 488 miles of existing mainline natural gas pipeline located between the Essex Meter Facility with Pacific Gas & Electric (PG&E) in San

Bernardino County, California and extending northeast to the Milagro Plant in San Juan County, New Mexico. Specifically Questar proposes to:

- Abandon in place the following:

—About 220 miles of 16-inch diameter pipeline extending northeast from the current Questar Essex metering and regulating (M&R) Facility with PG&E in San Bernardino County, California to its Grey Mountain main line block valve in Coconino County, Arizona.
—Mohave Valley Compressor Station in Mohave County, Arizona;
—two delivery interconnects and associated M&R facilities, and all other appurtenant facilities, as necessary; and
—affiliated facilities in San Bernardino County, California; Mohave, Yavapai, Coconino and Apache Counties, Arizona; and San Yuan, Utah.

Abandon by sale to NTUA approximately 268 miles of its interstate pipeline, three compressor stations, and related facilities. Specifically, Questar proposes to:

- Abandon by sale the following:

—approximately 41.3 miles of 20-inch diameter pipeline extending east from Quastar's Chinde Wash Launcher and Receiver facility in San Juan County, New Mexico to its Milagro Plant Interconnect in San Juan County, New Mexico;
—about 58.9 miles of 12-inch diameter pipeline extending southeast from Questar's Red Mesa Compressor Station in San Juan County Utah to its Chinde Wash Launcher and Receiver facility in San Juan County, New Mexico;
—about 168.0 miles of 16-inch diameter pipeline extending northeast from Questar's Grey Mountain block valve in Coconino County, Arizona to its Red Mesa Compressor Station in San Juan County, Utah;
—three compressor stations including Shiprock Compressor Station in San Juan County, New Mexico; Red Mesa Compressor Station in San Juan County, Utah; Cameron Compressor Station in Coconino County, Arizona; and
—six interconnects: three receipt point interconnects and three delivery point interconnects with associated M&R facilities, and other appurtenant facilities, as necessary.

The general location of the project facilities is shown in appendix 1.[1]

**Land Requirements for Construction**

There is no construction involved in this project. About 27.25 acres of land would be disturbed during removal of minor aboveground facilities and all work would be limited to existing permanent right-of way and existing access roads. All disturbed areas would be restored to preexisting conditions.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the facilities to be abandoned in place and removal of minor facilities proposed under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, no agency has expressed intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s) (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] We, us, and our refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies/Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an intervenor which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's website. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP18–39 or CP18–40). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 8, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–03005 Filed 2–13–18; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0723]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before April 16, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0723.

*Title:* 47 U.S.C. Section 276, Public Disclosure of Network Information by Bell Operating Companies (BOCs).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 3 respondents; 3 responses.

*Estimated Time per Response:* 120 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 276 of the Telecommunications Act of 1996.

*Total Annual Burden:* 360 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* If the Commission requests respondents to submit information to the Commission or to USAC that the respondents believe is confidential, the

respondents may request confidential treatment of such information pursuant to 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB. Under 47 U.S.C. 276(b)(1)(C), the Bell Operating Companies (BOCs) are required to publicly disclose changes in their networks or new network services. Sections 276(b)(1)(C) directs the Commission to ''prescribe a set of nonstructural safeguards for BOC payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding.'' The Computer Inquiry-III network information disclosure requirements specifically state that the disclosure would occur at two different points in time. First, disclosure would occur at the make/buy point: When a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC can introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. While the scope and applicability of the Computer III safeguards has changed with the Commission's 2015 decision regarding forbearance from enforcement of the Computer III requirements (Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. Section 160(c) from Enforcement of Obsolete ILEC Regulations that Inhibit Deployment of Next Generation Networks, Memorandum Opinion and Order, FCC 15–166 (2015)), these are minimum requirements under section 276(b)(1)(C). Without information disclosures, the industry would be unable to ascertain whether the BOCs are designing new network services or changing network technical specifications to the advantage of their own payphones, or in a manner that might disadvantage BOC payphone competitors. These requirements ensure that BOCs comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–02998 Filed 2–13–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1198]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before April 16, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–1198.

*Title:* Section 90.525, Administration of Interoperability Channels; Section 90.529, State Licenses; and Section 90.531, Band Plan.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* State, Local or Tribal Government, and Not-for- profit institutions.

*Number of Respondents and Responses:* 2,271 respondents; 2,271 responses.

*Estimated Time per Response:* 1–2 hours.

*Frequency of Response:* On occasion reporting and one-time reporting requirements; third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), unless otherwise noted.

*Total Annual Burden:* 2,312 hours.

*Total Annual Cost:* No Cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses: Section 90.525* of the Commission's rules requires approval of

license applications for Interoperability channels in the 769–775 MHz and 799–805 MHz frequency bands by state-level agency or organization responsible for administering emergency communications. *Section 90.529* of the Commission's rules provides that each state license will be granted subject to the condition that the state certifies on or before each applicable benchmark date that it is providing or prepared to provide ''substantial service.'' *Section 90.531* of the Commission's rules sets forth the band plan for the 769–775 MHz and 799–805 MHz public safety bands. This section covers channel designations for base and mobile use, narrowband segments, combined channels, channel pairing, internal guard band, and broadband. Narrowband general use channels, including the former narrowband reserve channels, and low power channels require regional planning committee concurrence and narrowband air-ground channels require state or regional planning committee concurrence.

Commission staff will use the information to assign licenses for interoperability and General Use channels, as well as renewal of State licenses. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate State interoperability or regional planning requirements or provide for the efficient use of State frequencies. This information collection includes rules to govern the operation and licensing of 700 MHz band systems to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–02999 Filed 2–13–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0174 and 3060–0580]**

## Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before April 16, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0174.

*Title:* Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit entities; Individuals or households.

*Number of Respondents and Responses:* 22,900 respondents and 1,877,000 responses.

*Estimated Time per Response:* .0011 to .2011 hours.

*Frequency of Response:* Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

*Total Annual Burden:* 249,043 hours.

*Total Annual Cost:* $34,623.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* The FCC is preparing a system of records, FCC/MB–2, ''Broadcast Station Public Inspection Files,'' to cover the personally identifiable information (PII) that may be included in the broadcast station public inspection files. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Privacy Impact Assessment(s):* The FCC is preparing a PIA.

*Needs and Uses:* The information collection requirements that are approved under this collection are as follows:

47 CFR 73.1212 requires a broadcast station to identify at the time of broadcast the sponsor of any matter for which consideration is provided. For advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone

number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file. Pursuant to the changes contained in 47 CFR 73.1212(e) and 47 CFR 73.3526(e)(19), this list, which could contain personally identifiable information, would be located in a public inspection file to be located on the Commission's website instead of being maintained in the public file at the station. Burden estimates for this change are included in OMB Control Number 3060–0214.

47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which money, service or other valuable consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. Under this rule section, when advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product is sufficient when it is clear that the mention of the name of the product constitutes a sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

*OMB Control Number:* 3060–0580.

*Title:* Section 76.1710, Operator Interests in Video Programming.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 1,500 respondents; 1,500 responses.

*Estimated Time per Response:* 15 hours.

*Frequency of Response:* Recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 22,500 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment(s):* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* The information collection requirements contained in 47 CFR 76.1710 require cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–03001 Filed 2–13–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1210]**

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before March 16, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or

the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–1210.

*Title:* Wireless E911 Location Accuracy Requirements.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, local or tribal governments.

*Number of Respondents and Responses:* 4,394 respondents; 29,028 responses.

*Estimated Time per Response:* 2–10 hours.

*Frequency of Response:* Recordkeeping, on occasion; one-time; quarterly and semi-annual reporting requirements, and third-party disclosure requirements.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47. U.S.C. Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 143,138 hours.

*Total Annual Cost:* No Cost.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The Commission is requesting that respondents submit confidential information to the Commission in the context of the test bed. Nationwide Commercial Mobile Radio Service (CMRS) providers must make data from the test bed available to small and regional CMRS providers so that the smaller providers can deploy technology throughout their networks that is consistent with a deployment that was successfully tested in the test bed. CMRS providers also may request confidential treatment of live 911 call data reports, but the Commission reserves the right to release aggregate or anonymized data on a limited basis to facilitate compliance with its rules.

*Needs and Uses:* The Commission has developed a proposed reporting template to assist CMRS providers in submitting aggregate live 911 call data as required under Section 20.18(i)(3)(ii) of the rules and seeks Office of Management and Budget (OMB) approval of the proposed template. The Commission also is requesting OMB to extend its approval of these collections for an additional three years. The information collections are described below. The proposed reporting template for live 911 call data is described below in the discussion of Section 20.18(i)(3)(ii). The proposed template will not change the paperwork burden associated with this collection, and there is no change to any other reporting obligation in this collection.

The information sought in this collection is necessary and vital to the effective implementation of improved location accuracy, which will enable Public Safety Answering Points (PSAPs) to dispatch to and first responders to respond to emergencies.

Section 20.18(i)(2)(ii)(A) requires that, within three years of the effective date of rules, CMRS providers shall deliver to uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 20.18(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. The requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 20.18(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the goals that they themselves agreed to.

Section 20.18(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for indoor location. The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 20.18(i)(3)(ii) requires that beginning 18 months from the effective date of the rules, CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls. Nationwide CMRS providers must submit call data on a quarterly basis; non-nationwide CMRS providers need only submit this data every six months. Non-nationwide providers that do not provide service in any of the Test Cities may satisfy this requirement by collecting and reporting data based on the largest county within the carrier's footprint. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

The Commission has developed a proposed reporting template to assist CMRS providers in collecting, formatting, and submitting aggregate live 911 call data in accordance with the requirements in the rules. The proposed template will also assist the Commission in evaluating the progress CMRS providers have made toward meeting the 911 location accuracy benchmarks. The proposed template is an Excel spreadsheet and will be available for downloading on the Commission's website. The Commission may also develop an online filing mechanism for these reports in the future.

Section 20.18(i)(4)(ii) requires that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission a report on its progress toward implementing improved indoor location accuracy. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 20.18(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan

for the administration and operation of the NEAD. This requirement is necessary to ensure that the four nationwide CMRS providers are building in privacy and security measures to the NEAD from its inception.

Section 20.18(i)(4)(iv) requires that before use of the NEAD or any information contained therein, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the NEAD.

Section 20.18(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement will serve to make the use of C/U data easier for PSAPs

Section 20.18(k) requires that CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–02997 Filed 2–13–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1251]**

### Information Collection Approved by the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval, on an emergency basis, for a new, one-time information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1251.

*OMB Approval Date:* February 7, 2018.

*OMB Expiration Date:* February 28, 2021.

*Title:* Mobility Fund Phase II Challenge Process.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

*Number of Respondents and Responses:* 500 respondents; 500 responses.

*Estimated Time per Response:* 204 hours for challengers; 71 for challenged parties.

*Frequency of Response:* One-time reporting requirement.

*Total Annual Burden:* 78,725 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

*Nature and Extent of Confidentiality:* To the extent the information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section .459 of the Commission's rules for such information. See 47 CFR 0.459.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* In 2011, the Commission established the Mobility Fund, which consists of two phases. Mobility Fund Phase I provided one-time universal service support payments to immediately accelerate deployment of mobile broadband services. MF–II will use a reverse auction to provide ongoing universal service support payments to continue to advance deployment of such services. In its February 2017 *Mobility Fund II Report and Order and Further Notice of Proposed Rulemaking* (*MF–II Report and Order and/or FNPRM*) (FCC 17–11), the Commission adopted the rules and framework for moving forward expeditiously with the MF–II auction and stated that, prior to the auction, it would establish a map of areas presumptively eligible for MF–II support based on the most recently available FCC Form 477 mobile wireless coverage data, and provide a limited timeframe for parties to challenge those initial determinations during the pre-auction process. The Commission sought comment in the accompanying *Mobility Fund II FNPRM* on how to best design a robust, targeted MF–II challenge process that efficiently resolves disputes about the areas eligible for MF–II support.

In its August 2017 *Order on Reconsideration and Second Report and Order* (*Challenge Process Order*) (FCC 17–102), the Commission (1) reconsidered its earlier decision to use FCC Form 477 data to compile the map of areas presumptively eligible for MF–II support and decided it would instead conduct a new, one-time data collection with specified data parameters tailored to MF–II to determine the areas in which there is deployment of qualified LTE that will be used (together with high-cost disbursement data available from the Universal Service Administrative Company (USAC)) for this purpose, and (2) adopted a streamlined challenge process that will efficiently resolve disputes about areas deemed presumptively ineligible for MF–II support. The map of areas presumptively eligible for MF–II support will serve as the starting point for the challenge process pursuant to which an interested party (challenger) may initiate a challenge with respect to one or more areas initially deemed ineligible for MF–II support (*i.e.,* areas *not* listed on the Commission's map of areas presumptively eligible for MF–II support) and challenged parties can respond to challenges.

A challenger seeking to initiate a challenge of one or more areas initially deemed ineligible in the Commission's map of areas presumptively eligible for MF–II support may do via the online challenge portal developed by USAC for this purpose (the USAC portal). For each state, a challenger must (1) identify the area(s) it seeks to challenge, (2) submit detailed proof of a lack of unsubsidized, qualified 4G LTE coverage in each challenged area in the form of actual outdoor speed test data collected using the standardized parameters specified by the Commission in the *Challenge Process Order* and any other parameters the Commission or the

Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) may implement, and (3) certify its challenge. The USAC system will validate a challenger's evidence using an automated challenge validation process. Once all valid challenges have been identified, a challenged party that chooses to respond to any valid challenge(s) may submit additional data via the online USAC portal during the established response window. A challenged party may submit technical information that is probative regarding the validity of a challenger's speed tests, including speed test data and other device-specific data collected from transmitter monitoring software or, alternatively, may submit its own speed test data that conforms to the same standards and requirements specified by the Commission and the Bureaus for challengers.

In conjunction with the qualified 4G LTE data separately collected pursuant to OMB 3060–1242 that will be used to create the map of areas presumptively eligible for MF–II support, the information collected under this MF–II challenge process collection will enable the Commission to efficiently resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF–II support and establish the final map of areas eligible for such support, thereby furthering the Commission's goal of targeting MF–II support to areas that lack adequate mobile voice and broadband coverage absent subsidies through a transparent process.

The Commission received approval from OMB for the information collection requirements contained in OMB 3060–1251 on February 7, 2018.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–03000 Filed 2–13–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, February 15, 2018 at 10:00 a.m.

**PLACE:** 999 E Street NW, Washington, DC (Ninth Floor).

**STATUS:** This Meeting, open to the public, has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Signed:

**Dayna C. Brown,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2018–03166 Filed 2–12–18; 4:15 pm]

**BILLING CODE 6715–01–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 March 7, 2018.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Brandt J. Dufrene, Sr., individually and as trustee for The FSC Trust No. 1, and Brandt J. Dufrene, Jr., individually and as the trustee for The FSC Trust No. 2 and the Brandt J. Dufrene, Jr. Trust No. 1, all of Metairie, Louisiana;* to retain voting shares of First St. Charles Bancshares, Inc., and thereby indirectly retain First National Bank USA, both Boutte, Louisiana.

Board of Governors of the Federal Reserve System, February 9, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–03082 Filed 2–13–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[CDC–2018–0004; NIOSH–233–B]**

### NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings: Proposed Additions to the NIOSH Hazardous Drug List 2018

**AGENCY:** Centers for Disease Control and Prevention, HHS.

**ACTION:** Notice of draft document available for public comment.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability for public comment on the drugs proposed for placement on the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2018* (List), as well as the NIOSH *Policy and Procedures for Developing the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings.*

**DATES:** Comments must be received by April 16, 2018.

**ADDRESSES:** Comments may be submitted, identified by docket numbers CDC–2018–0004 and NIOSH–233–B, by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 1090 Tusculum Avenue, Cincinnati, OH 45226–1998.

*Instructions:* All information received in response to this notice must include the agency name and the docket numbers (CDC–2018–0004; NIOSH–233–B). All relevant comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 1090 Tusculum Avenue, MS–C26, Cincinnati, OH 45226, telephone (513) 533–8132 (not a toll free number), Email: *hazardousdrugs@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

Interested parties are invited to participate in this action by submitting written views, opinions, recommendation, and/or data. Comments are invited on any topic related to the drugs identified in this notice, including those evaluated for

placement on the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2018.* NIOSH also seeks comment on the draft *Policy and Procedures for Developing the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings,* available in the docket for this action. NIOSH invites comments specifically on the following questions related to this action:

1. Has NIOSH appropriately identified and categorized the drugs considered for placement on the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2018*?

2. Is information available from FDA or other Federal agencies or in the published, peer-reviewed scientific literature about a specific drug or drugs identified in this notice that would justify the reconsideration of NIOSH's categorization decision?

3. Does the draft *Policy and Procedures for Developing the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings* include a methodology for reviewing toxicity information that is appropriate for this activity?

## II. Background

In September 2004, NIOSH published *NIOSH Alert: Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings* (Alert).[1] The 2004 Alert set out a general NIOSH policy for the identification of hazardous drugs and contained examples of U.S. Food and Drug Administration (FDA)-approved drugs that were deemed to be hazardous to workers in health care and other settings and may require special handling. This initial list of hazardous drugs was updated in 2010,[2] 2012,[3] 2014,[4] and 2016.[5] The latest publication, entitled *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2016* (2016 Update), covered all new approved drugs and drugs with new warnings through December 2013.

## III. Policy and Procedures for Developing the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings

The NIOSH Director has developed draft policy and procedures, entitled *Policy and Procedures for Developing the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings,* to formalize the methodology NIOSH uses to guide the addition of hazardous drugs to the List (*see https://www.cdc.gov/niosh/topics/hazdrug/default.html*). The draft document clarifies and details the purpose of the List, which is to assist employers in providing safe and healthful workplaces by offering a list of drugs that meet the NIOSH definition of a hazardous drug, and sets out the procedures used by NIOSH to identify such drugs. The draft policy and procedures will be finalized after consideration of comments to this docket and from peer reviewers.[6]

According to the draft hazardous drugs policy and procedures, NIOSH defines a hazardous drug as a drug that is:

1. Approved for use in humans [7] by the FDA; [8] and

2. Not otherwise regulated by the U.S. Nuclear Regulatory Commission; [9] and

3. Either:

a. Accompanied by prescribing information in the ''package insert'' [10] that includes special handling information to protect workers handling the drug; or

b. Exhibits one or more of the following types of toxicity in humans, animal models, or *in vitro* systems: Carcinogenicity; teratogenicity or other developmental toxicity; reproductive toxicity; organ toxicity at low doses; genotoxicity; or structure and toxicity profile that mimics existing drugs determined hazardous by exhibiting any one of the previous five toxicity types.

In accordance with the draft hazardous drugs policy and procedures, NIOSH uses FDA databases to identify new drug approvals and drugs with new safety warnings.

Information pertaining to each new drug and drugs with new safety warnings is screened to determine whether a specific drug is potentially hazardous. Potentially hazardous drugs are those for which the manufacturer has provided special handling information intended to protect workers, or for which available toxicity information suggests that a drug may exhibit one of the types of toxicity in the NIOSH definition of a hazardous drug. Drugs for which insufficient toxicity information is available and drugs for which the available information suggests no toxic effect or a toxic effect that does not meet the NIOSH definition of a hazardous drug are not proposed for placement on the List and are not further considered. Drugs for which special handling information is available are published on the NIOSH website and proposed for placement on the List; these drugs are not further evaluated.

Drugs for which the available information suggests that the drug exhibits one or more toxic effects that meet the NIOSH definition of a hazardous drug are further evaluated to determine whether the drug should be proposed for placement on the List. To conduct the evaluation of drugs for which information suggests a toxic effect, NIOSH may consult the following sources of information to determine whether each screened drug might exhibit at least one type of toxicity in the NIOSH definition of a hazardous drug:

a. Information in the drug package insert;

b. FDA information pertaining to new drug safety labeling changes; [11]

c. When available, relevant information about carcinogenicity from:

(1) The National Toxicology Program (NTP) within the U.S. Department of Health and Human Services; [12]

(2) U.S. Environmental Protection Agency (EPA); [13]

[1] *See https://www.cdc.gov/niosh/docs/2004-165/.*

[2] *See https://www.cdc.gov/niosh/docs/2010-167/.*

[3] *See https://www.cdc.gov/niosh/docs/2012-150/.*

[4] *See https://www.cdc.gov/niosh/docs/2014-138/default.html.*

[5] *See https://www.cdc.gov/niosh/docs/2016-161/default.html.*

[6] *See https://www.cdc.gov/niosh/topics/hazdrug/peer-review-plan.html* for the charge to peer reviewers.

[7] Although only drugs approved by the FDA for use in humans are included in the definition of a hazardous drug, some of those drugs may be used in veterinary settings for treatment of animals and may be a hazard for veterinary care workers.

[8] 21 U.S.C. 301 *et seq.*

[9] 10 CFR parts 19, 20, and 35. *See https://www.nrc.gov/materials/miau/med-use.html.*

[10] *See* Drug Advertising: A Glossary of Terms at *https://www.fda.gov/drugs/resourcesforyou/consumers/prescriptiondrugadvertising/ucm072025.htm.* ''Prescribing information is also called product information, product labeling, or the package insert (''the PI''). It is generally drafted by the drug company and approved by the FDA. This information travels with a drug as it moves from the company to the pharmacist. It includes the details and directions healthcare providers need to prescribe the drug properly. It is also the basis for how the drug company can advertise its drug. The prescribing information includes such details about the drug as: Its chemical description; how it works; how it interacts with other drugs, supplements, foods, and beverages; what condition(s) or disease(s) it treats; who should not use the drug; serious side effects, even if they occur rarely; commonly occurring side effects, even if they are not serious; effects on specific groups of patients, such as children, pregnant women, or older adults and how to use it in these populations.''

[11] *See https://www.accessdata.fda.gov/scripts/cder/safetylabelingchanges/.*

[12] NTP (National Toxicology Program, DHHS) [2016]. 14th report on carcinogens. Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service. *See https://ntp.niehs.nih.gov/pubhealth/roc/index-1.html.*

[13] EPA (Environmental Protection Agency). Integrated Risk Information System (IRIS) Assessments. *See https://cfpub.epa.gov/ncea/iris2/atoz.cfm.*

(3) World Health Organization's International Agency for Research on Cancer (IARC); [14] and

(4) NIOSH.[15]

d. When available, relevant information about reproductive toxicity, teratogenicity, or developmental toxicity from the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR), and from its successor, the Office of Health Assessment and Translation (OHAT);

e. When available, published, peer-reviewed scientific literature about the hazard potential of a particular drug for workers in a healthcare setting, including any relevant studies cited in the drug package insert; and

f. When available, toxicity information from Safety Data Sheets (SDSs) provided by the manufacturer.

Reviewing the available human, animal, and *in vitro* data from those sources, NIOSH uses criteria included in the hazardous drugs policy and procedures to determine whether the available evidence demonstrates or supports any of the types of toxicity in the NIOSH definition of a hazardous drug. NIOSH makes an initial determination about each drug and then requests review and comment from independent peer reviewers.

After consideration of the peer reviews, NIOSH sorts all screened and evaluated drugs into one of five categories:

- Category 1—Special handling information
- Category 2—Insufficient toxicity information available to meet the NIOSH definition of a hazardous drug
- Category 3—Available information shows no toxic effect or shows a toxic effect that does not meet the NIOSH definition of a hazardous drug
- Category 4—Available toxicity information demonstrates or supports a determination that the drug does not meet the NIOSH definition of a hazardous drug
- Category 5—Available toxicity information demonstrates or supports a determination that the drug meets the NIOSH definition of a hazardous drug

The categorized drugs are identified in a **Federal Register** notice available for public and stakeholder comment for 60 days.

After consideration of all public and stakeholder comments received, NIOSH makes a final determination about the disposition of all identified drugs and publishes a notice in the **Federal Register** announcing publication of the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2018* on the NIOSH website.

## IV. Identifying Potentially Hazardous Drugs

Consistent with the hazardous drugs policy and procedures described above, NIOSH consulted two FDA databases on a monthly basis since the 2016 Update to identify newly-approved drugs and biologics [16] and already-approved drugs for which the manufacturer has issued a new safety warning.[17] Through the monthly FDA database search, conducted from January 2014 through December 2015, NIOSH identified 74 new drugs that had received FDA approval and 199 drugs with new safety warnings. In addition to the drugs identified by the FDA database searches, the NIOSH Director received a request to evaluate two drugs, dihydroergotamine and isotretinoin, for placement on the List by an interested party. In sum, 275 drugs were identified between January 2014 and December 2015 and screened.

## V. Screening of Potentially Hazardous Drugs

Upon identification by NIOSH, each drug was screened to determine whether the manufacturer specified special handling information in the package insert or if information in the package insert suggests that a drug may exhibit at least one of the types of toxicity in the NIOSH definition of a hazardous drug. For 18 drugs, existing toxicity information did not support placement on the List (*see* Table 1) and for 211 drugs and combination drugs, the available information suggests no toxic effect or a toxic effect that does not meet the NIOSH definition of a hazardous drug (*see* Table 2); those drugs are not proposed for placement on the List.

TABLE 1—INSUFFICIENT TOXICITY INFORMATION AVAILABLE TO MEET NIOSH DEFINITION OF HAZARDOUS DRUG

[Category 2]

| | | |
|---|---|---|
| Belimumab | Dinutuximab | Protriptyline |
| Betamethasone | Elosulfase | Sebelipase alfa |
| Cholic acid | Mepolizumab | Secukinumab |
| Daratumumab | Obinutuzumab | Siltuximab |
| Desipramine | Omalizumab | Vedolizumab |
| Dexamethasone | Pegaspargase | Velaglucerase |

TABLE 2—AVAILABLE INFORMATION SHOWS A TOXIC EFFECT THAT DOES NOT MEET THE NIOSH DEFINITION OF HAZARDOUS DRUG

[Category 3]

| | | | |
|---|---|---|---|
| Abatacept | Desvenlafaxine | Ketoconazole | Rasagiline |
| Aclidinium | Dexlansoprazole | Lamivudine | Regadenosone |
| Adalimumab | Diclofenac | Lansoprazole | Rifaximin |
| Adenosine | Diltiazem | Ledipasvir/Sofosbuvir | Rilpivirine |
| Aflibercept | Dimethyl fumarate | Lesinurad | Risedronate |
| Albiglutide | Dolasetron | Levetiracetam | Rivaroxaban |
| Alcaftadine | Doripenem | Levomilnacipran | Rivastigmine |
| Alirocumab | Doxazosin | Linaclotide | Rocuronium |
| Almotriptan | Doxepin | Linagliptin | Rolapitant |
| Anagrelide | Doxycycline | Lincomycin | Ropinirole |
| Apixaban | Droxidopa | Lisinopril | Rufinamide |

[14] IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Lyon, France. *See http://monographs.iarc.fr/ENG/Classification/index.php.*

[15] NIOSH Carcinogen List. *See https://www.cdc.gov/niosh/topics/cancer/npotocca.html.*

[16] *Drugs@FDA: FDA Approved Drug Products. https://www.accessdata.fda.gov/scripts/cder/daf/.*

[17] *Drug Safety Labeling Changes. https://www.accessdata.fda.gov/scripts/cder/safetylabelingchanges/.*

TABLE 2—AVAILABLE INFORMATION SHOWS A TOXIC EFFECT THAT DOES NOT MEET THE NIOSH DEFINITION OF HAZARDOUS DRUG—Continued

[Category 3]

| | | | |
|---|---|---|---|
| Aripiprazole | Dulaglutide | Losartan | Ruxolitinib |
| Asenapine | Duloxetine | Lovastatin | Sacubitril/Valsartan |
| Asparaginase erwinia | Edoxaban | Lumacaftor/Ivacaftor | Sapropterin |
| Avanafil | Efavirenz | Maraviroc | Saquinavir |
| Baclofen | Efinaconazole | Methadone | Saxagliptin |
| Beclomethasone | Eliglustat | Methoxy polyethylene glycol-epoetin beta | Selegiline |
| Bedaquiline | Eltrombopag | Methylphenidate | Selexipag |
| Benazepril | Eluxadoline | Methylprednisolone | Sertraline |
| Bimatoprost | Empagliflozin | Minocycline | Sildenafil |
| Boceprevir | Escitalopram | Mirabegron | Simeprevir |
| Brexpiprazole | Esomeprazole | Mirtazapine | Simvastatin |
| Bupivacaine | Etidronate | Morphine | Sitagliptin |
| Buprenorphine | Evolocumab | Moxifloxacin | Sofosbuvir |
| Bupropion | Ezopiclone | Naloxegol | Somatropin |
| Calcitonin | Fentanyl | Natalizumab | Sugammadex |
| Canagliflozin | Ferumoxytol | Necitumumab | Sulfasalazine |
| Canakinumab | Filgrastim | Netupitant/Palonosetron | Sulfur hexafluoride lipid type-A |
| Cangrelor | Flibanserin | Nivolumab | Suvorexant |
| Captopril | Fluoxetine | Nortriptyline | Tadalafil |
| Carbidopa | Fluvoxamine | Olanzapine | Taligucerase |
| Cariprazine | Fondaparinux | Olodaterol | Tamsulosin |
| Cefepime | Gabapentin | Omeprazole | Tapentadol |
| Cefoperazone | Galantamine | Ondasetron | Tavaborole |
| Ceftazidime/Avibactam | Gemfibrozil | Oritavancin | Tedizolide |
| Ceftriaxone | Granisetron | Oxybutynin | Telithromycin |
| Cinacalcet | Hydrocodone | Oxycodone | Telmisartan |
| Citalopram | Hydrocortisone | Oxymorphone | Ticagrelor |
| Clindamycin | Hydromorphone | Palbociclib | Tolvaptan |
| Clomipramine | Ibandronate | Palonosetron | Trazodone |
| Clozapine | Ibrutinib | Panitumumab | Triamcinolone |
| Collagenase clostridium histolytica | Imipramine | Pantoprazole | Trimipramine |
| Dabigatran | Infliximab | Paricalcitol | Trypan blue |
| Daclatasvir | Ingenol | Pegfilgrastim | Uridine |
| Dalbavancin | Insulin degludec | Peginterferon alpha-2A | Vardenafil |
| Dalteparin | Insulin glargine | Peginterferon alpha-2B | Varenicline |
| Dapagliflozin | Insulin glulisine | Pembrolizumab | Venlafaxine |
| Dapsone | Interferon alfa-2b | Peramivir | Vigabatrin |
| Daptomycin | Interferon beta-1a | Pramlintide | Vilazodone |
| Darunavir | Interferon gamma-1b | Prazosin | Vorapaxar |
| Deferasirox | Ipilimumab | Rabeprazole | Vortioxetine |
| Denosumab | Ivacaftor | Ramipril | Zolpidem |
| Deoxycholic acid | Ivermectin | Ramucirumab | |

Finally, the information available for 44 drugs suggests one or more toxic effects; those drugs were evaluated by NIOSH, as discussed below, and were shared with peer reviewers and stakeholders.[18]

## VI. Evaluation of Potentially Hazardous Drugs

Consistent with the draft hazardous drugs policy and procedures, NIOSH evaluated the 44 drugs identified as potentially hazardous to determine whether each meets the NIOSH definition of a hazardous drug by exhibiting one or more of the following types of toxicity in humans, animal models, or *in vitro* systems: Carcinogenicity; teratogenicity or other developmental toxicity; reproductive toxicity; organ toxicity at low doses; genotoxicity; and/or a structure and toxicity profile of an isomer or close chemical analog of a drug on the List. Using criteria articulated in the draft hazardous drugs policy and procedures,[19] NIOSH reviewed the available information and sought to determine whether the evidence for each drug either demonstrates or supports a determination of toxicity. Initial determinations were made about each evaluated drug and then the list of evaluated drugs was given to peer reviewers and stakeholders for additional evaluation.

## VII. Peer and Stakeholder Review of Potentially Hazardous Drugs

NIOSH conducted peer and stakeholder review of all evaluated drugs.[20] Four independent peer reviewers and eight stakeholders reviewed and commented on the 44 drugs. De-identified peer and stakeholder reviews will be placed in the docket for this action.

## VIII. Evaluated Drugs That Do Not Meet the NIOSH Definition of a Hazardous Drug

After consideration of the peer and stakeholder reviews, NIOSH determined that the available toxicity information for 23 drugs does not meet the NIOSH definition of a hazardous drug (Category

[18] Historically, NIOSH has conducted peer review and stakeholder review concurrently, prior to publication of the list of drugs proposed for addition to the List. Beginning with the 2020 Update, NIOSH will conduct peer review prior to publication of the list of drugs proposed for addition, and will conduct public comment and stakeholder review concurrently.

[19] *See* section VII.C.

[20] *See https://www.cdc.gov/niosh/review/peer/isi/hazdrug2018-pr.html* for the charge to peer reviewers.

4). These drugs are not proposed for placement on the List and are identified in Table 3.

TABLE 3—AVAILABLE TOXICITY INFORMATION DOES NOT DEMONSTRATE OR SUPPORT A DETERMINATION THAT THE DRUG MEETS THE NIOSH DEFINITION OF A HAZARDOUS DRUG

[Category 4]

| | | |
|---|---|---|
| Aglucosidase | Diazoxide | Lanreotide |
| Alectinib | Elotuzumab | Metreleptin |
| Alendronate | Finafloxacin | Milnacipran |
| Alogliptin | Golimumab | Nintedanib |
| Apremilast | Idelalisib | Peginterferon beta-1A |
| Calcipotriene | Isavuconazonium | Pirfenidone |
| Cetuximab | Itraconazole | Tasimelteon |
| Clarithromycin | Lamotrigine | |

## IX. Drugs Proposed for Placement on the NIOSH List of Hazardous Drugs

NIOSH determined that the available toxicity information for 20 drugs and one class of drug demonstrates or supports a NIOSH determination that they meet the NIOSH definition of a hazardous drug are proposed for placement on the List (Category 5). These drugs are proposed for placement on the list and are identified in Table 4.

Two additional drugs have special handling information specified by the manufacturer and are proposed for placement on the List (*see* Table 4).[21]

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[21] The manufacturers of trabectedin and inotuzumab ozogamicin added special handling information to the package inserts after publication of the 2016 Update. Although these drugs have been categorized by NIOSH as ''hazardous'' since April 10, 2017, they will be formally added to the 2018 Update unless compelling evidence in support of not placing them on the List is offered by public commenters. *See https://www.cdc.gov/niosh/docs/2016-161/default.html.*

**Table 4. Drugs Proposed for Placement on the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings* (Category 1 -- Special Handling Information & Category 5 -- Drug Meets the NIOSH Definition of Hazardous Drug)**

| Generic Drug Name | | |
|---|---|---|
| **Bevacizumab** | **Formulation**[a] ..... IV<br>**Dosage** ..... 5-15 mg/kg<br>**AHFS Class**[b] ..... Antineoplastic<br>**New Drug**[c] ..... Yes<br>**Special Handling Information**[d] ..... No<br>**2018 Update Table No.**[e] ..... 1 | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity and Teratogenicity or other developmental toxicity*: ovarian failure in patients in clinical trials, embryo-fetal toxicity in rabbits<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=939b5d1f-9fb2-4499-80ef-0607aa6b114e |
| **Blinatumomab** | **Formulation** ..... IV<br>**Dosage** ..... 9 mcg/day<br>**AHFS Class** ..... Antineoplastic<br>**New Drug** ..... Yes<br>**Special Handling Information** ..... No<br>**2018 Update Table No.** ..... 1 | **Rationale for Proposing Placement on the List**<br>*Organ toxicity at low doses*: neurotoxicity at low doses in patients in clinical studies<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=38b482a8-960b-4591-9857-5031ecb830aa |
| **Botulinum toxins, all forms** including AbobotulinimtoxinA and OnabotulinumtoxinA | **Formulation** ..... IM<br>**Dosage** ..... 1-1000 units<br>**AHFS Class** ..... Neurotoxin<br>**New Drug** ..... No<br>**Special Handling Information** ..... No<br>**2018 Update Table No.** ..... 2 | **Rationale for Proposing Placement on the List**<br>*Organ toxicity at low doses and Teratogenicity or other developmental toxicity*: spread of toxin effects, reductions in fetal body weight and decreased fetal skeletal ossification at human dose<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=botulinum+toxin+type+A&pagesize=200&page=1* |
| **Ceritinib** | **Formulation** ..... Capsule<br>**Dosage** ..... 750 mg<br>**AHFS Class** ..... Antineoplastic<br>**New Drug** ..... Yes<br>**Special Handling Information** ..... No<br>**2018 Update Table No.** ..... 1 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: embryo-fetal toxicity at low doses in rats and rabbits<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=fff5d805-4ffd-4e8e-8e63-6f129697563e |
| **Clobazam** | **Formulation** ..... Tablet, oral suspension<br>**Dosage** ..... 20 mg/kg<br>**AHFS Class** ..... Antiepileptic<br>**New Drug** ..... No | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity and Teratogenicity or other developmental toxicity*: embryo-fetal mortality and other harm at low doses in rats and rabbits, present in human breast milk |

| | | |
|---|---|---|
| | **Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=de03bd69-2dca-459c-93b4-541fd3e9571c |
| **Cobimetinib** | **Formulation**.....Tablet<br>**Dosage**.....60 mg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity and Teratogenicity or other developmental toxicity*: increased post-implantation loss, including total litter loss in rats at low doses; post-implantation loss and fetal malformations in humans<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=c387579e-cee0-4334-bd1e-73f93ac1bde6 |
| **Darbepoetin alfa** | **Formulation**.....IV, SQ<br>**Dosage**.....0.45-2.25 mcg/kg<br>**AHFS Class**.....Erythropoiesis stimulator<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....2 | **Rationale for Proposing Placement on the List**<br>*Carcinogenicity*: progression or recurrence of several cancers in studies of patients with cancer; reduced body weight in offspring at low doses in rats and rabbits<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=0fd36cb9-c4f6-4167-93c9-8530865db3f9 |
| **Dihydroergotamine** | **Formulation**.....IV, IM, SQ, nasal spray<br>**Dosage**.....1 mg<br>**AHFS Class**.....5HT receptor binder<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity*: oxytocic properties at low doses in humans<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Dihydroergotamine * |
| **Exenatide** | **Formulation**.....SQ<br>**Dosage**.....2 mg/week<br>**AHFS Class**.....Antidiabetic<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....2 | **Rationale for Proposing Placement on the List**<br>*Carcinogenicity and Teratogenicity or other developmental toxicity*: thyroid C-cell tumors in rat studies; adverse fetal effects in rats and mice<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Exenatide * |
| **Inotuzumab ozogamicin** | **Formulation**.....IV<br>**Dosage**.....0.5-0.8 mg/m$^2$<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....Yes | **Rationale for Proposing Placement on the List**<br>*Manufacturer special handling information*: drug is cytotoxic, users should follow applicable OSHA handling and disposal procedures<br>**Package Insert** |

| | | |
|---|---|---|
| | **2018 Update Table No.**.....1 | https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=cc7014b1-c775-411d-b374-8113248b4077 |
| **Interferon beta-1b** | **Formulation**.....SQ<br>**Dosage**.....0.25 mg<br>**AHFS Class**.....Immune modulator<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....2 | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity*: spontaneous abortions in human clinical trials<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Interferon+beta-1b |
| **Isotretinoin** | **Formulation**.....Capsule<br>**Dosage**.....0.5-1 mg/kg<br>**AHFS Class**.....Retinoid<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: severe fetal malformations at any dose in humans<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Isotretinoin * |
| **Ivabradine** | **Formulation**.....Tablet<br>**Dosage**.....5-7.5 mg<br>**AHFS Class**.....HCN blocker<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: embryo-fetal toxicity and teratogenicity at low doses in rats<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=92018a65-38f6-45f7-91d4-a34921b81d0d |
| **Lenvatinib** | **Formulation**.....Capsule<br>**Dosage**.....24 mg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: embryo-fetal toxicity at low doses in rats and rabbits; abortifacient in rabbits at low doses<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=f4bedd21-efde-44c6-9d9c-b48b78d7ed1e |
| **Miltefosine** | **Formulation**.....Capsule<br>**Dosage**.....50 mg<br>**AHFS Class**.....Antibiotic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: fetal death and teratogenicity at low doses in rats and rabbits<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Miltefosine * |
| **Olaparib** | **Formulation**.....Capsule | **Rationale for Proposing Placement on the List** |

| | | |
|---|---|---|
| | **Dosage**.....400 mg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | *Carcinogenicity and Teratogenicity or other developmental toxicity*: myelodysplastic syndrome/acute myeloid leukemia in patients in clinical studies; embryo-fetal toxicity, post implantation loss, malformations at low doses in rats<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=5e31a6a9-864f-4aba-8085-37ee1ddcd499 |
| **Osimertinib** | **Formulation**.....Tablet<br>**Dosage**.....80 mg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: embryo-fetal toxicity and lethality and reduced growth in offspring in rats<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=5e81b4a7-b971-45e1-9c31-29cea8c87ce7 |
| **Sonidegib** | **Formulation**.....Capsule<br>**Dosage**.....200 mg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Reproductive toxicity and Teratogenicity or other developmental toxicity*: embryo-fetal toxicity, teratogenesis, and spontaneous abortions at low doses in rabbits<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=Sonidegib * |
| **Trabectedin** | **Formulation**.....IV<br>**Dosage**.....1.5 mg/m$^2$<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....Yes<br>**Special Handling Information**.....Yes<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Manufacturer special handling information*: drug is cytotoxic, users should follow applicable OSHA handling and disposal procedures<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=472bd78e-be17-4b9d-90f4-9482c3aec9ff |
| **Trastuzumab** | **Formulation**.....IV<br>**Dosage**.....2-6 mg/kg<br>**AHFS Class**.....Antineoplastic<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....1 | **Rationale for Proposing Placement on the List**<br>*Organ toxicity at low doses and Teratogenicity or other developmental toxicity*: cardiac and pulmonary toxicity in patients; malformations and neonatal death in patients<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=492bddb2-077e-4064-bff3-372d6af0a7a2 |
| **Triazolam** | **Formulation**.....Tablet | **Rationale for Proposing Placement on the List** |

| | | |
|---|---|---|
| | **Dosage**.....0.25 mg<br>**AHFS Class**.....Hypnotic<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | *Mimics existing drugs determined hazardous by exhibiting teratogenicity or other developmental toxicity*: drug is a benzodiazepine, a class known to cause congenital malformations and cross placenta in patients<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/search.cfm?labeltype=all&query=triazolam&pagesize=200&page=1 |
| **Urofollitropin** | **Formulation**.....IM, SQ<br>**Dosage**.....150-450 IU<br>**AHFS Class**.....Ovulation stimulator<br>**New Drug**.....No<br>**Special Handling Information**.....No<br>**2018 Update Table No.**.....3 | **Rationale for Proposing Placement on the List**<br>*Teratogenicity or other developmental toxicity*: drug is known to cause fetal harm in patients<br>**Package Insert**<br>https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=9bb87daf-d156-504e-adaf-4c21383f8d16 |

[a] IM = intramuscular, IV = intravenous, SQ = subcutaneous
[b] AHFS (American Hospital Formulary Service) Pharmacologic-Therapeutic Classification system.
[c] FDA-approved drug (January 2014-December 2015).
[d] Manufacturer's package insert statement cautioning that the drug should be handled as hazardous.
[e] The final *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings* is subdivided into three tables: Table 1 contains antineoplastic drugs, including those with special handling information provided by the manufacturer; Table 2 contains non-antineoplastic drugs, including those with special handling information; and Table 3 contains non-antineoplastic drugs that primarily have adverse reproductive and/or teratogenic effects.
* Individual package inserts from multiple manufacturers were reviewed.

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## X. Drugs Removed From the NIOSH List of Hazardous Drugs

In a petition to NIOSH in February 2017, the pharmaceutical company Theravance Biopharma requested the removal of the drug telavancin from the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings.*[22] The petition included an analysis of animal developmental toxicity studies and argued that ''[p]lacing telavancin in the NIOSH category of a hazardous drug greatly overstates the occupational risk to healthcare workers handling telavancin.'' In response, NIOSH evaluated the information provided in the petition as well as other sources provided to NIOSH by the manufacturer and determined that telavancin does not meet the NIOSH definition of a hazardous drug. NIOSH informed users of the 2016 List of this determination via a web posting and responded to Theravance Biopharma with a letter dated April 12, 2017.[23] Accordingly, telavancin does not appear in the 2018 update to the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings.* This decision is considered final.

## XI. Final List of Drugs Proposed for Placement on the NIOSH List of Hazardous Drugs

After consideration of all public comments received in the docket for this action, NIOSH will develop a final list of drugs to be placed on the *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings, 2018.* The 2018 Update will be published on the NIOSH website and announced in a **Federal Register** notice.

Dated: February 8, 2018.

**John Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2018–02957 Filed 2–13–18; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations.

*OMB No.:* 0970–0407.

*Description:* The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-federal costs for the provision of cash and medical assistance to refugees and other eligible persons, along with allowable expenses for the administration of the refugee resettlement program at the State level. States, Wilson/Fish projects (alternative projects for the administration of the refugee resettlement program), and State Replacement Designees currently submit the ORR–2 Financial Status Report in accordance with 45 CFR part 92 and 45 CFR part 74. This proposed data collection would collect financial status data (*i.e.,* amounts of expenditures and obligations) broken down by the four program components: Refugee cash assistance, refugee medical assistance, health screening, and services for unaccompanied refugee minors as well as by program administration. This breakdown of financial status data on expenditures and obligations allows ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at 45 CFR 400.211 to collect these data for use in estimating annual costs of the refugee resettlement program. ORR must implement the methodology at 45 CFR 400.211 each year after receipt of its annual appropriation to ensure that the appropriated funds will be adequate for assistance to entering refugees. The estimating methodology prescribed in the ORR regulations requires the use of actual past costs by program component. In the event that the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. This proposed single-page report on expenditures and obligations will allow ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations.

*Respondents:* State Agencies, the District of Columbia, Replacement Designees under 45 CFR 400.301(c), and Wilson-Fish Grantees (State 2 Agencies) administering or supervising the administration of programs under Title IV of the Act.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ORR Financial Status Report Cash and Medical Assistance Program, Quarterly Report on Expenditures and Obligations | 57 | 4 | 1.50 | 342 |

*Estimated Total Annual Burden Hours:* 342.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn:

[22] Harstad EB and Coleman R. Petition of Theravance Biopharma US, Inc. to Remove Telavancin from the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings. February 28, 2017.

[23] NIOSH letter to Eric Harstad and Rebecca Coleman. April 12, 2017.

Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2018–03091 Filed 2–13–18; 8:45 am]

**BILLING CODE 4184–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Home Visiting Career Trajectories.

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS), in collaboration with the Health Resources and Services Administration (HRSA), seeks approval to collect information from home visiting program staff in programs receiving funding through the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program as part of the Home Visiting Career Trajectories study. ACF is interested in collecting information about the state of the home visiting workforce, career trajectories of home visitors, and strategies for building a pipeline of qualified home visitors and supervisors.

Through the proposed information collection, the researchers will obtain information about the characteristics, qualifications, and career trajectories of home visiting staff. The study will include a national survey of the MIECHV workforce, interviews with training and technical assistance experts, and site visits to home visiting programs in eight states that vary in terms of geography, population demographics, labor markets, and home visiting program offerings.

*Respondents:* Home visiting program managers, supervisors, home visitors, and training and technical assistance experts.

ANNUAL BURDEN ESTIMATES

| Instrument | Total/annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| Home visitor and supervisor survey | 3,000 | 1 | 0.38 | 1,140 |
| Program manager survey | 700 | 1 | 0.33 | 231 |
| Focus group moderator's guide | 480 | 1 | 2 | 960 |
| Self-administered questionnaire for focus group participants | 480 | 1 | 0.03 | 14 |
| Key informant interview guide—management and supervisory staff | 80 | 1 | 1.5 | 120 |
| Key informant interview guide—training and technical assistance experts | 30 | 1 | 1.5 | 45 |

*Estimated Total Annual Burden Hours:* 2,510.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

**Mary Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2018–03093 Filed 2–13–18; 8:45 am]

**BILLING CODE 4184–74–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–E–2336]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; JUVEDERM VOLUMA XC

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for JUVEDERM VOLUMA XC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2014–E–2336 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; JUVEDERM VOLUMA XC.'' Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993–0002, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device JUVEDERM VOLUMA XC. JUVEDERM VOLUMA XC is indicated for deep (subcutaneous and/or supraperiosteal) injection for cheek augmentation to correct age-related volume deficit in the midface in adults over the age of 21. Subsequent to this approval, the USPTO received a patent term restoration application for JUVEDERM VOLUMA XC (U.S. Patent No. 7,741,476) from Pierre Lebreton, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 30, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of JUVEDERM VOLUMA XC represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for JUVEDERM VOLUMA XC is 1,896 days. Of this time, 1,110 days occurred during the testing phase of the regulatory review period, while 786 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* August 15, 2008. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C act for human tests to begin became effective on July 24, 2009. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on August 15, 2008, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* August 29, 2011. FDA has verified the applicant's claim that the premarket approval application (PMA) for JUVEDERM VOLUMA XC (PMA P110033) was initially submitted August 29, 2011.

3. *The date the application was approved:* October 22, 2013. FDA has verified the applicant's claim that PMA P110033 was approved on October 22, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 567 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–03017 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–E–2598]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; BELEODAQ

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for BELEODAQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2015–E–2598 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BELEODAQ.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable

disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product BELEODAQ (belinostat). BELEODAQ is a histone deacetylase inhibitor indicated for the treatment of patients with relapsed or refractory peripheral T-cell lymphoma. This indication is approved under accelerated approval based on tumor response rate and duration of response. An improvement in survival or disease-related symptoms has not been established. Continued approval for this indication may be contingent upon verification and description of clinical benefit in the confirmatory trial. Subsequent to this approval, the USPTO received a patent term restoration application for BELEODAQ (U.S. Patent No. 6,888,027) from Spectrum Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BELEODAQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BELEODAQ is 3,488 days. Of this time, 3,281 days occurred during the testing phase of the regulatory review period, while 207 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 16, 2004. FDA has verified the Spectrum Pharmaceuticals, Inc. claim that December 16, 2004, is the date the investigational new drug application (NDA) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 9, 2013. The applicant claims December 8, 2013 as the date the NDA for BELEODAQ was initially submitted. However, FDA records indicate that NDA 206256 was submitted on December 9, 2013.

3. *The date the application was approved:* July 3, 2014. FDA has verified the applicant's claim that NDA 206256 was approved on July 3, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,779 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–03041 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–E–3813]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; OSURNIA

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OSURNIA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department

of Commerce, for the extension of a patent which claims that animal drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2015–E–3813 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OSURNIA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA has approved for marketing the animal drug product OSURNIA (terbinafine, florfenicol and betamethasone acetate). OSURNIA is indicated for the treatment of otitis externa in dogs associated with susceptible strains of bacteria (*Staphylococcus pseudintermedius*) and yeast (*Malassezia pachydermatis*). Subsequent to this approval, the USPTO

received a patent term restoration application for OSURNIA (U.S. Patent No. 7,854,943) from IDEXX, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 17, 2015, FDA advised the USPTO that this animal drug product had undergone a regulatory review period and that the approval of OSURNIA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

**II. Determination of Regulatory Review Period**

FDA has determined that the applicable regulatory review period for OSURNIA is 4,034 days. Of this time, 3,980 days occurred during the testing phase of the regulatory review period, while 54 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the FD&C Act (21 U.S.C. 355(i)) became effective:* October 21, 2003. The applicant claims September 20, 2013, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the INAD effective date was October 21, 2003, which was the date on which the Agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the FD&C Act (21 U.S.C. 360b):* September 12, 2014. The applicant claims September 9, 2014, as the date the new animal drug application (NADA) for OSURNIA (NADA 141–437) was initially submitted. However, FDA records indicate that NADA 141–437 was submitted on September 12, 2014.

3. *The date the application was approved:* November 4, 2014. FDA has verified the applicant's claim that NADA 141–437 was approved on November 4, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 235 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–02991 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–E–3488]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; KERYDIN

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for KERYDIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2015–E–3488 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; KERYDIN.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product KERYDIN (tavaborole). KERYDIN is indicated for the topical treatment of onychomycosis of the toenails due to *Tricophyton rubrum* or *Tricophyton mentagrophytes.* Subsequent to this approval, the USPTO received a patent term restoration application for KERYDIN (U.S. Patent No. 7,582,621) from Anacor Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of KERYDIN represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for KERYDIN is 3,112 days. Of this time, 2,768 days occurred during the testing phase of the regulatory review period, while 344 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 31, 2005. FDA has verified the applicant's claim that December 31, 2005, is the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* July 29, 2013. The applicant claims July 26, 2013, as the date the new drug application (NDA) for KERYDIN (NDA 204427) was initially submitted. However, FDA records indicate that NDA 204427 was submitted on July 29, 2013.

3. *The date the application was approved:* July 7, 2014. FDA has verified the applicant's claim that NDA 204427 was approved on July 7, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 408 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket

No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–02993 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2016–E–1184 and FDA–2016–E–1183]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; IBRANCE

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for IBRANCE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket Nos. FDA–2016–E–1184 and FDA–2016–E–1183 for ''For Determination of Regulatory Review Period for Purposes of Patent Extension; IBRANCE.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the dockets and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis

for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product IBRANCE (palbociclib). IBRANCE is indicated for the treatment of hormone receptor-positive, human epidermal growth factor receptor 2-negative advanced or metastatic breast cancer in combination with:

- An aromatase inhibitor as initial endocrine based therapy in postmenopausal women; or
- fulvestrant in women with disease progression following endocrine therapy.

Subsequent to this approval, the USPTO received patent term restoration applications for IBRANCE (U.S. Patent Nos. 6,936,612 and 7,208,489) from Warner-Lambert Company, LLC, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 12, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of IBRANCE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IBRANCE is 3,954 days. Of this time, 3,779 days occurred during the testing phase of the regulatory review period, while 175 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 9, 2004. FDA has verified the Warner-Lambert Company, LLC, claim that April 9, 2004, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* August 13, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for IBRANCE (NDA 207103) was initially submitted on August 13, 2014.

3. *The date the application was approved:* February 3, 2015. FDA has verified the applicant's claim that NDA 207103 was approved on February 3, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,810 days or 1,509 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–03029 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–0001]**

### Utilizing Innovative Statistical Methods and Trial Designs in Rare Disease Settings; Public Workshop

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

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following 1-day public workshop entitled ''Utilizing Innovative Statistical Methods and Trial Designs in Rare Disease Settings.'' This workshop is convened by the Duke-Robert J. Margolis, MD, Center for Health Policy at Duke University and supported by a cooperative agreement with FDA. The purpose of the public workshop is to bring rare disease stakeholders together to discuss the challenges associated with the development and regulatory decision-making for rare disease treatments and to also discuss promising study designs and analytical methods that can help overcome these challenges.

**DATES:** The public workshop will be held on March 19, 2018, from 9 a.m. to 5 p.m. Eastern Daylight Time (EDT). See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** The public workshop will be held at the DoubleTree by Hilton Hotel Washington DC-Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910. For additional travel and hotel information, please refer to the Duke Margolis Center for Health Policy website at: *https://healthpolicy.duke.edu/events/innovative-tools-and-statistical-methods-treatment-development-rare-disease-settings.*

**FOR FURTHER INFORMATION CONTACT:** Robyn Bent, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–2572, *Robyn.Bent@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Rare disease settings pose several significant challenges for clinical

research, drug development, and regulatory review. Small population sizes, possible limited scientific understanding of the disease of interest, and a lack of market incentives often preclude more traditional clinical trial or analytical approaches from being pursued. To help collaboratively address these barriers, FDA is working with stakeholders to solicit feedback on promising designs and methodologies for use in the development of rare disease treatments that can form the basis of formal guidance documents.

**II. Topics for Discussion at the Public Workshop**

During the public workshop, speakers and participants will discuss a range of tools and methods that can be used in the development of treatments for rare diseases and small patient populations. The meeting will include both presentations by panelists and dedicated time for questions and comments from attendees. Topics will include: Master protocols, use of external controls in single-arm trials, analytical tools for trials with multiple or novel endpoints, and best practices for leveraging Bayesian statistics and adaptive study designs.

**III. Participating in the Public Workshop**

*Registration:* To register for the public workshop, visit the following website: *https://healthpolicy.duke.edu/events/innovative-tools-and-statistical-methods-treatment-development-rare-disease-settings.* If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. There will be no onsite registration. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by 5 p.m. EDT on Thursday, March 15, 2018. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact Sarah Supsiri at the Duke-Margolis Center for Health Policy (phone: 202–791–9561, email: *sarah.supsiri@duke.edu*) no later than March 12, 2018.

*Streaming webcast of the public workshop:* This public workshop will also be webcast. Archived video footage will also be available at the Duke-Margolis website following the workshop (*https://healthpolicy.duke.edu/events/innovative-tools-and-statistical-methods-treatment-development-rare-disease-settings*). Persons interested in viewing the live webcast must register online before 5 p.m. EDT on March 18, 2018 (see *Registration*). Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location whenever possible. Webcast participants will be sent technical system requirements in advance of the event. Prior to joining the streaming webcast of the public workshop, it is recommended that you review these technical system requirements.

*Transcripts:* Please be advised that transcripts will not be available.

*Other Issues for Consideration:* A 1-hour lunch break is scheduled, but food will not be provided. There are multiple restaurants within walking distance of the DoubleTree by Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910.

All event materials will be provided to registered attendees via email prior to the workshop and will be publicly available at the Duke-Margolis Center for Health Policy website (*https://healthpolicy.duke.edu/events/innovative-tools-and-statistical-methods-treatment-development-rare-disease-settings*).

Dated: February 7, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–02990 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–E–2576]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; JARDIANCE

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined the regulatory review period for JARDIANCE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 16, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2015–E–2576 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; JARDIANCE.'' Received comments, those filed in a timely manner (see **ADDRESSES**),will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product JARDIANCE (empagliflozin). JARDIANCE is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for JARDIANCE (U.S. Patent No. 7,579,449) from Boehringer Ingelheim International GmbH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of JARDIANCE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for JARDIANCE is 2,275 days. Of this time, 1,760 days occurred during the testing phase of the regulatory review period, while 515 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 11, 2008. The applicant claims May 10, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 11, 2008, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 5, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for JARDIANCE (NDA 204629) was initially submitted on March 5, 2013.

3. *The date the application was approved:* August 1, 2014. FDA has verified the applicant's claim that NDA 204629 was approved on August 1, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,001 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 8, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–02992 Filed 2–13–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy). OMB No. 0915-0047-Revision

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received no later than March 16, 2018.

**ADDRESSES:** Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy). OMB No. 0915-0047-Revision.

*Abstract:* The HPSL Program, as authorized by Public Health Service (PHS) Act Sections 721–722 and 725–735, provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program, as authorized by PHS Act Sections 835–842, provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma and degrees in nursing, including an associate degree, a baccalaureate degree, or graduate degree in nursing. It also contains a number of recordkeeping and reporting requirements for academic institutions and loan applicants. The applicable regulations for these programs under 42 CFR part 57 implement and detail the various statutory requirements (see chart below). In an effort to consolidate information collection requests and achieve greater programmatic efficiency, HRSA is incorporating the Deferment Form (Deferment-HRSA Form 519) and the Annual Operating Report (AOR–HRSA Form 501) both formerly incorporated under OMB No. 0915–0044, into this information collection request. As a result, the OMB No. 0915–0044 package will be discontinued.

*Need and Proposed Use of the Information:* Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The Deferment Form (Deferment-HRSA Form 519), provides the schools with documentation of a borrower's deferment status, as detailed for the HPSL Program under 42 CFR part 57.210 and for NSL under 42 CFR part 57.310. The Annual Operating Report (AOR–HRSA Form 501), provides HHS with information from participating schools (including schools that are no longer disbursing loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due to the Federal Government are returned) relating to HPSL and NSL Program operations and financial activities. Moreover, the HPSL and NSL Program requirements are essential for assuring that borrowers are aware of their rights and responsibilities, academic institutions have accurate records of the history and status of each loan account in order to pursue aggressive collection efforts to reduce default rates, and that academic institutions maintain adequate records for audit and assessment purposes to help HHS safeguard federal funds expended through the Federal Capital Contribution (FCC). Academic institutions are free to use improved information technology to manage the information required by the regulations.

*Likely Respondents:* Financial Aid Directors working at institutions participating in the HPSL and NSL Programs.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Instrument (HPSL & NSL) | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Deferment—HRSA Form 519 | 3,125 | 1 | 3,125 | 0.5 | 1,562.5 |
| AOR–HRSA—Form 501 | 768 | 1 | 768 | 12.0 | 9,216.0 |
| Total | 3,893 | | 3,893 | | 10,778.5 |

RECORDKEEPING REQUIREMENTS

| Regulatory/section requirements | Number of record keepers | Hours per year | Total burden hours |
|---|---|---|---|
| **HPSL Program** | | | |
| 57.206(b)(2), Documentation of Cost of Attendance | 432 | 1.05 | 454 |
| 57.208(a), Promissory Note | 432 | 1.25 | 540 |
| 57.210((b)(1)(i), Documentation of Entrance Interview | 432 | 1.25 | 540 |
| 57.210(b)(1)(ii), Documentation of Exit Interview | 475 | 0.37 | 176 |
| 57.215(a)&(d), Program Records | 475 | 10.00 | 4,750 |
| 57.215(b), Student Records | 475 | 10.00 | 4,750 |
| 57.215(c), Repayment Records | 475 | 19.55 | 9,286 |
| HPSL Subtotal | | | 20,496 |
| **NSL Program** | | | |
| 57.306(b)(2)(ii), Documentation of Cost of Attendance | 304 | 0.25 | 76 |
| 57.308(a), Promissory Note | 304 | 0.50 | 152 |
| 57.310(b)(1)(i), Documentation of Entrance Interview | 304 | 0.50 | 152 |
| 57.310(b)(1)(ii), Documentation of Exit Interview | 486 | 0.14 | 68 |
| 57.315(a)(1)&(a)(4), Program Records | 486 | 5.00 | 2,430 |
| 57.315(a)(2), Student Records | 486 | 1.00 | 486 |
| 57.315(a)(3), Repayment Records | 486 | 2.51 | 1,220 |
| NSL Subtotal | | | 4,584 |

HPSL data includes active and closing Loans for Disadvantaged Students (LDS) program schools.

REPORTING REQUIREMENTS

| Regulatory/section requirements | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| **HPSL Program** | | | | | |
| 57.206(a)(2), Student Financial Aid Transcript | 4,600 | 1.0 | 4,600 | 0.25 | 1,150 |
| 57.208(c), Loan Information Disclosure | 325 | 299.5 | 97,338 | 0.63 | 61,323 |
| 57.210(b)(1)(i), Entrance Interview | 325 | 139.5 | 45,338 | 0.50 | 22,669 |
| 57.210(b)(1)(ii), Exit Interview | 334 | 113.5 | 37,909 | 1.00 | 37,909 |
| 57.210(b)(1)(iii), Notification of Repayment | 334 | 862.5 | 288,075 | 0.38 | 109,469 |
| 57.210(b)(1)(iv), Notification During Deferment | 333 | 17.0 | 5,661 | 0.63 | 3,566 |
| 57.210(b)(1)(vi), Notification of Delinquent Accounts | 334 | 172.5 | 57,615 | 1.25 | 72,019 |
| 57.210(b)(1)(x), Credit Bureau Notification | 334 | 6.0 | 2,004 | 0.50 | 1,002 |
| 57.210(b)(4)(i), Write-off of Uncollectible Loans | 520 | 1.0 | 520 | 3.00 | 1,560 |
| 57.211(a) Disability Cancellation | 3 | 1.0 | 3 | 1.00 | 3 |
| 57.215(a)(2), Administrative Hearings | 0 | 0.0 | 0 | 0.00 | 0 |
| 57.215(a)(d), Administrative Hearings | 0 | 0.0 | 0 | 0.00 | 0 |
| HPSL Subtotal | *334 | | 539,063 | | 310,670 |
| **NSL Program** | | | | | |
| 57.306(a)(2), Student Financial Aid Transcript | 4,100 | 1.0 | 4,100 | 0.25 | 1,025 |
| 57.310(b)(1)(i), Entrance Interview | 282 | 17.5 | 4,935 | 0.42 | 2,073 |
| 57.310(b)(1)(ii), Exit Interview | 348 | 9.0 | 3,132 | 0.42 | 1,315 |
| 57.301(b)(1)(iii), Notification of Repayment | 348 | 9.0 | 3,132 | 0.27 | 846 |
| 57.310(b)(1)(iv), Notification During Deferment | 348 | 1.5 | 522 | 0.29 | 151 |

REPORTING REQUIREMENTS—Continued

| Regulatory/section requirements | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| 57.310(b)(1)(vi), Notification of Delinquent Accounts | 348 | 42.5 | 14,790 | 0.04 | 592 |
| 57.310(b)(1)(x), Credit Bureau Notification | 348 | 709.0 | 246,732 | 0.006 | 1,480 |
| 57.310(b)(4)(i), Write-off of Uncollectible Loans | 23 | 1.0 | 23 | 3.00 | 69 |
| 57.311(a), Disability Cancellation | 16 | 1.0 | 16 | 1.00 | 16 |
| 57.315(a)(1)(ii), Administrative Hearings | 0 | 0.0 | 0 | 0.00 | 0 |
| 57.316a, Administrative Hearings | 0 | 0.0 | 0 | 0.00 | 0 |
| NSL Subtotal | *348 | | 277,382 | | 7,567 |

*Includes active and closing schools.

**Amy McNulty.**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2018–02958 Filed 2–13–18; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Privacy Act of 1974; System of Records.

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notice of a New System of Records.

**SUMMARY:** The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) proposes to establish a new system of records subject to the Privacy Act, System No. 09–70–0539, titled ''Quality Payment Program (QPP).'' The new system of records will cover quality and performance data collected and used by CMS in determining merit-based payment adjustments for health care services provided by clinicians to Medicare beneficiaries, and in providing expert feedback to clinicians and third party data submitters for the purpose of helping clinicians provide high-value care to patients.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by March 16, 2018.

**ADDRESSES:** Written comments should be submitted by mail or email to: CMS Privacy Act Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1870, Location N1-14–56, or *walter.stone@cms.hhs.gov.* Comments received will be available for review without redaction unless otherwise advised by the commenter at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

**FOR FURTHER INFORMATION CONTACT:** General questions about the new system of records should be submitted by mail or email to: Michelle Peterman, Health Insurance Specialist, Division of Electronic Clinician and Quality, Quality Measurement and Value-Based Incentives Group, Center for Clinical Standards and Quality, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1870, Mailstop: S3–02–01, or *michelle.peterman@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the New Quality Payment Program Supported by the New System of Records

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) amended title XVIII of the Social Security Act (the Act) to repeal the way physicians were paid under the previous Sustainable Growth Rate (SOR) formula and replaced it with a new approach known as the Quality Payment Program. The Quality Payment Program streamlines and consolidates components of three existing incentive programs that reward high-value patient centered care: (1) Physician Quality Reporting System (PQRS) (§ 1848(k) and (m) of the Act (42 U.S.C. 1395w–4)), (2) Medicare Electronic Health Records (EHR) Incentive Program for Eligible Professionals (§ 1848(0) of the Act), and (3) Physician Value-Based Payment Modifier (VM) (§ 1848(p) of the Act). For more information, see rulemakings implementing the existing programs, at 80 Fed. Reg. 71135 (November 16, 2015) (PQRS); 80 FR 62761 (October 16, 2015) (EHR); and 80 FR 71273 (November 16, 2015) (VM).

There are two separate pathways within the Quality Payment Program, Advanced Alternative Payment Models (Advanced APM) and Merit-based Incentive Payment System (MIPS), both of which contribute toward the goal of seamless integration of the Quality Payment Program into clinical practice workflows. MIPS provides clinicians measures and activities to assist them in providing high-value, patient-centered care to Medicare patients, and to encourage and reward their use of the same. The participants generate and submit to CMS data on health care coordination. The data will be submitted to CMS by eligible clinicians and approved third party data submitters (for example, registries which collect and submit disease tracking data; health information technology (IT) vendors which submit data from clinicians' Certified Electronic Health Record Technology (CEHRT) systems). The data will include information about, and will be retrieved by personal identifiers for: (1) The clinicians, (2) any third party data submitters who are individuals (*e.g.,* sole proprietor vendors), (3) individuals who submit data for clinicians or third party data submitters as their representatives or contact persons, and (4) Medicare beneficiaries and any non-Medicare beneficiaries receiving the health care services referenced in the Quality Payment Program data. The records are described below.

The data submission process will require that clinicians and third party submitters use their identifying and contact information, tax identification number (TIN/EIN), national provider identifier (NPI), and information about health care services provided to patients for the performance categories of the MIPS including (1) quality-including a set of evidence-based, specialty-specific standards; (2) cost of services provided; (3) improvement activities that improved or are likely to improve clinical practice or care delivery; and (4) advancing care information which focuses on the use of CEHRT to support interoperability and avoid

redundancies. Except for specific measures or activities identified and published in the **Federal Register** by November 1 of each year, there are no changes in Calendar Year (CY) 2017 with respect to the collection and use of Privacy Act records associated with these activities in the QPP system of record notice (SORN) other than what is collected by the overlapping SORNs described below. There were no changes to the Call for Quality Measures process in the CY 2018 rule and so there are no changes to the use or additional collection of Privacy Act records related to the four performance categories. Payment adjustments for eligible clinicians do not begin until CY 2019 and at that time any additional Privacy Act records associated with those payment adjustments based on their performance during the applicable performance period will be described if needed in an update to this SORN. MIPS quality and performance data used in the program will be reported to CMS by eligible clinicians and approved third party data submitters of the types described in 42 CFR 414.1400. The data will pertain to health care services provided to Medicare beneficiaries, but may also include data about non-Medicare patients. As mentioned above, except for specific measures or activities identified and published in the **Federal Register** by November 1 of each year, there are no changes in CY 2017 with respect to the collection and use of Privacy Act records associated with these activities in the QPP SORN other than what is collected by the overlapping SORNs described below.

**II. Related Systems of Records Supporting the Existing PQRS, EHR, and VM Programs**

The PQRS, EHR, and VM programs each maintain records subject to the Privacy Act which are maintained in existing systems of records; these systems of records will necessarily overlap with this system of records until the existing programs fully sunset. Therefore, these SORNs cover the Quality Payment Program Privacy Act records until the QPP SORN is finalized:

1. PQRS: ''Performance Measurement and Reporting System (PMRS),'' System No. 09–70–0584, last published at 73 FR 80412 (December 31, 2008);

2. EHR: ''Medicare and Medicaid Electronic Health Record (EHR) Incentive Program National Level Repository'' System No. 09–70–0587, last published at 75 FR 73095 (November 29, 2010);

3. VM: ''Medicare Multi-Carrier Claims System (MCS),'' System No. 09–70–0501, last published at 71 FR 64968 (November 6, 2006); and

4. VM: ''Fiscal Intermediary Shared System (FISS),'' System No. 09–70–0503, last published at 71 FR 64961 (November 6, 2006).

The Performance Measurement and Reporting System (PMRS) SORN covers the Better Quality Information (BQI) to Improve Care for Medicare Beneficiaries Project, the Electronic Prescribing (E-Prescribing) Incentive Program, and the PQRS. The BQI to Improve Care for Medicare Beneficiaries Project and the E-Prescribing Incentive Program have fully sunsetted. The PQRS program's last reporting year was CY 2016. However, Privacy Act records related to the PQRS program will continue to be utilized for several additional years to assess payment adjustments in CY 2018 and data as needed. The Medicare and Medicaid Electronic Health Record (EHR) Incentive Program National Level Repository SORN covers the Medicare and Medicaid EHR Incentive Programs. The Medicare EHR Incentive program's last payment year was CY 2016. However, Privacy Act records related to the Medicare EHR Incentive program will continue to be utilized for several additional years to assess data as needed. In addition, the Medicare EHR Incentive for eligible hospitals and critical access hospitals (CAHs) and the Medicaid EHR Incentive program are active programs. Therefore, the EHR SORN will not be rescinded. The SORNs that cover the VM program will not be rescinded as they are applicable to many CMS programs.

The Quality Payment Program will continue to evolve over multiple years to accommodate payment policy implementations and take advantage of new system capabilities. This SORN will be similarly reviewed and updated to reflect significant changes, including the sunsetting of the existing programs and disposition of the records covered by the existing SORNs, when they occur.

**III. Related Rulemakings and Information Collections**

Requirements for submitting data about improvement activities did not exist in the legacy programs replaced by MIPS, and CMS does not have historical data which is directly relevant. However, the Privacy Act records collected through these legacy programs are the same data elements that are used for the Quality Payment Program in CY 2017 and 2018 although the specific uses for the previous programs may be more expansive. To date, participants in the Quality Payment Program have registered, have selected measures and are submitting data beginning in 2018 as individuals, as part of a group or as part of a virtual group—a scenario not provided through the legacy SORNs.

The primary purpose of the PMRS system of records, entitled ''Performance Measurement and Reporting System (PMRS),'' is to support the collection, maintenance, and processing of information to promote the delivery of high quality, efficient, effective, and economical health care services, and promote the quality and efficiency of services of the type for which payment may be made under title XVIII by allowing for the establishment and implementation of performance measures, the provision of feedback to physicians, and public reporting of performance information.

The primary purpose of the EHR system of records, entitled ''Medicare and Medicaid Electronic Health Record (EHR) Incentive Program National Level Repository,'' called the National Level Repository or NLR, is to collect, maintain, and process information that is required for the Medicare and Medicaid EHR Incentive Programs.

The primary purpose of the VM program covered by the systems of records entitled, ''Medicare Multi-Carrier Claims System (MCS) and the Fiscal Intermediary Shared System (FISS),'' is to identify and associate a provider (physician or individual provider) to their registration and their reports, known as the Quality and Resource Use Report (QRUR). QRUR is a report given to providers on quality of care and cost performance. In most cases, systems of records maintain Tax Identification Number (TIN) and the name of the organization. In very few cases, providers may be using their Social Security number (SSN) as Billing TIN.

As discussed above the programs covered by the PMRS SORN have sunsetted; however, the final payment year for the PQRS program is CY 2018 requiring the PMRS SORN to remain in effect until all pertinent data has been utilized. The EHR SORN and VM SORNs will not be rescinded as there are programs covered by these SORNs that are currently active and have no plans to sunset.

Once the PQRS program sunsets the records will be dispositioned entirely into the QPP system of records under NARA CMS Records Schedule: DAA–0440–2015–0009–003. The retention period for these records is 10 years.

Because the PMRS and the QPP systems of records maintain identical records for the categories of individuals covered by the respective system of records and also overlap for purposes of

making payment based on quality measures and improvement activities (though not with the same percentages of activity weighting or payment calculation), the routine uses for disclosures of records in the system of records and uses of records in the system of records are the same. Categories of individuals covered by the system of records will expand under the QPP SORN to include all-payer data.

All of the routine uses either are necessary and proper or are compatible with the original collection purpose of encouraging and rewarding clinicians' use of measures and activities that help them provide high-value, patient-centered care to Medicare beneficiaries.

Dated: February 1, 2018.

**Emery Csulak,**

*Director, Information Security Privacy Group, and Senior Official for Privacy, Centers for Medicare & Medicaid Services.*

## SYSTEM NAME AND NUMBER

''Quality Payment Program (QPP)'', HHS/CMS/CCSQ System No. 09–70–0539.

### SECURITY CLASSIFICATION:

Unclassified.

### SYSTEM LOCATION:

The address of the agency component responsible for the system of records is: CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

### SYSTEM MANAGER(S):

The agency official who is responsible for the system of records is: Director, Quality Measurement and Value-based Incentives Group, CCSQ, CMS, Room C1–23–14, 7500 Security Boulevard, Baltimore, Maryland 21244–1870.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Provisions of the Social Security Act codified at 42 U.S.C. §§ 1320c–3, *13951,* 1395w–4, 1395w–21, and 1395y.

### PURPOSE(S) OF THE SYSTEM:

The purposes for which HHS/CMS will use the records are:

- To be utilized for program management and administration purposes;
- To determine payment adjustments for health care services provided by clinicians to Medicare beneficiaries;
- To provide expert feedback to clinicians and third party data submitters, in order to help clinicians provide high-value, patient-centered care to Medicare beneficiaries;
- To make clinician-level performance measure results available to Medicare patients and caregivers through Physician Compare, as defined via regulation, either on public profile pages or via the Downloadable Database housed on *data.medicare.gov* for the purpose of promoting more informed health care choices for people with Medicare; and
- To provide relevant records to other Federal and state agencies which administer federally-funded health benefit programs; Quality Improvement Networks that review claims and conduct outreach and reviews; and individuals and organizations that assist consumers, to use for program administrative purposes and in health, disease, and payment-related research, evaluation, outreach, and transparency projects.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records will be about these categories of individuals involved in the Quality Payment Program:

- Eligible clinicians (such as, physicians, physician assistants, nurse practitioners) who submit quality and performance data to CMS under the Program;
- Any third party data submitters of the types described in 42 CFR 414.1400 who are individuals (*e.g.,* sole proprietor health IT or survey vendors) and submit data to the Program;
- Individuals who submit data for clinicians and third party data submitters (*i.e.,* as their representatives or contact persons); and
- Medicare beneficiaries (and any non-Medicare beneficiaries) receiving the health care services referenced in the data submitted to CMS under the Program.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The system will include these categories of records:

- *Records about clinicians.* These will include identifying information and contact information (such as the clinician's name, address, phone number, email address, date of birth, business address, tax identification number (TIN/EIN), national provider identifier (NPI), Social Security number (SSN), prescriber identification number, and other assigned clinician numbers) and information about health care services the clinician provided to Medicare beneficiaries (and any non-Medicare beneficiaries) and the measures and activities the clinician used in providing the services.
- *Records about any third party data submitters who are individuals (for example, sole proprietor health IT or survey vendors). These records will include the third party's name, email address, business address, and TIN/EIN.*
- *Records about individuals who submit data for clinicians and third party data submitters.* These will include the representative's name and contact information such as address, TIN/EIN, email address, and business address.
- *Records about Medicare beneficiaries (and any non-Medicare beneficiaries).* These will include the beneficiary's identifying and health information, *i.e.* name, address, date of birth, gender, ethnicity, health care utilization and claims data, health insurance claim number (HICN), Medicare beneficiary identifier (MBI), and SSN.
- *Records about other payer payment arrangements.* These will include other payer payment arrangement information submitted by non-Medicare payers to determine whether a payment arrangement meets the Other Payer Advanced Alternative Payment Model (APM) criteria. These records will include payer identifying information, payment arrangement information, supporting documentation, and a certification statement.

### RECORD SOURCE CATEGORIES:

The sources of the records covered by this system of records are (1) clinicians, (2) third party data submitters, and (3) individuals who submit data for clinicians or third party data submitters.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

A. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may disclose records from the Quality Payment Program to a party outside HHS without the prior, written consent of the individual to whom such information pertains.

1. Records may be disclosed to agency contractors (including, but not limited to, Medicare Administrative Contractors (MACs), fiscal intermediaries, and carriers) that assist in the health operations of a CMS-administered health benefits program, to CMS consultants, or to a grantee of a CMS-administered grant program, who have been engaged by the agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS. Such disclosures include (but are not limited to) disclosures deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct,

remedy, or otherwise combat fraud, waste, or abuse in such program.

2. Records may be disclosed to another Federal or state agency to the extent deemed necessary to: (a) Contribute to the accuracy of CMS' proper payment of Medicare benefits; (b) enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements health benefit programs funded in whole or in part with Federal funds; and/or (c) assist state Medicaid programs which may require Quality Payment Program information.

3. Clinician-level performance measurement results may be made available to the public, through Physician Compare, as defined via regulation, either on public profile pages or via the Downloadable Database housed on *data.medicare.gov* for the purpose of promoting more informed health care choices for people with Medicare.

4. Records may be disclosed to MIPS-eligible clinicians and eligible entities in order to provide them with expert feedback, and records may be disclosed to CMS authorized entities participating in health care transparency projects.

5. Records may be disclosed to organizations that assist consumers in comparing the quality and price of health care services, and/or that use such information for purposes related to prevention of disease or disability, or restoration or maintenance of health.

6. Records may be disclosed to organizations for research, evaluation, and projects involving payment issues.

7. Records may be disclosed to Beneficiary and Family Centered Care (BFCC)-QIOs, Quality Innovation Network-QIOs (QIN–QIOs), the Small, Underserved, and Rural Support (SURS) technical assistance contractors, and the Practice Transformation Networks (PTNs) under the Transforming Clinical Practice Initiative (TCPI) for purposes of: (a) Identifying clinicians who are included in the Quality Payment Program, specifically the MIPS track, based on the low-volume threshold; (b) determining the appropriate form of Technical Assistance based on practice size and clinician need; (c) providing eligibility information to clinicians interested in forming a virtual group; (d) transitioning clinician referrals from the Quality Payment Program Service Center to the appropriate Technical Assistance channel; (e) performing proactive outreach and engagement activities for the purpose of helping MIPS eligible clinicians participate in the program; (f) developing educational tools and resources; (g) monitoring annual MIPS eligible clinician performance; (h) assessing future need based on a MIPS eligible clinician's Final Score; (i) tracking non-MIPS eligible clinicians who voluntarily report measures and activities to MIPS; and (j) assisting MIPS eligible clinicians transition into an Advanced APM.

8. Records may be disclosed to the Department of Justice (DOJ), a court, or an adjudicatory body when: (a) The Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

9. Records may be disclosed to another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

10. Records may be disclosed to appropriate agencies, entities, and persons when (a) HHS suspects or has confirmed that there has been a breach of the system of records; (b) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. Records may be disclosed to another Federal agency or Federal entity, when HHS determines that information from this system of records is reasonably necessary to as.sist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal government, or national security, resulting from a suspected or confirmed breach.

12. Records may be disclosed to the U.S. Department of Homeland Security (OHS) if captured in an intrusion detection system used by HHS and OHS pursuant to a OHS cybersecurity program that monitors internet traffic to and from Federal government computer networks to prevent a variety of types of cybersecurity incidents.

B. Additional Circumstances Affecting Routine Use Disclosures: To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy oflndividually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E), disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information'' (see 45 CFR 164.512(a)(l)).

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

The records will be stored electronically or on magnetic media or paper.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

The data collected on clinicians will be retrieved by the clinician's name, address, NPI, TIN/EIN and other identifying provider numbers. Information about third party data submitters who are individuals will be retrieved by name, address, and TIN/EIN. Records about contact persons will be retrieved by name, email address and business address. The data collected on Medicare beneficiaries (and any non-Medicare beneficiaries) will be retrieved by the beneficiary's name, Medicare beneficiary identifier (MBI), health insurance claim number (HICN), SSN, address, and date of birth.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

A records disposition schedule for the Quality Payment Program is pending submission to and approval by the National Archives and Records Administration (NARA); until NARA approval is obtained, CMS will retain the records indefinitely. CMS is proposing a retention period of approximately 10 years for these records under the NARA CMS Records Schedule: DAA–0440–2015–0009–0003. Any claims-related records that become encompassed by a document preservation order may be retained longer (*i.e.,* until notification is received from the Department of Justice).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Safeguards will conform to the HHS Information Security and Privacy Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.* Information will be safeguarded in accordance with applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards, including, all pertinent National Institutes of Standards and Technology (NIST) publications, and 0MB Circular A–130. Records will be protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges, and cameras; securing hard-copy records in locked file cabinets, file rooms, or offices during off-duty hours; controlling access to physical locations where records are maintained and used by means of combination locks and identification badges issued only to authorized users; limiting access to electronic databases to authorized users based on roles and two-factor authentication (user ID and password); using a secured operating system protected by encryption, firewalls, and intrusion detection systems; requiring encryption for records stored on removable media; and training personnel in Privacy Act and information security requirements. Records that are eligible for destruction will be disposed of using secure destruction methods prescribed by NIST SP 800–88.

**RECORD ACCESS PROCEDURES:**

An individual seeking access to a record about him or her in this system should write to tbe System Manager indicated above, who will require the individual's name and particulars necessary to distinguish between records on subject individuals with the same name, such as NPI or TIN. The requestor should also reasonably specify the record(s) to which access is sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

Any subject individual may request that his record be corrected or amended if he believes that the record is not accurate, timely, complete, or relevant or necessary to accomplish a Department function. A subject individual making a request to amend or correct his record shall address his request to the responsible System Manager as stated above, in writing. The subject individual shall specify in each request: (I) The system of records from which the record is retrieved; (2) The particular record which he is seeking to correct or amend; (3) Whether he is seeking an addition to or a deletion or substitution of the record; and, (4) His reasons for requesting correction or amendment of the record. (These procedures are in accordance with Department regulation 45 CFR Sb.7).

**NOTIFICATION PROCEDURES:**

Individuals wishing to know if this system contains records about them should write to the System Manager indicated above and follow the same instructions under Record Access Procedures.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

[FR Doc. 2018–02933 Filed 2–13–18; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Assistant Secretary for Administration (ASA), Department of Health and Human Services (HHS).

**ACTION:** Notice of modified systems of records.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to modify all of its systems of records to add two security-related routine uses which are needed to improve federal agencies' ability to detect and address actual and suspected breaches of personally identifiable information (PII) in Privacy Act systems of records. The routine uses are explained in the Supplementary Information section of this notice.

**DATES:** This notice will become effective 30 days after publication, unless the Department makes changes based on comments received. Written comments should be submitted on or before the effective date.

**ADDRESSES:** The public should address written comments to Beth Kramer, HHS Privacy Act Officer, by mail or email, at *HHS.ACFO@hhs.gov,* or FOIA/PA Division, Suite 729H, 200 Independence Avenue SW, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** General questions may be submitted to Beth Kramer, HHS Privacy Act Officer, by mail or email, at *HHS.ACFO@hhs.gov,* or FOIA/PA Division, Suite 729H, 200 Independence Avenue SW, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** The Privacy Act (5 U.S.C. 552a), at subsection (b)(3), requires each agency to publish, for public notice and comment, routine uses describing any disclosures of information about an individual that the agency intends to make from a Privacy Act system of records without the individual's prior written consent, other than those which are authorized directly in the Privacy Act at subsections (b)(1)–(2) and (b)(4)–(12). The Privacy Act defines ''routine use'' at subsection (a)(7) to mean a disclosure for a purpose compatible with the purpose for which the record was collected.

In accordance with Office of Management and Budget (OMB) Memorandum M–17–12, issued January 3, 2017, titled ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' HHS is adding the following two routine uses to all of its system of records notices (SORNs) to authorize HHS to disclose information from each system of records when necessary to obtain assistance with a suspected or confirmed breach of PII or to assist another agency in its response to a breach. The first routine use is a revised version of a routine use prescribed in 2007, in former OMB Memorandum M–07–16. The second routine use is new:

''To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

''To another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.''

Both routine uses are compatible with the purposes for which PII is collected in the affected systems of records, because individuals whose PII is included in any federal record system

expect that the federal government will secure the information, and because the routine uses are necessary and proper to comply with federal laws imposing security requirements, such as:

- The Privacy Act, which requires that PII be secured against potential misuse by unauthorized persons (*see* 5 U.S.C. 552a(e)(10)); and
- The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III of the E-Government Act of 2002 (*see* 44 U.S.C. 3541 *et seq.*), which requires that federal information and information systems be protected from unauthorized use, disclosure, disruption, modification and destruction, in order to preserve data integrity, confidentiality, and availability.

Adding these routine uses would constitute a significant change to the affected systems of records; therefore, HHS has provided a report on the establishment of the routine uses to OMB and Congress in accordance with 5 U.S.C. 552a(r).

**Michael S. Marquis,**

*Director, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs.*

For the reasons set forth above, the following two routine uses are added to all HHS systems of records listed in the tables at the end of this Notice, and will be effective upon completion of the public comment period provided in this Notice. The first routine use will replace any previously-published version of that routine use:

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

To another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

**HISTORY:**

See below table for the publication history of each affected SORN.

OFFICE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES (OS)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–90–0001 ... | Telephone Directory/Locator System | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0005 ... | Safety Management Information System | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0007 ... | Complaints & Inquiries Records—Miscellaneous | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0008 ... | Conflict of Interest Records | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0009 ... | Discrimination Complaints Records | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0010 ... | Employee Assistance Program (EAP) Records | 67 FR 4965 2/1/02 ..... | None. |
| 09–90–0014 ... | Grievances Filed Under Part 771 of 5 CFR | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0015 ... | Grievance Records Filed Under Procedures Established by Labor-Management Negotiations. | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0020 ... | Suitability for Employment Records | 58 FR 28880 5/17/93 ..... | 59 FR 55845 11/9/94. |
| 09–90–0024 ... | HHS Financial Management System Records | 80 FR 67767 11/3/15 ..... | None. |
| 09–90–0025 ... | Central Registry of Individuals Doing Business with HHS | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0027 ... | Congressional Correspondence Unit | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0037 ... | Secretariat's Correspondence Control System | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0038 ... | Secretary's Official Files | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0039 ... | National Disaster Claims Processing System | 66 FR 44347 8/23/01 ..... | None. |
| 09–90–0040 ... | National Disaster Medical System (NDMS) Patient Treatment and Tracking. | 78 FR 78959 12/27/13 ..... | None. |
| 09–90–0048 ... | Medicare Appeals Council Records | 71 FR 11206 3/6/06 ..... | None. |
| 09–90–0049 ... | Departmental Appeals Board Case and Appeal Records | 71 FR 11204 3/6/06 ..... | None. |
| 09–90–0052 ... | Investigatory Material Compiled for Law Enforcement Purposes for the Program Information Management System (PIMS). | 75 FR 18841 4/13/10 ..... | None. |
| 09–90–0058 ... | Tracking Records and Case Files for FOIA and Privacy Act Requests and Appeals. | 81 FR 17463 3/29/16 ..... | None. |
| 09–90–0059 ... | Federal Advisory Committee Membership Files | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0062 ... | Administrative Claims | 69 FR 71414 12/9/04 ..... | None. |
| 09–90–0066 ... | OGC Attorney Applicant Files | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0067 ... | Invention Reports Submitted to the Department of Health & Human Services by its Employees, Grantees and Fellowship Recipients & Contractors. | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0068 ... | Federal Private Relief Legislation | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0069 ... | Unfair Labor Practice Records | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0072 ... | Congressional Grants Notification Unit | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0083 ... | JOBS Evaluation Data System | 57 FR 2104 1/17/92 ..... | 59 FR 55845 11/9/94. |
| 09–90–0085 ... | Partnership for Long Term Care Data Set | 73 FR 77027 12/18/08 ..... | None. |
| 09–90–0160 ... | Medical Reserve Corps Unit Information | 71 FR 37937 7/3/06 ..... | None. |
| 09–90–0161 ... | Minority Health Information Services | 75 FR 18837 4/13/10 ..... | None. |
| 09–90–0411 ... | HHS Consolidated Acquisition Solution (HCAS) | 76 FR 21902 4/19/11 ..... | None. |
| 09–90–0777 ... | Facility and Resource Access Control Records | 75 FR 47812 8/9/10 ..... | None. |
| 09–90–1200 ... | Workplace Violence Prevention Team (WVPT) Records | 65 FR 58999 10/3/00 ..... | None. |
| 09–90–1201 ... | ONC Health IT Dashboard | 76 FR 79685 12/22/11 ..... | None. |

## OFFICE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES (OS)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–90–1202 ... | Think Cultural Health | 77 FR 68123 11/15/12 | None. |
| 09–90–1401 ... | Records About Restricted Dataset Requesters | 80 FR 17447 4/1/15 | None. |
| 09–90–1402 ... | HHS Payroll Records | 80 FR 48538 8/13/15 | None. |
| 09–90–1501 ... | Administrative Law Judge (ALJ) Working File, Office of Medicare Hearings and Appeals (OMHA). | 80 FR 63562 10/20/15 | None. |
| 09–90–1601 ... | Outside Experts Recruited for Non-FACA Activities | 81 FR 83246 11/21/16 | None. |
| 09–90–9999 ... | Automated Litigation Tracking System | 48 FR 38305 8/23/83 | 59 FR 55845 11/9/94. |
| 09–37–0001 ... | OASH Correspondence Control System | 51 FR 42352 11/24/86 | 53 FR 47302 11/22/88. 56 FR 1232 1/11/91. |
| 09–37–0020 ... | Office of Minority Health Grants Records System | 52 FR 37663 10/8/87 | 56 FR 1232 1/11/91. |
| 09–37–0021 ... | HHS Records Related to Research Misconduct Proceedings | 74 FR 44847 8/31/09 | None. |
| 09–37–0024 ... | Studies of Preventive Medicine, Health Promotion, and Disease Prevention. | 60 FR 1788 1/5/95 | None. |
| 09–37–0151 ... | Public Health Service ALERT Records Concerning Individuals Found to Have Committed Scientific Misconduct in PHS Sponsored Research. | 59 FR 25953 5/18/94 | None. |
| 09–40–0001 ... | Public Health Service (PHS) Commissioned Corps General Personnel Records. | 63 FR 68596 12/11/98 | None. |
| 09–40–0002 ... | Public Health Service (PHS) Commissioned Corps Medical Records | 63 FR 68596 12/11/98 | None. |
| 09–40–0003 ... | Public Health Service (PHS) Commissioned Corps Board Proceedings. | 63 FR 68596 12/11/98 | None. |
| 09–40–0004 ... | Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files. | 63 FR 68596 12/11/98 | None. |
| 09–40–0005 ... | Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records. | 63 FR 68596 12/11/98 | None. |
| 09–40–0011 ... | Proceedings of the Board for Correction of PHS Commissioned Corps Records. | 63 FR 68596 12/11/98 | None. |
| 09–40–0012 ... | Debt Management and Collection System | 63 FR 68596 12/11/98 | 80 FR 67767 11/3/15. |

## OFFICE OF INSPECTOR GENERAL (OIG)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–90–0002 ... | Investigatory Material Compiled for Security and Suitability Purposes | 47 FR 45514 10/13/82 | 59 FR 55845 11/9/94. |
| 09–90–0003 ... | Criminal Investigative Files of the Inspector General | 73 FR 11650 3/4/08 | None. |
| 09–90–0064 ... | Litigation Files, Administrative Complaints and Adverse Personnel Actions. | 47 FR 45514 10/13/82 | 59 FR 55845 11/9/94. |
| 09–90–0076 ... | Administrative Files | 73 FR 18532 4/4/08 | None. |
| 09–90–0077 ... | Litigation Files, Administrative Complaints, and Personnel Actions | 73 FR 20311 4/15/08 | None. |
| 09–90–0100 ... | Civil and Administrative Investigative Files of the Inspector General | 47 FR 43190 9/30/82 | 59 FR 55845 11/9/94. 68 FR 36827 6/19/03. |
| 09–90–0101 ... | Health Care Program Violations | 66 FR 9865 2/12/01 | None. |
| 09–90–1000 ... | Consolidated Data Repository | 73 FR 66648 11/10/08 | 76 FR 81950 12/29/11. |

## ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–80–0321 ... | ORR Division of Children's Services Records | 81 FR 46682 7/18/16 | None. |
| 09–80–0325 ... | ORR Internet Refugee Arrivals Data System (iRADS) | 81 FR 46682 7/18/16 | None. |
| 09–80–0327 ... | ORR Repatriation Program Records | 81 FR 46682 7/18/16 | None. |
| 09–80–0329 ... | ORR Unaccompanied Refugee Minors Records | 81 FR 46682 7/18/16 | None. |
| 09–80–0341 ... | FYSB Research and Evaluation Project Records | 80 FR 17893 4/2/15 | None. |
| 09–80–0361 ... | OPRE Research and Evaluation Project Records | 80 FR 17893 4/2/15 | None. |
| 09–80–0371 ... | OCC Federal Child Care Monthly Case Records | 80 FR 17893 4/2/15 | None. |
| 09–80–0373 ... | OFA Tribal Temporary Assistance for Needy Families (Tribal TANF) Data System. | 80 FR 17893 4/2/15 | None. |
| 09–90–0375 ... | OFA Temporary Assistance for Needy Families | 80 FR 17893 4/2/15 | None. |
| 09–80–0381 ... | OCSE National Directory of New Hires | 80 FR 17893 4/2/15 | None. |
| 09–80–0383 ... | OCSE Debtor File | 80 FR 17893 4/2/15 | None. |
| 09–80–0385 ... | OCSE Federal Case Registry of Child Support Orders (FCR) | 80 FR 17893 4/2/15 | None. |
| 09–80–0387 ... | Federal Parent Locator Service Child Support Services Portal | 80 FR 17893 4/2/15 | None. |
| 09–80–0388 ... | ORR Refugee Suicide Database | 81 FR 46682 7/18/16 | None. |

## AGENCY FOR HEALTHCARE RESEARCH AND QUALITY (AHRQ)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–35–0001 ... | Agency Management Information System/Grants (AMIS/GRANTS and CONTRACTS). | 69 FR 17666 4/5/04 ..... | None. |
| 09–35–0002 ... | Medical Expenditure Panel Survey (MEPS) and National Medical Expenditure Survey 2 (NMES 2). | 69 FR 17666 4/5/04 ..... | None. |

## CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–19–0001 ... | Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances. | 76 FR 4431 1/25/11 ..... | None. |
| 09–20–0001 ... | Certifying Interpreting Physician File ..... | 51 FR 42449 11/24/86 ..... | 57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4435 1/25/11. |
| 09–20–0055 ... | Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements. | 51 FR 42449 11/24/86 ..... | 53 FR 47345 11/22/88.<br>54 FR 47904 11/17/89.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4436 1/25/11. |
| 09–20–0059 ... | Division of Training Mailing List ..... | 51 FR 42449 11/24/86 ..... | 58 FR 69048 12/29/93. |
| 09–20–0089 ... | Studies of Treatment of Tuberculosis and Other Mycobacterioses ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4438 1/25/11. |
| 09–20–0090 ... | Studies of Testing for Tuberculosis and Other Mycobacterioses ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4440 1/25/11. |
| 09–20–0096 ... | Records of Tuskegee Study Health Benefit Recipients ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4443 1/25/11. |
| 09–20–0102 ... | Alien Mental Waiver Program ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4445 1/25/11. |
| 09–20–0103 ... | Alien Tuberculosis Follow-up Program ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4446 1/25/11. |
| 09–20–0106 ... | Specimen Handling for Testing and Related Data ..... | 51 FR 42449 11/24/86 ..... | 53 FR 47345 11/22/88.<br>54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4449 1/25/11. |
| 09–20–0112 ... | Fellowship Program and Guest Researcher Records ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94.<br>59 FR 67080 12/28/94.<br>76 FR 4451 1/25/11. |
| 09–20–0113 ... | Epidemic Investigation Case Records ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4452 1/25/11. |

CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–20–0117 ... | Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>58 FR 69048 12/29/93.<br>76 FR 4454 1/25/11. |
| 09–20–0118 ... | Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>58 FR 69048 12/29/93.<br>76 FR 4456 1/25/11. |
| 09–20–0136 ... | Epidemiologic Studies and Surveillance of Disease Problems ..... | 57 FR 62811 12/31/92 ..... | 58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94.<br>59 FR 67080 12/28/94.<br>76 FR 4458 1/25/11. |
| 09–20–0137 ... | Passport File ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>58 FR 69048 12/29/93.<br>76 FR 4460 1/25/11. |
| 09–20–0138 ... | Epidemic Intelligence Service Officers Files ..... | 51 FR 42449 11/24/86 ..... | 53 FR 47345 11/22/88.<br>54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>58 FR 69048 12/29/93.<br>76 FR 4462 1/25/11. |
| 09–20–0147 ... | Occupational Health Epidemiological Studies and EEOICPA Program Records. | 76 FR 34706 6/14/11 ..... | None. |
| 09–20–0149 ... | Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4466 1/25/11. |
| 09–20–0153 ... | Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4469 1/25/11. |
| 09–20–0154 ... | Medical and Laboratory Studies ..... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4471 1/25/11. |
| 09–20–0157 ... | Clinical Laboratory Personnel Proficiency Test Results (Medicare) .... | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>58 FR 69048 12/29/93. |
| 09–20–0159 ... | Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4474 1/25/11. |
| 09–20–0160 ... | Records of Subjects in Health Promotion and Education Studies ..... | 51 FR 42449 11/24/86. .... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4476 1/25/11. |
| 09–20–0161 ... | Records of Health Professionals in Disease Prevention and Control Training Programs. | 51 FR 42449 11/24/86 ..... | 54 FR 47904 11/17/89.<br>56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 67080 12/28/94.<br>76 FR 4478 1/25/11. |
| 09–20–0162 ... | Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. | 51 FR 42449 11/24/86. .... | 56 FR 66733 12/24/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>76 FR 4480 1/25/11. |
| 09–20–0163 ... | Applicants for National Center for Health Statistics Technical Assistance. | 51 FR 42368 11/24/86 ..... | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |
| 09–20–0164 ... | Health and Demographic Surveys Conducted in Probability Samples of the United States Population. | 49 FR 37693 9/25/84. ..... | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |

CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–20–0165 ... | Health Facilities' Inventories and Survey | 49 FR 37694 9/25/84 | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |
| 09–20–0166 ... | Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year. | 49 FR 37695 9/25/84 | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |
| 09–20–0167 ... | Health Care Statistics | 49 FR 37697 9/25/84 | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |
| 09–20–0169 ... | Users of Health Statistics | 51 FR 42371 11/24/86 | 52 FR 45023 11/24/87.<br>56 FR 1324 1/11/91.<br>57 FR 62811 12/31/92.<br>58 FR 69048 12/29/93.<br>59 FR 48331 9/7/94. |
| 09–20–0170 ... | National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS). | 72 FR 35993 7/2/07 | 76 FR 4483 1/25/11. |
| 09–20–0171 ... | Quarantine-and-Traveler-Related Activities, Including Records for Contact Tracing Investigation and Notification under 42 CFR Parts 70 and 71. | 72 FR 70867 12/13/07 | 76 FR 4485 1/25/11. |

CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–70–0500 ... | Health Plan Management System (HPMS) | 73 FR 2257 1/14/08 | 74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0501 ... | Medicare Multi-Carrier Claims System (MCS) | 55 FR 37549 9/12/90 | 55 FR 47394 11/13/90.<br>59 FR 37243 7/21/94.<br>62 FR 6648 2/21/96.<br>63 FR 38414 7/16/98.<br>65 FR 50552 8/18/00.<br>67 FR 54428 8/22/02.<br>71 FR 64968 11/6/06.<br>74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0502 ... | Enrollment Database (EDB) | 73 FR 10249 2/26/08 | 74 FR 30606 6/26/09.<br>78 FR 23938 4/23/13.<br>81 FR 8204 2/18/16. |
| 09–70–0503 ... | Fiscal Intermediary Shared System (FISS) | 71 FR 64961 11/6/06 | 74 FR 30606 6/26/09<br>78 FR 32257 5/29/13. |
| 09–70–0505 ... | Third Party System (TPS) | 72 FR 36000 7/2/07 | None. |
| 09–70–0506 ... | CMS Encounter Data System (EDS) | 79 FR 34539 6/17/14 | None. |
| 09–70–0507 ... | Open Payments (OPP) | 79 FR 32547 6/5/14 | None. |
| 09–70–0508 ... | CMS Risk Adjustment Suite of Systems (RASS) | 80 FR 49237 8/17/15 | None. |
| 09–70–0510 ... | State Health Insurance Assistance Program (SHIP) National Performance Report (SHIP–NPR). | 72 FR 36005 7/2/07 | None. |
| 09–70–0511 ... | CMS Risk Adjustment Data Validation System (RAD–V) | 81 FR 26566 5/3/16 | None. |
| 09–70–0512 ... | Links of Social Security Administration (SSA) and Centers for Medicare & Medicaid Services (CMS) Data (LOD). | 73 FR 11643 3/4/08 | None. |
| 09–70–0513 ... | Medicare Benefits Notices (MBN) | 65 FR 48000 8/4/00 | None. |
| 09–70–0514 ... | Medicare Provider Analysis and Review (MEDPAR) | 71 FR 17470 4/6/06 | 74 FR 30606 6/26/09. |
| 09–70–0515 ... | Record of Individuals Allowed Regular and Special Parking Privileges at the CMS Building (PRKG). | 71 FR 60533 10/13/06 | None. |
| 09–70–0516 ... | Complaints Against Health Insurance Issuers and Health Plans (CAHII). | 72 FR 26121 5/8/07 | None. |
| 09–70–0517 ... | Physician/Supplier 1099 File (Statement for Recipients of Medical and HealthCare Payments) (PSFMHC). | 67 FR 40941 6/14/02 | None. |
| 09–70–0518 ... | Record of Individuals Authorized Entry to the CMS Building via a Card Key Access System (RICKS). | 71 FR 67130 11/20/06 | None. |
| 09–70–0519 ... | Medicare Current Beneficiary Survey (MCBS) | 71 FR 60722 10/16/06 | 74 FR 30606 6/26/09. |
| 09–70–0520 ... | ESRD Program Management and Medical Information System (PMMIS). | 72 FR 26126 5/8/07 | 74 FR 30606 6/26/09. |

CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–70–0521 ... | Inpatient Rehabilitation Facilities—Patient Assessment Instrument (IRF–PAI). | 71 FR 67143 11/20/06 ..... | 74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0522 ... | HHA Outcome and Assessment Information Set (OASIS) ..... | 72 FR 63906 11/13/07 ..... | 74 FR 30606 6/26/09.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0524 ... | Intern and Resident Information System (IRIS) ..... | 72 FR 69691 12/10/07 ..... | None. |
| 09–70–0525 ... | Unique Physician/Practitioner Identification Number (UPIN) System .. | 79 FR 64802 10/31/14 ..... | None. |
| 09–70–0526 ... | Common Working File (CWF) ..... | 71 FR 64955 11/6/06 ..... | 74 FR 30606 6/26/09.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0527 ... | Fraud Investigation Database (FID) ..... | 71 FR 77759 12/27/06 ..... | 78 FR 32257 5/29/13. |
| 09–70–0528 ... | Long Term Care Minimum Data Set (MDS) ..... | 72 FR 12801 3/19/07 ..... | 74 FR 30606 6/26/09.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0529 ... | Employee Building Pass File (EBPF) ..... | 72 FR 65741 11/23/07 ..... | None. |
| 09–70–0530 ... | Medicare Supplier Identification Files (MSIF) ..... | 71 FR 70404 12/4/06 ..... | 78 FR 32257 5/29/13. |
| 09–70–0531 ... | National Emphysema Treatment Trial (NETT) ..... | 72 FR 47045 8/22/07 ..... | None. |
| 09–70–0532 ... | Provider Enrollment, Chain, and Ownership System (PECOS) ..... | 71 FR 60536 10/13/06 ..... | 74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0533 ... | Medicare Managed Care Beneficiary Reconsideration System (RECON). | 71 FR 60153 10/12/06 ..... | None. |
| 09–70–0534 ... | Medicare Exclusion Database (MED) ..... | 71 FR 70967 12/7/06 ..... | 78 FR 32257 5/29/13. |
| 09–70–0535 ... | 1–800 Medicare Helpline (HELPLINE) ..... | 73 FR 10255 2/26/08 ..... | None. |
| 09–70–0536 ... | Medicare Beneficiary Database (MBD) ..... | 71 FR 70396 12/4/06 ..... | 74 FR 30606 6/26/09.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0537 ... | Workers Comp Set Aside File (WCSAF) ..... | 70 FR 75175 12/19/05 ..... | None. |
| 09–70–0538 ... | Individuals Authorized Access to Centers for Medicare & Medicaid Services Computer Services (IACS). | 72 FR 63902 11/13/07 ..... | 74 FR 30606 6/26/09. |
| 09–70–0539 ... | Long Term Care Hospitals Quality Reporting Program (LTCH QRP) | 78 FR 8536 2/6/13 ..... | None. |
| 09–70–0541 ... | Medicaid Statistical Information System (MSIS) ..... | 71 FR 65527 11/8/06 ..... | 74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0542 ... | Medicare Learning Network (MLN) Registration and Product Ordering System (REPOS). | 72 FR 10537 3/8/07 ..... | None. |
| 09–70–0543 ... | Cytology Personnel Records System (CYPERS) ..... | 70 FR 2637 1/14/05 ..... | None. |
| 09–70–0544 ... | Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System (HITS). | 70 FR 38944 7/6/05 ..... | None. |
| 09–70–0546 ... | Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Section 1011). | 70 FR 45397 8/5/05 ..... | None. |
| 09–70–0547 ... | Data Collection Secondary to Coverage Decision (DCSCD) System .. | 70 FR 53667 9/9/05 ..... | None. |
| 09–70–0548 ... | Hospice Item Set (HIS) System ..... | 79 FR 19341 4/8/14 ..... | None. |
| 09–70–0550 ... | Medicare Retiree Drug Subsidy Program (RDSP) ..... | 70 FR 41035 7/15/05 ..... | 74 FR 30606 6/26/09.<br>78 FR 32257 5/29/13. |
| 09–70–0552 ... | Medicare Premium Withhold System (PWS) ..... | 70 FR 69766 11/17/05 ..... | None. |
| 09–70–0553 ... | Medicare Drug Data Processing System (DDPS) ..... | 73 FR 30943 5/29/08 ..... | 74 FR 30606 6/26/09.<br>76 FR 65196 10/20/11.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0555 ... | National Plan and Provider Enumeration System (NPPES) ..... | 75 FR 30411 6/1/10 ..... | 78 FR 32257 5/29/13. |
| 09–70–0557 ... | Medicare True Out-of-Pocket (TrOOP) Expenditures System ..... | 70 FR 69569 11/16/05 ..... | None. |
| 09–70–0558 ... | National Claims History (NCH) ..... | 71 FR 67137 11/20/06 ..... | 74 FR 30606 6/26/09.<br>76 FR 65196 10/20/11.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0560 ... | Health Insurance Exchanges (HIX) Program ..... | 78 FR 63211 10/23/13 ..... | None. |
| 09–70–0564 ... | Medicare Prescription Drug Plan Finder (MPDPF) System ..... | 70 FR 67709 11/8/05 ..... | None. |
| 09–70–0565 ... | Automated Survey Processing Environment (ASPEN) Complaints/Incidents Tracking System (ACTS). | 71 FR 29643 5/23/06 ..... | None. |
| 09–70–0566 ... | Medicare Appeals System (MAS) ..... | 71 FR 54489 9/15/06 ..... | None. |
| 09–70–0568 ... | One Program Integrity Data Repository (ODR) ..... | 71 FR 64530 11/2/06 ..... | 74 FR 30606 6/26/09. |
| 09–70–0569 ... | Post-Acute Care Payment Reform/Continuity of Assessment Records and Report Evaluation Demonstration and Evaluation (PAC–CARE). | 72 FR 55225 9/28/07 ..... | 74 FR 30606 6/26/09. |
| 09–70–0571 ... | Medicare Integrated Data Repository (IDR) ..... | 71 FR 74915 12/13/06 ..... | 74 FR 30606 6/26/09.<br>76 FR 65196 10/20/11.<br>78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0572 ... | National Disaster Medical System Claims Processing System (NDMS–CPS). | 70 FR 70849 11/23/05 ..... | None. |
| 09–70–0573 ... | Chronic Condition Warehouse (CCW) ..... | 79 FR 64802 10/31/14 ..... | None. |
| 09–70–0574 ... | Medicare Health Support System (MHS) ..... | 71 FR 24718 4/26/06 ..... | None. |
| 09–70–0575 ... | Organ Procurement Organizations System (OPOS) ..... | 71 FR 29336 5/22/06 ..... | 74 FR 30606 6/26/09. |

CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–70–0576 ... | Healthcare Common Procedure Coding System (HCPCS) Level II .... | 72 FR 44155 8/7/07 ..... | None. |
| 09–70–0578 ... | Medicaid Program and State Children's Health Insurance Program Payment Error Rate Measurement (PERM). | 71 FR 28347 5/16/06 ..... | None. |
| 09–70–0580 ... | Medicare Care Management for High Cost Beneficiaries (CMHCB) ... | 71 FR 41811 7/24/06 ..... | None. |
| 09–70–0584 ... | Performance Measurement and Reporting System (PMRS) ..... | 74 FR 17672 4/16/09 ..... | None. |
| 09–70–0586 ... | Health Insurance Assistance Database (HIAD) ..... | 76 FR 21373 4/15/11 ..... | None. |
| 09–70–0587 ... | Medicare and Medicaid Electronic Health Record (EHR) Incentive Program National Level Repository. | 75 FR 73095 11/29/10 ..... | None. |
| 09–70–0588 ... | Medicare Advantage Prescription Drug System (MARx) System ..... | 76 FR 47190 8/4/11 ..... | 78 FR 23938 4/23/13.<br>78 FR 32257 5/29/13. |
| 09–70–0591 ... | Master Demonstration, Evaluation, and Research Studies for the Office of Research Development and Information (DERS). | 72 FR 19705 4/19/07 ..... | None. |
| 09–70–0593 ... | Money Follows the Person (MFP) Demonstration (MFPD) ..... | 72 FR 72729 12/21/07 ..... | None. |
| 09–70–0594 ... | Home and Community Based Alternatives (CBA) to Psychiatric Residential Treatment Facilities (PRTF) Demonstration (CBA–PRTF). | 72 FR 72733 12/21/07 ..... | 74 FR 30606 6/26/09. |
| 09–70–0595 ... | Evaluation of Drug Usage Under the Staff Time and Resource Intensity Verification Study (STRIVE). | 71 FR 64527 11/2/06 ..... | None. |
| 09–70–0597 ... | Medicare Master Death Records File (MMDRF) ..... | 72 FR 35997 7/2/07 ..... | None. |
| 09–70–0598 ... | Medicare Administrative Issue Tracker and Reporting of Operations System (MAISTRO). | 73 FR 10450 2/27/08 ..... | None. |
| 09–70–0598 ... | ACO Database System ..... | 76 FR 58007 9/19/11 ..... | None. |
| 09–70–0599 ... | Medicaid Integrity Program System (MIPS) ..... | 73 FR 11638 3/4/08 ..... | 78 FR 32257 5/29/13. |
| 09–70–3005 ... | Correspondence Tracking Management System (CTMS) ..... | 67 FR 57020 9/6/02 ..... | None. |
| 09–90–0041 ... | Consumer Mailing List ..... | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0046 ... | Consumer Complaint Correspondence System ..... | 47 FR 45514 10/13/82 ..... | 59 FR 55845 11/9/94. |
| 09–90–0250 ... | Early Retirement Reinsurance Program (ERRP) ..... | 75 FR 31440 6/3/10 ..... | None. |
| 09–90–0275 ... | Pre-Existing Condition Insurance Plan (PCIP) ..... | 75 FR 38526 7/2/10 ..... | None. |

FOOD & DRUG ADMINISTRATION (FDA)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–10–0002 ... | Regulated Industry Employee Enforcement Records ..... | 51 FR 42524 11/24/86 ..... | 53 FR 9815 3/25/88.<br>54 FR 47912 11/17/89.<br>59 FR 67087 12/28/94.<br>79 FR 36536 6/27/14. |
| 09–10–0004 ... | Communications (Oral and Written) With the Public ..... | 51 FR 42524 11/24/86 ..... | 54 FR 47912 11/17/89.<br>79 FR 36536 6/27/14. |
| 09–10–0005 ... | State Food and Drug Official File ..... | 51 FR 42524 11/24/86 ..... | 59 FR 67087 12/28/94.<br>79 FR 36536 6/27/14. |
| 09–10–0009 ... | Special Studies and Surveys on FDA-Regulated Products ..... | 51 FR 42524 11/24/86 ..... | 59 FR 67087 12/28/94.<br>79 FR 36536 6/27/14. |
| 09–10–0010 ... | Bioresearch Monitoring Information System ..... | 77 FR 1073 1/9/12 ..... | 79 FR 36536 6/27/14. |
| 09–10–0013 ... | Employee Conduct Investigative Records ..... | 51 FR 42524 11/24/86 ..... | 56 FR 1331 1/11/91.<br>57 FR 62828 12/31/92.<br>59 FR 67087 12/28/94.<br>79 FR 36536 6/27/14. |
| 09–10–0018 ... | Employee Identification Card Information Records ..... | 51 FR 42524 11/24/86 ..... | 56 FR 1331 1/11/91.<br>57 FR 62828 12/31/92.<br>59 FR 67087 12/28/94.<br>79 FR 36536 6/27/14. |
| 09–10–0019 ... | Mammography Quality Standards Act (MQSA) Training Records ..... | 60 FR 53188 10/12/95 ..... | 79 FR 36536 6/27/14. |
| 09–10–0020 ... | FDA Records Related to Research Misconduct Proceedings ..... | 77 FR 52036 8/28/12 ..... | 79 FR 36536 6/27/14. |
| 09–10–0021 ... | FDA User Fee System ..... | 77 FR 67820 11/14/12 ..... | 79 FR 36536 6/27/14. |
| 09–10–0022 ... | FDA Commissioning of State and Local Officials ..... | 79 FR 72687 12/8/14. ..... | date corrected:<br>79 FR 74730 12/16/14. |

HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–15–0003 ... | Contract Physicians and Consultants ..... | 74 FR 38456 8/3/09 ..... | None. |
| 09–15–0007 ... | Patients Medical Record System Public Health Service Hospitals ..... | 74 FR 38456 8/3/09 ..... | None. |
| 09–15–0028 ... | Public Health Service Clinical Affiliation Trainee Records ..... | 74 FR 38456 8/3/09 ..... | None. |
| 09–15–0037 ... | Public Health Service and National Health Service Corps Scholarship/Loan Repayment Participant Records System. | 80 FR 18631 4/7/15 ..... | None. |
| 09–15–0038 ... | Disability Claims of the Nursing Student Loan Program ..... | 75 FR 5604 2/3/10 ..... | None. |
| 09–15–0046 ... | Health Professions Planning and Evaluation ..... | 75 FR 15441 3/29/10 ..... | None. |
| 09–15–0054 ... | National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners. | 78 FR 47322 8/5/13 ..... | None. |

## HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–15–0055 ... | Organ Procurement and Transplantation Network Data System | 74 FR 57184 11/4/09 | None. |
| 09–15–0056 ... | National Vaccine Injury Compensation Program | 75 FR 60468 9/30/10 | None. |
| 09–15–0059 ... | Strategic Work Information and Folder Transfer System (SWIFT) | 75 FR 57806 9/22/10 | None. |
| 09–15–0065 ... | Smallpox Vaccine Injury Compensation Program | 68 FR 62301 11/3/03 | None. |
| 09–15–0066 ... | State-Provided Physician Records for the Application Submission & Processing System. | 75 FR 19652 4/15/10 | None. |
| 09–15–0068 ... | C.W. Bill Young Cell Transplantation Program | 74 FR 23869 5/21/09 | None. |
| 09–15–0069 ... | Campus Based Branch Program Document Management System | 75 FR 5606 2/3/10 | None. |
| 09–15–0071 ... | Countermeasures Injury Compensation Program | 76 FR 28991 5/19/11 | None. |

## INDIAN HEALTH SERVICE (IHS)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–17–0001 ... | Medical, Health, and Billing Records Systems | 75 FR 1625 1/12/10 | None. |
| 09–17–0002 ... | Indian Health Service Scholarship and Loan Repayment Programs | 74 FR 50222 9/30/09 | None. |
| 09–17–0003 ... | Indian Health Service Medical Staff Credentials and Privileges Records. | 74 FR 46436 9/9/09 | 74 FR 50981 10/2/09. |
| 09–17–0004 ... | Indian Health Service Sanitation Facilities Construction Individual Applicant Records. | 74 FR 43143 8/26/09 | None. |
| 09–17–0005 ... | Personal Health Records (PHR) Administrative Records—IHS | 77 FR 65564 10/29/12 | None. |

## NATIONAL INSTITUTES OF HEALTH (NIH)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–25–0005 ... | Administration: Library Operations and NIH Library User I.D. File | 67 FR 60742 9/26/02 | None. |
| 09–25–0007 ... | Administration: NIH Safety Glasses Issuance Program | 67 FR 60742 9/26/02 | None. |
| 09–25–0011 ... | Clinical Research: Blood Donor Records | 67 FR 60742 9/26/02 | None. |
| 09–25–0012 ... | Clinical Research: Candidate Healthy Volunteer Records | 67 FR 60742 9/26/02 | None. |
| 09–25–0014 ... | Clinic Research: Student Records | 67 FR 60742 9/26/02 | None. |
| 09–25–0033 ... | International Activities: Fellowships Awarded by Foreign Organizations. | 67 FR 60742 9/26/02 | None. |
| 09–25–0034 ... | International Activities: Scholars-in-Residence Program | 67 FR 60742 9/26/02 | None. |
| 09–25–0036 ... | Extramural Awards and Chartered Advisory Committees (IMPAC 2), Contract Information (DCIS), and Cooperative Agreement Information. | 67 FR 60742 9/26/02 | None. |
| 09–25–0041 ... | Research Resources: Scientists Requesting Hormone Distribution | 67 FR 60742 9/26/02 | None. |
| 09–25–0054 ... | Administration: Property Accounting (Card Key System) | 67 FR 60742 9/26/02 | None. |
| 09–25–0078 ... | Administration: Consultant File | 67 FR 60742 9/26/02 | None. |
| 09–25–0087 ... | Administration: Senior Staff | 67 FR 60742 9/26/02 | None. |
| 09–25–0099 ... | Clinical Research: Patient Medical Records | 67 FR 60742 9/26/02 | None. |
| 09–25–0105 ... | Administration: Health Records of Employees, Visiting Scholars, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit. | 67 FR 60742 9/26/02 | None. |
| 09–25–0106 ... | Administration: Office of the NIH Director and Institute/Center Correspondence Records. | 67 FR 60742 9/26/02 | None. |
| 09–25–0108 ... | Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti. | 67 FR 60742 9/26/02 | None |
| 09–25–0115 ... | Administration: Curricula Vitae of Consultants and Clinical Investigators. | 67 FR 60742 9/26/02 | None. |
| 09–25–0118 ... | Contracts: Professional Services Contractors | 67 FR 60742 9/26/02 | None. |
| 09–25–0121 ... | International Activities: Senior International Fellowships Program | 67 FR 60742 9/26/02 | None. |
| 09–25–0124 ... | Administration: Pharmacology Research Associates | 67 FR 60742 9/26/02 | None. |
| 09–25–0140 ... | International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health. | 67 FR 60742 9/26/02 | None. |
| 09–25–0156 ... | Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service. | 67 FR 60742 9/26/02 | None. |
| 09–25–0158 ... | Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program. | 67 FR 60742 9/26/02 | None. |
| 09–25–0160 ... | United States Renal Data System (USRDS) | 67 FR 60742 9/26/02 | None. |
| 09–25–0165 ... | National Institutes of Health (NIH) Office of Loan Repayment and Scholarship (OLRS) Records System. | 67 FR 6043 2/8/02 | None. |
| 09–25–0166 ... | Administration: Radiation and Occupational Safety and Health Management Information Systems. | 67 FR 60742 9/26/02 | None. |
| 09–25–0167 ... | National Institutes of Health (NIH) TRANSHARE Program | 67 FR 60742 9/26/02 | None. |
| 09–25–0168 ... | Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors. | 71 FR 46496 8/14/06 | None. |
| 09–25–0169 ... | Medical Staff-Credentials Files | 67 FR 60742 9/26/02 | None. |

NATIONAL INSTITUTES OF HEALTH (NIH)—Continued

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–25–0200 ... | Clinical, Basic and Population-based Research Studies of the National Institutes of Health (NIH). | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0202 ... | Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky. | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0203 ... | National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files. | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0207 ... | Subject Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications. | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0208 ... | Drug Abuse Treatment Outcome Study (DATOS) ..... | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0209 ... | Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting Investigational New Drug and New Drug Applications. | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0210 ... | Shipment Records of Drugs of Abuse to Authorized Researchers ..... | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0211 ... | Intramural Research Program Records of In-and-Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers. | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0213 ... | Administration: Employee Conduct Investigative Records ..... | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0216 ... | Administration: NIH Electronic Directory ..... | 67 FR 60742 9/26/02 ..... | None. |
| 09–25–0217 ... | NIH Business System (NBS) ..... | 67 FR 54441 8/22/02 ..... | None. |
| 09–25–0223 ... | NIH Records Related to Research Misconduct Proceedings ..... | 77 FR 52043 8/28/12 ..... | None. |
| 09–25–0225 ... | NIH Electronic Research Administration (eRA) Records ..... | 81 FR 88690 12/8/16 ..... | None. |

SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)

| SORN No. | System of records | Last full publication | Subsequent revisions |
|---|---|---|---|
| 09–30–0023 ... | Records of Contracts Awarded to Individuals ..... | 75 FR 28264 5/20/10 ..... | None. |
| 09–30–0027 ... | Grants and Cooperative Agreements: Alcohol, Drug Abuse, and Mental Health Services Evaluation, Service, Demonstration, Education, Fellowship, Training, Clinical Training, and Community Services Programs. | 75 FR 28264 5/20/10 ..... | |
| 09–30–0033 ... | Correspondence Files ..... | 75 FR 28264 5/20/10 ..... | None. |
| 09–30–0036 ... | Alcohol, Drug Abuse, and Mental Health Epidemiologic Data ..... | 75 FR 28264 5/20/10 ..... | None. |
| 09–30–0051 ... | SAMHSA Information Mailing System (SIMS) ..... | 75 FR 28264 5/20/10 ..... | None. |
| 09–30–0052 ... | Opioid Treatment Waiver Notification System (OTWNS) ..... | 75 FR 28264 5/20/10 ..... | None. |

[FR Doc. 2018–03014 Filed 2–13–18; 8:45 am]
**BILLING CODE 4150–25–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 30 Day Proposed Information Collection: Indian Health Service Information Security Ticketing and Incident Reporting

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection Office of Management and Budget (OMB) Control Number 0917–XXXX, titled, Information Security Ticketing and Incident Reporting. This proposed information collection project was recently published in the **Federal Register** (82 FR 56832) on November 30, 2017, and allowed 60 days for public comment, as required by the PRA. The IHS received no comments on this notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB. A copy of the draft supporting statement is available at *www.regulations.gov* (see Docket ID IHS_FRDOC_0001).

**DATES:** March 16, 2018. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

**ADDRESSES:** Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Evonne Bennett-Barnes by one of the following methods:

- *Mail:* Evonne Bennett-Barnes, Management Analyst/Information Collection Clearance Officer, Indian Health Service, 5600 Fisher Lane, Mail stop: 09E21B, Rockville, MD 20857.
- *Phone:* 301–443–4750.
- *Email: Evonne.Bennett-Barnes@ihs.gov.*
- *Fax:* 301–594–0899.

**SUPPLEMENTARY INFORMATION:** The IHS Office of Information Technology is submitting the proposed information collection to OMB for review, as required by the PRA of 1995. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed

collection of information; (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 collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Proposed Collection: Title:* 0917–XXXX, ''Information Security Ticketing and Incident Reporting.''

*Type of Information Collection Request:* This is a new information request for a three year approval of this new information collection, 0917–XXXX.

*Form(s) and Form number(s):* Incident Reporting Form, Form F07–02b.

*Title of Proposal:* Information Security Ticketing and Incident Reporting.

*OMB Control Number:* To be assigned.

*Need and Use of Information Collection:* The Indian Health Service (IHS) uses secure information technology (IT) to improve health care quality, enhance access to specialty care, reduce medical errors, and modernize administrative functions consistent with the Department of Health and Human Services (HHS) enterprise initiatives.

IHS is responsible for maintaining an information security program that provides protection for information collected or maintained by or on behalf of the Agency, and protection for information systems used or operated by the Agency or by another organization on behalf of the Agency.

*Members of Affected Public:* IHS staff, including federal and non-federal employees (contractors, Tribal employees, etc.).

*Status of the Proposed Information Collection:* New request.

*Type of Respondents:* Individuals.

*The table below provides:* Types of data collection instruments, estimation to number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hours.

| Data collection instrument(s) | Estimated number of respondents | Responses per respondent | Annual number of responses | Average burden hour per response * | Total annual burden hours |
|---|---|---|---|---|---|
| IHS Federal and Non-Federal Staff | 1,700 | 1 | 1,700 | 15 | 425 |
| Total | 1,700 | 1 | 1,700 | 15 | 425 |

* For ease of understanding, average burden hours are provided in actual minutes. There are no direct costs, to respondents to report.

Dated: February 5, 2018.

**Michael D. Weahkee,**

*Assistant Surgeon General, U.S. Public Health Service, Acting Director, Indian Health Service.*

[FR Doc. 2018–03018 Filed 2–13–18; 8:45 am]

**BILLING CODE 4160–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 30 Day Notice for Extension of the Indian Health Service Loan Repayment Program (LRP)

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice and request for comments. Request for extension of approval.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, the Indian Health Service (IHS) is submitting to the Office of Management and Budget (OMB) a request for an extension of a previously approved collection of information titled, ''IHS Loan Repayment Program (LRP)'' (OMB Control Number 0917–0014), which expires July 31, 2018. This proposed information collection project was recently published in the **Federal Register** (82 FR 55107) on November 20, 2017, and allowed 60 days for public comment, as required by the PRA. The IHS received 20 anonymous comments regarding this collection but they did not pertain to the LRP notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS_FRDOC_0001).

**DATES:** March 16, 2018. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

**ADDRESSES:** Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Evonne Bennett-Barnes by one of the following methods:

- *Mail:* Evonne Bennett-Barnes, Management Analyst/Information Collection Clearance Officer, Indian Health Service, 5600 Fisher Lane, Mail stop: 09E21B, Rockville, MD 20857.
- *Phone:* 301–443–4750.
- *Email: Evonne.Bennett-Barnes@ihs.gov.*
- *Fax:* 301–594–0899.

**SUPPLEMENTARY INFORMATION:** The IHS is submitting the proposed information collection to OMB for review, as required by section 3507(a)(1)(D) of the PRA of 1995. This notice is soliciting comments from members of the public and affected agencies as required by 44 U.S.C. 3506(c)(2)(A) concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Proposed Collection: Title:* 0917–0014, ''Indian Health Service Loan Repayment Program.''

*Type of Information Collection Request:* Three year extension of this information collection.

*Form(s):* The LRP application is available in an electronically fillable and fileable format.

*Need and Use of Information Collection:* The IHS LRP identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract through which the IHS agrees to repay part or all of their indebtedness in exchange for an initial two-year service commitment to practice full-time at an eligible Indian health program. The LRP is necessary to augment the critically low health professional staff at IHS health care facilities.

Any health professional wishing to have their health education loans repaid may apply to the IHS LRP. A two-year contract obligation is signed by both parties, and the individual agrees to work at an eligible Indian health program location and provide health services to American Indian and Alaska Native individuals.

The information collected via the on-line application from individuals is analyzed and a score is given to each applicant. This score will determine which applicants will be awarded each fiscal year. The administrative scoring system assigns a score to the geographic location according to vacancy rates for that fiscal year and also considers whether the location is in an isolated area. When an applicant accepts employment at a location, the applicant in turn ''picks-up'' the score of that location.

*Status of the Proposed Information Collection:* Renewal of a current collection.

*Affected Public:* Individuals and households.

*Type of Respondents:* Individuals.

*The table below provides:* Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

| Data collection instrument(s) | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual responses (in hours) |
|---|---|---|---|---|
| LRP Application (3 forms in total) | 1,726 | 1 | 1.5 | 2,589 |

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Dated: February 5, 2018.

**Michael D. Weahkee,**

*RADM, Assistant Surgeon General, U.S. Public Health Service, Acting Director, Indian Health Service.*

[FR Doc. 2018–03019 Filed 2–13–18; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Impact of Microenvironment on Lung Progenitor Cell Function.

*Date:* March 14, 2018.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–827–7953, *kristen.page@nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Studies in Calcific Aortic Valve Disease.

*Date:* March 28, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hilton Crystal City, at Washington National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* David A. Wilson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 8, 2018.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–02949 Filed 2–13–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS Maximizing Investigators' Research Award for Early Stage Investigators (R35) Applications.

*Date:* April 5–6, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

*Contact Person:* Lisa A. Dunbar, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–02952 Filed 2–13–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

*Date:* March 1–2, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Chevy Chase, 4300 Military Rd. NW, Washington, DC 20015.

*Contact Person:* Helen Lin, Ph.D., Scientific Review Officer, National Institutes of Health, NIAMS, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2018.

**Sylvia L. Neal,**

*Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–02950 Filed 2–13–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Training grants review.

*Date:* March 6, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–02951 Filed 2–13–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Par Panel: Inter-organelle Communication in Cancer.

*Date:* March 5, 2018.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

*Date:* March 13, 2018.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Urology and Urogynecology Application Review.

*Date:* March 13, 2018.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Immune Mechanism of Host Defense.

*Date:* March 13, 2018.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Metabolism and Reproductive Sciences.

*Date:* March 13, 2018.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Transplantation, Tumors, Diabetes, Autoimmunity And Asthma.

*Date:* March 13, 2018.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

*Date:* March 13, 2018.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Neurogenesis, Cell Fate, Neurotransmission and Neurodegeneration.

*Date:* March 14, 2018.

*Time:* 10:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cardiovascular and Respiratory AREA (R15).

*Date:* March 14–15, 2018.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–02948 Filed 2–13–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0045]**

### Merchant Mariner Medical Advisory Committee

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Merchant Mariner Medical Advisory Committee and its Working Groups will meet to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meetings will be open to the public.

**DATES:** The Merchant Mariner Medical Advisory Committee and its working groups are scheduled to meet on Tuesday, March 6, 2018, and on Wednesday, March 7, 2018, from 8:00 a.m. until 5:30 p.m. These meetings may adjourn early if the Committee has completed its business.

**ADDRESSES:** The meetings will be held at Vanderbilt University in the Sarratt Student Center, Room 216/220, 2301 Vanderbilt Place, Nashville, TN 37212 (*https://www.vanderbilt.edu/community/*).

*Pre-registration Information:* Pre-registration is not required for access to this meeting by the public.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Alternate Designated Federal Officer as soon as possible using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Instructions:* You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comment before the meetings, please submit your comments no later than February 27, 2018. We are particularly interested in comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2018–0045. Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review the Privacy and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

*Docket Search:* For access to the docket, to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2018–0045 in the ''Search'' box, press Enter, and then click on the item you wish to view.

**FOR FURTHER INFORMATION CONTACT:** Mr. Davis Breyer, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1445, fax 202–372–8382 or *davis.j.breyer@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is pursuant with the Federal Advisory Committee Act, Title 5 United States Code Appendix.

The Merchant Mariner Medical Advisory Committee Meeting is authorized by section 210 of the U.S.

Coast Guard Authorization Act of 2010 (Pub. L. 111–281, codified at 46 United States Code 7115). The Committee advises the Secretary on matters related to (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

**Agenda**

*Day 1*

The agenda for the March 6, 2018, meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Groups' business/task statements, which are listed under paragraph 2(a)–(b) below.

(2) Working Groups will separately address the following task statements which are available for viewing at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/medmac:*

(a) Task statement 16–24, requesting recommendations on appropriate diets and wellness for mariners while aboard merchant vessels; and

(b) Task statement 17–26, Input to Support Regulatory Reform of Coast Guard Regulations-Executive Orders 13771 and 13783.

(3) Public comment period.

(4) Reports of Working Groups. At the end of the day, the Working Groups will report to the full Committee on what was accomplished in their meetings. The full Committee will not take action on these reports on this date. Any official action taken as a result of these Working Group meetings will be taken on day two of the meeting.

(5) Adjournment of meeting.

*Day 2*

The agenda for the March 7, 2018 meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer announcements.

(3) Remarks from U.S. Coast Guard Leadership.

(4) Swearing in of newly appointed Committee members.

(5) Roll call of Committee members and determination of a quorum.

(6) Reports from the following Working Groups:

(a) Task statement 16–24, requesting recommendations on appropriate diets and wellness for mariners while aboard merchant vessels; and

(b) Task statement 17–26, Input to Support Regulatory Reform of Coast Guard Regulations-Executive Orders 13771 and 13783.

(7) Other items for discussion:

(a) Report on National Maritime Center activities from the National Maritime Center Commanding Officer;

(8) Public comment period.

(9) Discussion of Working Group recommendations.

The Committee will review the information presented on each issue, deliberate on any recommendations presented by the Working Groups, approve/formulate recommendations and close any completed tasks. Official action on these recommendations may be taken on this date.

(10) Closing remarks/plans for next meeting.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/medmac* no later than February 27, 2018. Alternatively, you may contact Mr. Davis Breyer as noted in the **FOR FURTHER INFORMATION** section above.

A public comment period will be held during each Working Group and full Committee meeting concerning matters being discussed.

Please note that the meeting may adjourn early if the work is completed.

Dated: February 8, 2018.

**Jeffrey G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2018–02943 Filed 2–13–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1807]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with the Code of Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood

hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 5, 2018.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Alabama: Cullman | Unincorporated areas of Cullman County (17–04–5897P). | The Honorable Kenneth Walker, Chairman, Cullman County Board of Commissioners, 500 2nd Avenue Southwest, Cullman, AL 35055. | Cullman County Courthouse, 500 2nd Avenue Southwest, Cullman, AL 35055. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2018 ..... | 010247 |
| Arkansas: Benton .. | City of Lowell (17–06–3879P). | The Honorable Eldon Long, Mayor, City of Lowell, 216 North Lincoln Street, Lowell, AR 72745. | City Hall, 216 North Lincoln Street, Lowell, AR 72745. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 23, 2018 ..... | 050342 |
| Colorado: | | | | | | |
| Jefferson ..... | City of Lakewood (17–08–0933P). | The Honorable Adam A. Paul, Mayor, City of Lakewood, 470 South Allison Parkway, Lakewood, CO 80226. | Engineering Department, 470 South Allison Parkway, Lakewood, CO 80226. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2018 ..... | 085075 |
| Jefferson ..... | Unincorporated areas of Jefferson County (17–08–0933P). | The Honorable Libby Szabo, Chair, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419. | Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2018 ..... | 080087 |
| Weld ..... | Town of Windsor (17–08–0666P). | Mr. Kelly Arnold, Manager, Town of Windsor, 301 Walnut Street, Windsor, CO 80550. | Town Hall, 301 Walnut Street, Windsor, CO 80550. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 ..... | 080264 |
| Weld ..... | Unincorporated areas of Weld County (17–08–0666P). | The Honorable Julie Cozad, Chair, Weld County Board of County Commissioners, P.O. Box 758, Greeley, CO 80632. | Weld County Commissioner's Office, 915 10th Street, Greeley, CO 80632. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 ..... | 080266 |
| Florida: | | | | | | |
| Charlotte ..... | Unincorporated areas of Charlotte County (18–04–0115P). | The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948. | Charlotte County Community Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2018 ..... | 120061 |
| Collier ..... | Unincorporated areas of Collier County (18–04–0104P). | The Honorable Penny Taylor, Chair, Collier County Board of Commissioners, 3299 East Tamiami Trail, Suite 303, Naples, FL 34112. | Collier County Administrative Building, 3301 East Tamiami Trail, Building F, 1st Floor, Naples, FL 34112. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2018 ..... | 120067 |
| Monroe ..... | Unincorporated areas of Monroe County (18–04–0288P). | The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040. | Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 26, 2018 ..... | 125129 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Monroe | Unincorporated areas of Monroe County (18–04–0313P). | The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040. | Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 125129 |
| Osceola | City of St. Cloud (17–04–5506P). | The Honorable Nathan Blackwell, Mayor, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769. | Public Works Department, 1300 9th Street, St. Cloud, FL 34769. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 125191 |
| Georgia: | | | | | | |
| Hall | City of Flowery Branch (17–04–5316P). | The Honorable James ''Mike'' Miller, Mayor, City of Flowery Branch, P.O. Box 757, Flowery Branch, GA 30542. | Community Development Department, 5512 Main Street, Flowery Branch, GA 30542. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 130333 |
| Hall | Unincorporated areas of Hall County (17–04–5316P). | The Honorable Richard Higgins, Chairman, Hall County Board of Commissioners, P.O. Drawer 1435, Gainesville, GA 30504. | Hall County Engineering Division, 2875 Browns Bridge Road, Gainesville, GA 30504. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 130466 |
| Houston | City of Warner Robins (17–04–4313P). | The Honorable Randy Toms, Mayor, City of Warner Robins, 700 Watson Boulevard, Warner Robins, GA 31093. | Engineering Department, 610B Watson Boulevard, Warner Robins, GA 31093. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 19, 2018 | 130111 |
| Tift | City of Tifton (17–04–7716P). | The Honorable Julie Smith, Mayor, City of Tifton, 130 1st Street East, Tifton, GA 31793. | Public Works Department, 1000 Armour Road, Tifton, GA 31794. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 130171 |
| Tift | Unincorporated areas of Tift County (17–04–7716P). | The Honorable Grady Thompson, Chairman, Tift County Commission, 225 North Tift Avenue, Tifton, GA 31794. | Tift County Development Support Services Department, 225 North Tift Avenue, Tifton, GA 31794. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 | 130404 |
| Louisiana: Lafayette. | Unincorporated areas of Lafayette Parish (17–06–3167P). | The Honorable Joel Robideaux, Mayor-President, Lafayette Consolidated, Government, P.O. Box 4017–C, Lafayette, LA 70502. | Lafayette Parish Department of Planning and Development, 220 West Willow Street, Building B, Lafayette, LA 70501.. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 16, 2018 | 220101 |
| New Mexico: | | | | | | |
| Bernalillo | Unincorporated areas of Bernalillo County (17–06–3952P). | Ms. Julie Morgas Baca, Manager, Bernalillo County, 1 Civic Plaza Northwest, Albuquerque, NM 87102. | Bernalillo County Public Works Division, 2400 Broadway Southeast, Albuquerque, NM 87102. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 6, 2018 | 350001 |
| Sierra | City of Truth or Consequences (17–06–2009P). | Mr. Juan Fuentes, Manager, City of Truth or Consequences, 505 Sims Street, Truth or Consequences, NM 87901. | City Hall, 505 Sims Street, Truth or Consequences, NM 87901. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 23, 2018 | 350073 |
| Sierra | Unincorporated areas of Sierra County (17–06–2009P). | The Honorable Kenneth Lyon, Chairman, Sierra County Commission, 855 Van Patten Street, Truth or Consequences, NM 87901. | Sierra County Administration Office, 855 Van Patten Street, Truth or Consequences, NM 87901. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 23, 2018 | 350071 |
| Sierra | Village of Williamsburg (17–06–2009P). | The Honorable Deb Stubblefield, Mayor, Village of Williamsburg, P.O. Box 150, Williamsburg, NM 87942. | Sierra County Administration Office, 855 Van Patten Street, Truth or Consequences, NM 87901. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 23, 2018 | 350074 |
| Oklahoma: | | | | | | |
| Tulsa | City of Bixby (17–06–2611P). | The Honorable John Easton, Mayor, City of Bixby, P.O. Box 70, Bixby, OK 74008. | Planning Department, 116 West Needles, Bixby, OK 74008. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 9, 2018 | 400207 |
| Tulsa | City of Tulsa (17–06–2611P). | The Honorable G. T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103. | Planning and Development Department, 175 East 2nd Street, Tulsa, OK 74103. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 9, 2018 | 405381 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Pennsylvania: Lycoming. | Borough of, South Williamsport (17–03–1817P). | The Honorable J. Bernard Schelb, President, Borough of, South Williamsport Council, 329 West Southern Avenue, South Williamsport, PA 17702. | Planning and Community Development Department, Hazard Mitigation Division, 48 West 3rd Street, South Williamsport, PA 17701. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 12, 2018 ..... | 420658 |
| South Carolina: | | | | | | |
| Charleston ..... | City of Charleston (17–04–7085P). | The Honorable John J. Tecklenburg, Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402. | Engineering Division, 2 George Street, Charleston, SC 29401. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 ..... | 455412 |
| Lancaster ..... | Unincorporated areas of Lancaster County (17–04–5698P). | The Honorable Steve Harper, Chairman, Lancaster County Council, 101 North Main Street, 2nd Floor, Lancaster, SC 29721. | Lancaster County Zoning Department, 101 North Main Street, Lancaster, SC 29721. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 23, 2018 ..... | 450120 |
| Tennessee: Williamson. | City of Franklin (17–04–8021P). | The Honorable Ken Moore, Mayor, City of Franklin, 109 3rd Avenue South, Franklin, TN 37064. | Building and Neighborhood Services Department, 109 3rd Avenue South, Franklin, TN 37064. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 13, 2018 ..... | 470206 |
| Texas: | | | | | | |
| Denton ..... | City of Denton (17–06–0580P). | The Honorable Chris A. Watts, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201. | Engineering Department, 901–A Texas Street, Denton, TX 76509. | *https://msc.fema.gov/portal/advanceSearch.* | May 4, 2018 ..... | 480194 |
| Harris ..... | Unincorporated areas of Harris County (17–06–4282P). | The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002. | Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 ..... | 480287 |
| Medina ..... | Unincorporated areas of Medina County (17–06–3375P). | The Honorable Chris Schuchart, Medina County Judge, 1502 Avenue K, Hondo, TX 78861. | Medina County Environmental Health Department, 709 Avenue Y, Hondo, TX 78861. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 22, 2018 .... | 480472 |
| Tarrant ..... | City of Fort Worth (17–06–2262P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 9, 2018 ..... | 480596 |
| Tarrant ..... | City of Fort Worth (17–06–4080P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2018 ..... | 480596 |
| Tarrant ..... | City of River Oaks (17–06–4080P). | The Honorable Herman Earwood, Mayor, City of River Oaks, 4900 River Oaks Boulevard, River Oaks, TX 76114. | City Hall, 4900 River Oaks Boulevard, River Oaks, TX 76114. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2018 ..... | 480609 |
| Tarrant ..... | City of Sansom Park (17–06–4080P). | The Honorable Jim Barnett, Jr., Mayor, City of Sansom Park, 5705 Azle Avenue, Sansom Park, TX 76114. | City Hall, 5705 Azle Avenue, Sansom Park, TX 76114. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2018 ..... | 480611 |
| Tarrant ..... | City of Westworth Village (17–06–2290P). | The Honorable Michael R. Coleman, Mayor, City of Westworth Village, 311 Burton Hill Road, Westworth Village, TX 76114. | City Hall, 311 Burton Hill Road, Westworth Village, TX 76114. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 5, 2018 ..... | 480616 |
| Travis ..... | City of Bee Cave (17–06–2595P). | The Honorable Caroline Murphy, Mayor, City of Bee Cave, 4000 Galleria Parkway, Bee Cave, TX 78738. | Department of Planning and Development, 4000 Galleria Parkway, Bee Cave, TX 78738. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 12, 2018 ..... | 480610 |
| Travis ..... | City of Pflugerville (17–06–3700P). | The Honorable Victor Gonzales, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691. | Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 9, 2018 ..... | 481028 |
| Travis ..... | Unincorporated areas of Travis County (17–06–2595P). | The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767. | Travis County Transportation and Natural Resources Division, 700 Lavaca Street, Suite 540, Austin, TX 78701. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 12, 2018 ..... | 481026 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Utah: Cache ..... | City of Hyrum (17–08–0954P). | The Honorable Stephanie Miller, Mayor, City of Hyrum, 60 West Main Street, Hyrum, UT 84319. | City Hall, 60 West Main Street, Hyrum, UT 84319. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 25, 2018 ..... | 490017 |
| Virginia: Prince William. | Unincorporated areas of Prince William County (17–03–1502P). | Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Woodbridge, VA 22192. | Prince William County Department of Public Works, 5 County Complex Court, Suite 170, Woodbridge, VA 22192. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 26, 2018 ..... | 510119 |

[FR Doc. 2018–03077 Filed 2–13–18; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1805]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 25, 2018.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Arizona: | | | | | | |
| Maricopa ..... | City of Goodyear (17–09–1851P). | The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338. | Engineering Department, 14455 West Van Buren Street, Goodyear, AZ 85338. | *https://msc.fema.gov/portal/advanceSearch.* | May 4, 2018 ..... | 040046 |
| Maricopa ..... | Unincorporated Areas of Maricopa County (17–09–1851P). | The Honorable Denny Barney, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | *https://msc.fema.gov/portal/advanceSearch.* | May 4, 2018 ..... | 040037 |
| California: | | | | | | |
| Alameda ..... | Unincorporated Areas of Alameda County (17–09–2355P). | The Honorable Wilma Chan, President, Board of Supervisors, Alameda County, 1221 Oak Street, Suite 536, Oakland, CA 94612. | Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, CA 94544. | *https://msc.fema.gov/portal/advanceSearch.* | May 7, 2018 ..... | 060001 |
| Ventura ..... | City of Simi Valley (17–09–2603P). | The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2018 ..... | 060421 |
| Hawaii: | | | | | | |
| Hawaii ..... | Hawaii County (17–09–1339P). | The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720. | Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 12, 2018 ..... | 155166 |
| Honolulu ..... | City and County of Honolulu (17–09–2310P). | The Honorable Kirk Caldwell, Mayor, City and County of Honolulu, 530 South King Street, Room 306, Honolulu, HI 96813. | Department of Planning and Permitting, 650 South King Street, Honolulu, HI 96813. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 26, 2018 ..... | 150001 |
| Idaho: Ada | Unincorporated Areas of Ada County (17–10–1683P). | The Honorable David L. Case, Chairman, Ada County Board of Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702. | Ada County Courthouse, 200 West Front Street, Boise, ID 83702. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2018 ..... | 160001 |
| Illinois: | | | | | | |
| Adams ..... | City of Quincy (17–05–2795P). | The Honorable Kyle A. Moore, Mayor, City of Quincy, 730 Maine Street, Quincy, IL 62301. | City Hall, 730 Maine Street, Quincy, IL 62301. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 19, 2018 ..... | 170003 |
| Adams ..... | Unincorporated Areas of Adams County (17–05–2795P). | The Honorable Les Post, Chairman, Adams County Board, Adams County Courthouse, 101 North 54th Street, Quincy, IL 62305. | Adams County Courthouse, 101 North 54th Street, Quincy, IL 62305. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 19, 2018 ..... | 170001 |
| Indiana: | | | | | | |
| Bartholomew .. | City of Columbus (17–05–4165P). | The Honorable James D. Lienhoop, Mayor, City of Columbus, City Hall, 123 Washington Street, Columbus, IN 47201. | Bartholomew County Planning Department, 123 Washington Street, Suite B, Columbus, IN 47201. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 17, 2018 ..... | 180007 |
| Bartholomew .. | Unincorporated Areas of Bartholomew County (17–05–4165P). | Mr. Carl Lienhoop, Chairman, Bartholomew County Commissioners, 440 3rd Street, Columbus, IN 47201. | Bartholomew County Planning Department, 123 Washington Street, Suite B, Columbus, IN 47201. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 17, 2018 ..... | 180006 |
| Oregon: | | | | | | |
| Marion ..... | City of Salem (17–10–1190P). | The Honorable M. Chuck Bennett, Mayor, City of Salem, 555 Liberty Street, Southeast, Room 220, Salem, OR 97301. | Public Works Department, 555 Liberty Street, Southeast, Room 325, Salem, OR 97301. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2018 ..... | 410167 |
| Marion ..... | City of Salem (17–10–1368P). | The Honorable M. Chuck Bennett, Mayor, City of Salem, 555 Liberty Street, Southeast, Room 220, Salem, OR 97301. | Public Works Department, 555 Liberty Street, Southeast, Room 325, Salem, OR 97301. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 29, 2018 .... | 410167 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Marion ..... | City of Turner (17–10–1190P). | The Honorable Gary Tiffin, Mayor, City of Turner, 5255 Chicago Street, Southeast Turner, OR 97392. | City Hall, 7250 3rd Street, Southeast Turner, OR 97392. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2018 ..... | 410171 |
| Marion ..... | Unincorporated Areas of Marion County (17–10–1190P). | Mr. Sam Brentano, Commissioner, Marion County, 555 Court Street, Northeast, Suite 5232, Salem, OR 97309. | Department of Planning, 3150 Lancaster Drive, Northeast Salem, OR 97305. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2018 ..... | 410154 |

[FR Doc. 2018–03074 Filed 2–13–18; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2018–0011; OMB No. 1660—NEW]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Post Disaster Survivor Preparedness Research

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, 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 a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning post disaster research on the impacts on survivors of disasters including historically underserved communities in disasters such as the 2017 Hurricanes: Harvey, Irma, and Maria.

**DATES:** Comments must be submitted on or before April 16, 2018.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0011. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Snelling, Senior Advisor, U.S. Department of Homeland Security/FEMA/National Preparedness Directorate, Individual and Community Preparedness Division, Washington, DC 20472–3630, *jacqueline.snelling@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Stafford Act, Title VI, Emergency Preparedness (42 U.S.C. 5195–5195(a)) identifies the purpose of emergency preparedness ''for the protection of life and property in the United States from hazards.'' It directs that the Federal Government ''provide necessary direction, coordination, and guidance'' as authorized for a comprehensive emergency preparedness system for all hazards. Emergency preparedness is defined as all ''activities and measures designed or undertaken to prepare or minimize the effects of a hazard upon the civilian population . . . .'' The ''conduct of research'' is among the measures to be undertaken in preparation for hazards.

The FEMA Strategic Plan 2014–2018 references FEMA priorities for preparing individuals in Priority #1, to achieve a survivor-centric mission where ''Individuals and communities know the steps to take, have the tools required, and take appropriate actions, before, during, and after disasters, and in Priority #3, to better prepare survivors and bystanders.

Presidential Policy Directive—8 (PPD–8) directs the Secretary of Homeland Security to ''coordinate a comprehensive campaign to build and sustain national preparedness, including public outreach and community-based and private sector programs to enhance national resilience, the provision of Federal financial assistance, preparedness efforts by the Federal Government, and national research and development efforts.''

#### Collection of Information

*Title:* Post Disaster Survivor Preparedness Research.

*Type of Information Collection:* New information collection.

*OMB Number:* 1660—NEW.

*FEMA Forms:* FEMA Form 519–0–54, Post Disaster Survivor Preparedness Research.

*Abstract:* Through improved understanding of the relationship between an individual's preparedness knowledge, actions, and perception and self-efficacy, FEMA will be able to draw some conclusions as to how these factors contribute to and/or hinder life-saving responses and short and long-term recovery, with a focus on historically underserved communities.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 3,120.

*Estimated Number of Responses:* 3,120.

*Estimated Total Annual Burden Hours:* 740.

*Estimated Total Annual Respondent Cost:* $19,240.00.

*Estimated Respondents' Operation and Maintenance Costs:* $0.

*Estimated Respondents' Capital and Start-Up Costs:* $0.

*Estimated Total Annual Cost to the Federal Government:* $186,573.45.

#### 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.

Dated: February 8, 2018.

**William H. Holzerland,**

*Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2018–03073 Filed 2–13–18; 8:45 am]

**BILLING CODE 9111–46–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/A0A501010.999900253G]**

### Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2019 or Calendar Year 2019

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of application deadline.

**SUMMARY:** In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2018, deadline for Indian Tribes/consortia to submit completed applications to begin participation in the Tribal self-governance program in fiscal year 2019 or calendar year 2019.

**DATES:** Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2018.

**ADDRESSES:** Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, 1849 C Street NW, Mail Stop 2071–MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone (703) 390–6551.

**SUPPLEMENTARY INFORMATION:** Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), and 25 CFR 1000.15(a), the Director, Office of Self-Governance may select up to 50 additional participating Tribes/consortia per year for the Tribal self-governance program and negotiate and enter into a written funding agreement with each participating Tribe. The Act mandates that the Secretary of the Interior submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each Tribe that is served by the Bureau of Indian Affairs' agency that is serving the Tribe that is a party to the funding agreement. Initial negotiations with a Tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

#### Purpose of Notice

The regulations at 25 CFR 1000.10 to 1000.31 will be used to govern the application and selection process for Tribes/consortia to begin their participation in the Tribal self-governance program in fiscal year 2019 and calendar year 2019. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the Tribal self-governance program in fiscal year 2019 or calendar year 2019 must respond to this notice, except for those Tribes/consortia which are: (1) Currently involved in negotiations with the Department; or (2) one of the 123 Tribal entities with signed agreements.

#### Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires December 31, 2019.

Dated: January 26, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2018–03075 Filed 2–13–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/A0A501010.999900 253G]**

### Proclaiming Certain Lands as Reservation for the Nottawaseppi Huron Band of the Potawatomi

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of reservation proclamation.

**SUMMARY:** This notice informs the public that the Acting Assistant Secretary—Indian Affairs proclaimed approximately 121.01 acres, more or less, an addition to the reservation of the Nottawaseppi Huron Band of the Potawatomi of Michigan on November 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. These lands are proclaimed to be part of Nottawaseppi Huron Band of Potawatomi Reservation, Calhoun County, Michigan.

**Reservation for the Nottawaseppi Huron Band of Potawatomi**

**Pine Creek I, II, III Parcels**

**Michigan Meridian**

**Calhoun County, Michigan**

**Legal description containing 121.01 acres, more or less**

**Pine Creek Parcels I, II, III (Tract 481–T–1)**

The Northeast ¼ of the Southeast ¼, and the West ½ of the Southeast ¼, Section 20, Township 4 South, Range 8 West, Michigan Meridian, Michigan.

The above described lands contain a total of 121.01 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines or any other

valid easements or rights-of-way or reservations of record.

**Authority:** 25 U.S.C. 5110.

Dated: November 24, 2017.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2018–03076 Filed 2–13–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/ A0A501010.999900253G]**

### Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

**DATES:** This compact takes effect on February 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** An extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to July 27, 2018. This publishes notice of the new expiration date of the compact.

Dated: January 24, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2018–03072 Filed 2–13–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[Docket No. ONRR–2012–0003, DS63600000 DR2000000.PMN000 189D0102R2]**

### Royalty Policy Committee; Public Meeting

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the second meeting of the Royalty Policy Committee (Committee). This meeting is open to the public.

**DATES:** The Committee meeting will be held on Wednesday, February 28, 2018, in Houston, TX, from 9:00 a.m. to 5:00 p.m. Central Time.

**ADDRESSES:** The Committee meeting will be held at the Hyatt Regency Hotel North Houston located at 425 North Sam Houston Parkway East, Houston, Texas 77060. Members of the public may attend in person or view documents and presentations under discussion via WebEx at *https://onrr.webex.com/onrr/j.php?MTID=m298215b8534d67e011ccd6e7397a7331* and listen to the proceedings at telephone number 1–888–455–2910 or International Toll number 210–839–8953 (passcode: 7741096).

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Mentasti, Office of Natural Resources Revenue at (202) 513–0614 or email to *rpc@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Department of the Interior established the Committee on April 21, 2017, under the authority of the Secretary of the Interior and regulated by the Federal Advisory Committee Act. The purpose of the Committee is to ensure that the public receives the full value of resources produced from Federal lands. The duties of the Committee are solely advisory in nature. More information about the Committee, including its charter, is available at *www.doi.gov/rpc.*

*Meeting Agenda:* At the February meeting, the Committee will receive reports and recommendations from the three subcommittees, and may vote to make recommendations to the Secretary of the Interior. The final agenda and meeting materials will be posted on the Committee website at *www.doi.gov/rpc.* All Committee meetings are open to the public.

Whenever possible, we encourage those participating by telephone to gather in conference rooms in order to share teleconference lines. Please plan to dial into the meeting and/or log into WebEx at least 10–15 minutes prior to the scheduled start time in order to avoid possible technical difficulties. We will accommodate individuals with special needs whenever possible. If you require special assistance (such as an interpreter for the hearing impaired), please notify Interior staff in advance of the meeting at 202–513–0614 or email to *rpc@ios.doi.gov.*

We will post the minutes from these proceedings on the Committee website at *www.doi.gov/rpc* and they will also be available for public inspection and copying at our office at the Stewart Lee Udall Department of the Interior Building in Washington, DC, by contacting Interior staff via email to *rpc@ios.doi.gov* or via telephone at 202–513–0614.

Members of the public may choose to make a public comment during the designated time for public comments. Members of the public may also choose to submit written comments by mailing them to the Office of Natural Resources Revenue, Attention: RPC, 1849 C Street NW, MS 5134, Washington, DC 20240. You also can email your written comments to *rpc@ios.doi.gov.* Comments that you submit in response to this notice are a matter of public record.

*Public Disclosure of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 5 U.S.C. Appendix 2.

**Vincent DeVito,**

*Counselor to the Secretary for Energy Policy.*

[FR Doc. 2018–02939 Filed 2–13–18; 8:45 am]

**BILLING CODE 4335–30–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Digital Video Receivers and Related Hardware and Software*

*Components, DN 3294;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and 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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Rovi Corporation; Rovi Guides, Inc., Rovi Technologies Corporation; and Veveo, Inc. on February 08, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video receivers and related hardware and software components. The complaint names as respondents: Comcast Corporation of Philadelphia, PA; Comcast Cable Communications, LLC of Philadelphia, PA; Comcast Cable Communications Management, LLC of Philadelphia, PA; Comcast Business Communications, LLC of Philadelphia, PA; Comcast Holdings Corporation of Philadelphia, PA; and Comcast Shared Services, LLC of Chicago, IL. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3294) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 9, 2018.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–03092 Filed 2–13–18; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**[F.C.S.C. Meeting and Hearing Notice No. 2–18]**

### Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

*Friday, February 23, 2018:* 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

*Status:* Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW, Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

**Brian M. Simkin,**

*Chief Counsel.*

[FR Doc. 2018–03189 Filed 2–12–18; 4:15 pm]

**BILLING CODE 4410–BA–P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings; Correction

**SUMMARY:** The National Council on Disability published a notice in the **Federal Register** of February 8, 2018, concerning a meeting of the Council. This document contains a correction to the agenda timing and content of the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Anne Sommers, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

In the **Federal Register** of February 8, 2018, in FR Doc. 18–02597, on page 5647, in the second column, correct the ''Matters to be Considered'' caption to read:

**MATTERS TO BE CONSIDERED:** The Council will receive agency updates on policy projects, finance, governance, and other business. The Council will receive an update on the work done to date for its 2018 Progress Report to Congress and the President, which this year will focus on monitoring and enforcement efforts at the Equal Employment Opportunity Commission, the U.S. Access Board, and the U.S. Department of Labor. The Council will next release its latest report titled, ''U.S. Foreign Policy and Disability 2017: Progress and Promise'' with a summary of the report followed by a respondent panel. The Council will then revisit its policy project proposals from October 2017 in summaries of each proposal. Following this recap, the Council will hear from representatives from the U.S. Department of Justice Disability Rights Division, who have been asked to speak about recent ADA regulation rescissions as well as their work in the area of service animals. Following that presentation, the Council will receive public comments on which of the Council's proposed policy projects are of greatest priority to the disability community (including immigration; institutionalization following natural disasters; organ donation policies; a technology bill of rights; autonomous vehicle technology; guardianship due process concerns; and any others that may be raised during the course of the earlier summary of proposals).

Following the public comment, the Council will discuss and vote on the slate of projects it will move forward for external funding opportunities and internal work of staff.

In the **Federal Register** of February 8, 2018, in FR Doc. 18–02597, on page 5647, in the second and third columns, correct the ''Agenda'' caption to read:

**AGENDA:** The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

**Thursday, March 8**

9:00—9:30 a.m.—Welcome and introductions
9:30—10:15 a.m.—2018 Progress Report update and discussion
10:15—10:30 a.m.—Break
10:30—11:30 a.m.—Foreign policy report release and respondent panel
11:30 a.m.—12:00 p.m.—NCD business meeting
12:00—12:15 p.m.—Training on Council Member time reports
12:15—1:30 p.m.—LUNCH BREAK
1:30—2:00 p.m.—Recap of new policy project proposals from October 2017 board meeting
2:00—3:00 p.m.—Panel of Department of Justice Disability Rights Division representatives regarding rescinded ADA regulations and agency activities regarding service animals
3:00—3:15 p.m.—BREAK
3:15—3:45 p.m.—Public comments (focused on recommendations for Council priorities based on the summary of policy projects earlier summarized)
3:45—5:00 p.m.—Council discussion of the slate of projects it will move forward for funding opportunities and the internal work of staff, to begin in the remainder of FY18.
5:00 p.m.—Adjourn

In the **Federal Register** of February 8, 2018, in FR Doc. 18–02597, on page 5647, in the third column, correct the ''Public Comment'' caption to read:

**PUBLIC COMMENT:** To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Wednesday, March 7, 2018. Priority will be given to those individuals who are in-person to provide their comments during the public comment period. Those commenters on the phone will be called on per the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the March quarterly meeting will be limited to those regarding the public's input on which of the Council's proposed policy projects are of greatest priority to the disability community (including immigration; institutionalization following natural disasters; organ donation policies; a technology bill of rights; autonomous vehicle technology; guardianship due process concerns; and any others that may be raised during the course of the earlier summary of proposals).

Dated: February 12, 2018.

**Deb Cotter,**

*Executive Director.*

[FR Doc. 2018–03196 Filed 2–12–18; 4:15 pm]

**BILLING CODE 8421–03–P**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice; request for comment.

**SUMMARY:** The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection

will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

**DATES:** Comments on this information collection must be submitted on or before April 16, 2018.

**ADDRESSES:** Submit comments by email to Mr. Joel Schwartz, Chief Guidelines Officer, at *jschwartz@neh.gov.*

**SUPPLEMENTARY INFORMATION:** NEH will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of electronic submissions of responses.

This Notice also lists the following information:

*Type of Review:* Extension of a currently approved collection.

*Agency:* National Endowment for the Humanities.

*Title of Proposal:* Generic Clearance Authority for the National Endowment for the Humanities.

*OMB Number:* 3136–0134.

*Affected Public:* Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH award recipients.

*Total Respondents:* 7,815.

*Frequency of Collection:* On occasion.

*Total Responses:* 7,815.

*Average Time per Response:* Varies according to type of information collection.

*Estimated Total Burden Hours:* 88,885 hours.

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

**Jon Parrish Peede,**

*Senior Deputy Chairman.*

[FR Doc. 2018–02941 Filed 2–13–18; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Renew an Information Collection System

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

**DATES:** Written comments on this notice must be received by April 16, 2018, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; 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).

**SUPPLEMENTARY INFORMATION:**

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

*Title of Collection:* Engineering Program Monitoring Data Collections.

*OMB Number:* 3145–0238.

*Expiration Date of Approval:* April 30, 2018.

*Type of Request:* Intent to seek approval to renew an information collection for post-award output and outcome monitoring system.

*Abstract:*

*Proposed Project:* NSF provides nearly 20 percent of federal funding for basic research to academic institutions.[1] Within NSF, the Directorate for Engineering (ENG) has primary responsibility for promoting the progress of engineering in the United States in order to enable the Nation's capacity to perform. Its investments in engineering research and education aim to build and strengthen a national capacity for innovation that can lead over time to the creation of new shared wealth and a better quality of life. Most NSF programs in engineering are funded through the Directorate for Engineering, which also sponsors the NSF's Industrial Innovation and Partnerships (IIP) Division. To these ends, ENG provides support for research and implementation activities that may meet national needs. While scientists seek to discover what is not yet known, engineers apply fundamental science to design and develop new devices and engineered systems to solve societal problems. ENG also focuses on broadening participation in engineering research and careers.

The Directorate for Engineering (ENG) requests of the Office of Management and Budget (OMB) renewal of this clearance that will allow NSF–ENG to improve the rigor of our surveys for evaluations and program monitoring, as well as to initiate new data collections to monitor the immediate, intermediate and long-term outcomes of our investments by periodically surveying the grantees and their students involved in the research. The clearance will allow any program in the Directorate for Engineering at NSF to rigorously develop, test, and implement survey instruments and methodologies.

Some NSF–ENG programs regularly conduct a variety of data collection activities that include routine program monitoring, program evaluations, and education-related data collections from federally funded institutions of higher education. The primary objective of this clearance is to allow other programs in NSF–ENG to collect outcome and output data from grantees, their partners and students, which will enable the evaluation of the impact of its investments in engineering research over time. With that purpose, this clearance will allow us to use a bank of approved question items as needed as long as the resources consumed to do not exceed this request. The second related objective is to improve our questionnaires and/or data collection procedures through pilot tests and other survey methods used in these activities

[1] National Science Foundation. (2012). *NSF at a glance.* Retrieved from *http://www.nsf.gov/about/glance.jsp.*

for different programs. Under this clearance a variety of surveys could be pre-tested, modified and used. The exact combination of questions from the question bank is currently unknown for each program, but it will be based on their respective logic models and program goals. Following standard OMB requirements, NSF will submit to OMB an individual request for each survey project it undertakes under this clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire (if one is used) and materials describing the project.

In doing so, this request seeks approval for multiple data collections that have similar elements and purposes and will provide essential information for program monitoring purposes through multiple possible methods of collection. Data collected by ENG program outcome monitoring systems will be used for program planning, management, evaluation, and audit purposes. Summaries of output and outcome monitoring data are used to respond to queries from Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), and NSF's Office of the Inspector General. These data are needed for effective administration, program and project monitoring, evaluation, strategic reviews and for measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act (GPRA) Modernization Act of 2010, and NSF's Strategic Plan.

Outcome and output monitoring data represented in this collection is complementary to the data collected in the RPPR both with respect to type of questions and indicators (content) and timeliness of the collection. All questions asked are questions that are NOT included in the final or annual report and the intention is to ask them even beyond the period of performance on voluntary basis in order to capture impacts of the research that occur beyond the life of the award. Questionnaire items fall into the category of general items that could be used across programs as well as items of interest to a particular division. We are seeking to collect additional information from the grantees about the outcomes of their research that go above and beyond the standard reporting requirements used by the NSF and could span a period of up to 10 years after the award.

The six (6) divisions or offices in NSF–ENG which oversee multiple programs are included in this request. They are designed to assist in management of specific programs, divisions, or multi-agency initiatives and to serve as data resources for current and future program evaluations.

| Program/Office | Type of program |
|---|---|
| Emerging Frontiers in Research and Innovation (EFRI) | Fundamental Research. |
| Engineering Education and Centers (EEC) | Large research center's research (Implementation & Development) & Research and Education. |
| Industrial Innovation and Partnerships (IIP) | Translational Research. |
| Chemical, Bioengineering, Environmental, and Transport Systems (CBET). | Fundamental Research. |
| Civil, Mechanical, and Manufacturing Innovation (CMMI) | Fundamental Research. |
| Electrical, Communications, and Cyber Systems (ECCS) | Fundamental Research. |

ENG-funded projects could include research opportunities and mentoring for educators, scholars, and university students, as well as outreach programs that help stir the imagination of K–12 students, often with a focus on groups underrepresented in science and engineering. The surveys to be tested and implemented would be designed to assist in management of specific division programs, divisions, or multi-agency initiatives and to serve as data resources for current and future program evaluations.

This data collection effort will enable program officers to longitudinally monitor outputs and outcomes given the unique goals and purpose of their programs. This is very important to enable appropriate and accurate evidence-based management of the programs and to determine whether or not the specific goals of the programs are being met.

Grantees will be invited to submit this information on a periodic basis to support performance review and the management of ENG grants by ENG officers. Once the survey tool for a specific program is tested, ENG grantees will be invited to submit these indicators to NSF via data collection methods that include but are not limited to online surveys, interviews, focus groups, phone interviews, etc. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; sources of complementary cash and in-kind support to the ENG project; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; descriptions of significant advances and other outcomes of the ENG-funded effort.

*Use of the Information:* The data collected will be used for NSF internal reports, historical data, program level studies and evaluations, and for securing future funding for the ENG program maintenance and growth. These data could be used for program evaluation purposes if deemed necessary for a particular program. Evaluation designs could make use of metadata associated with the award, and other characteristics to identify a comparison group to evaluate the impact of the program funding and other interesting research questions. Different designs could be possible based on the research questions varying from program to program but the fact that NSF–ENG has already collected data on the outcomes of interest will result in substantial savings on the evaluation per se.

ESTIMATE OF BURDEN

| Collection title | Number of respondents | Annual number of responses/ respondent | Annual hour burden |
|---|---|---|---|
| Emerging Frontiers in Research and Innovation (EFRI) | 85 | 0.25 | 21.25 |
| Civil, Mechanical, and Manufacturing Innovation (CMMI) | 1,300 | 0.25 | 325 |
| Chemical, Bioengineering, Environmental, and Transport Systems (CBET) | 1,750 | 0.25 | 437.5 |
| Electrical, Communications, and Cyber Systems (ECCS) | 1,000 | 0.25 | 250 |
| Engineering Education and Centers (EEC) | 100 | 0.25 | 100 |
| Industrial Innovation and Partnerships (IIP) | 1,000 | 4 | 4,000 |
| Total | 5,235 | | 5,133.75 |

Below is an example that shows how the hour burden was estimated for the monitoring system.

The estimated average number of annual respondents is 5,235, with an estimated annual response burden of 5,133.75 hours. For post-award monitoring systems, most divisions expect to collect data at 1, 2, 5, and 10 years post-award, in order to have the best chance of capturing the more immediate outcomes expected by 1–2 years post-award, intermediate outcomes at 5 years post-award, and long-term outcomes/impacts at 10 years post award. These four (4) data collections spread over the span of 10 years; this averages to 0.25 data collections/year. For the IIP division, many awards are made in translational research, such that we might expect a shorter and more condensed timeline of outcomes and impacts. Thus, some programs may wish to collect data quarterly for the first two years of the award, and then once annually at 5 and 10 years post-award. The annual number of responses for the first 2 years post award is included in this table.

For life-of-award monitoring, the data collection burden to awardees will be limited to no more than 2 hours of the respondents' time in each instance.

*Respondents:* The respondents are either PIs or program coordinators. One PI or program coordinator per award completes the questionnaire.

*Estimates of Annualized Cost to Respondents for the Hour Burdens:* The overall annualized cost to the respondents is estimated to be $214,635. The following table shows the annualized estimate of costs to PI/program coordinator respondents, who are generally university professors. This estimated hourly rate is based on a report from the American Association of University Professors, ''Annual Report on the Economic Status of the Profession, 2011–12,'' *Academe,* March–April 2012, Survey Report Table 4. According to this report, the average salary of an associate professor across all types of doctoral-granting institutions (public, private-independent, religiously affiliated) was $86,319. When divided by the number of standard annual work hours (2,080), this calculates to approximately $41 per hour.

| Respondent type | Number of respondents | Burden hours per respondent | Average hourly rate | Estimated annual cost |
|---|---|---|---|---|
| PIs/Program Coordinators (EFRI, CBET, CMMI, ECCS, EEC) | 4,235 | 0.25 | $41 | $173,635 |
| PIs/Program Coordinators (IIP Division) | 1,000 | 1 | 41 | 41,000 |
| Total | 5,235 | | | 214,635 |

*Estimated Number of Responses per Report:* Data collection for the collections involves all awardees in the programs involved. The table below shows the total universe and sample size for each of the collections.

RESPONDENT UNIVERSE AND SAMPLE SIZE OF ENG PROGRAM MONITORING CLEARANCE COLLECTIONS

| Collection title | Universe of respondents | Sample size |
|---|---|---|
| Emerging Frontiers in Research and Innovation (EFRI) | 85 | 85 |
| Civil, Mechanical, and Manufacturing Innovation (CMMI) | 1,300 | 1,300 |
| Chemical, Bioengineering, Environmental, and Transport Systems (CBET) | 1,750 | 1,750 |
| Electrical, Communications, and Cyber Systems (ECCS) | 1,000 | 1,000 |
| Engineering Education and Centers (EEC) | 100 | 100 |
| Industrial Innovation and Partnerships (IIP) | 1,000 | 1,000 |

Dated: February 9, 2018.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2018–03002 Filed 2–13–18; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0026]**

## Very Low-Level Radioactive Waste Scoping Study

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Scoping study; public meeting and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is conducting a very low-level radioactive waste (VLLW) scoping study to identify possible options to improve and strengthen the NRC's regulatory framework for the disposal of the anticipated large volumes of VLLW associated with the decommissioning of nuclear power plants and material sites, as well as waste that might be generated by alternative waste streams that may be created by operating reprocessing facilities or a radiological event. The NRC is seeking stakeholder input and perspectives on this action. Respondents are asked to consider specific questions posed by the NRC staff and other Federal agencies in this notice when preparing their responses.

**DATES:** Submit comments by May 15, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0026. Address questions about NRC dockets 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: OWFN–2–A13, 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:** Maurice Heath, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3137; email: *Maurice.Heath@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2018–0026 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0026.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession Number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

• *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 reference Docket ID NRC–2018–0026 in your comment submission. If your comment contains proprietary or sensitive information, please contact the individual listed in the **FOR INFORMATION CONTACT** section of this document to determine the most appropriate method for submitting your comment.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. 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. Background

In 2007, following developments in the national program for Low-Level Radioactive Waste (LLRW) disposal, as well as changes in the regulatory environment, the NRC conducted a strategic assessment of its regulatory program for LLRW. The results of this assessment were published in late 2007 in SECY–07–0180, ''Strategic Assessment of Low-Level Radioactive Waste Regulatory Program'' (ADAMS Accession No. ML071350299). The strategic assessment identified the need to coordinate with other agencies on consistency in regulating LAW disposal and to develop guidance that summarizes disposition options for low-end materials and waste.

In 2016, the NRC staff conducted a programmatic assessment of the LLRW program to identify and prioritize tasks that the NRC could undertake to ensure a stable, reliable, and adaptable regulatory framework for effective LLRW management. The results of this assessment were published in October 2016, in SECY–16–0118, ''Programmatic Assessment of Low-Level Radioactive Waste Regulatory Program'' (ADAMS Accession No. ML15243A192). The programmatic assessment identified the need to perform a LAW scoping study as a medium priority.

In International Atomic Energy Agency (IAEA) Safety Guide No. GSG–1, ''Classification of Radioactive Waste'' (*http://www-pub.iaea.org/MTCD/publications/PDF/Pub1419_web.pdf*), the IAEA defines VLLW as waste that does not meet the criteria of exempt waste, but does not need a high level of containment and isolation, and, therefore, is suitable for disposal in a near surface landfill type facility with limited regulatory control. The NRC currently does not have a formal regulatory definition for VLLW, nor has it adopted the IAEA definition. However, the NRC uses the term VLLW consistent with the international regulatory structure. In general, the NRC

considers VLLW as material containing some residual radioactivity, including naturally occurring radionuclides that may be safely disposed of in hazardous or municipal solid waste landfills.

The LAW scoping study, later renamed the VLLW Scoping Study, will combine several tasks initially defined in the 2007 strategic assessment into one. These tasks include: (1) Coordinating with other agencies on consistency in regulating LAW; (2) developing guidance that summarizes disposition options for low-end materials and waste; and (3) promulgating a rule for disposal of LAW. As part of the scoping study, the NRC will also evaluate regulatory options that would define the conditions under which LAW, including mixed waste, could be disposed of in Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste facilities.

Consistent with SECY–16–0118, the NRC is conducting this VLLW Scoping Study, which will consider disposal of waste as defined by 10 CFR part 61 as the isolation, by emplacement in a land disposal facility, of radioactive wastes from the biosphere that is inhabited by man and that contains his food chains. As such, the scoping study will not address non-disposal related disposition pathways including unrestricted release, clearance, reuse, or recycle of materials.

The purpose of the VLLW Scoping Study is to identify possible options to improve and strengthen the NRC's regulatory framework for the disposal of the anticipated large volumes of VLLW associated with the decommissioning of nuclear power plants, and waste that might be generated by alternative waste streams that may be created by fuel reprocessing or a radiological event. Additionally, the NRC plans to evaluate regulatory options that could define the conditions under which VLLW, including mixed waste, could be disposed of in RCRA hazardous waste facilities.

## III. Specific Request for Comment

The NRC is interested in receiving comments from a broad range of stakeholders, including professional organizations, licensees, Agreement States, and members of the public. Likewise, respondents to this request with insight into relevant international initiatives are invited to provide their perspectives regarding international best practices related to VLLW disposal or other experiences that the NRC staff should consider. All comments will be considered and the results of the scoping study will be documented in a publicly available report, which will inform the Commission of the staff's recommendation for addressing VLLW disposal.

All comments that are to receive consideration in the VLLW Scoping Study must be submitted electronically or in writing as indicated in the **ADDRESSES** Section of this document. Respondents are asked to consider the background material discussed in Section II above when preparing their comments. In responding, commenters are encouraged to provide specific suggestions and the basis for suggestions offered. Specifically, the NRC staff requests comment on the following questions:

1. The United States does not have a formal regulatory definition of VLLW. What should the NRC consider in developing its own regulatory definition for VLLW? Is there another definition of VLLW that should be considered? Provide a basis for your response.

2. The existing regulatory framework within 10 CFR 61.55 divides low-level radioactive waste into four categories: Class A, Class B, Class C, and Greater Than Class C. Should the NRC revise the waste classification system to establish a new category for VLLW? What criteria should NRC consider in establishing the boundary between Class A and VLLW categories?

3. The NRC's alternative disposal request guidance entitled, ''Review, Approval, and Documentation of Low-Activity Waste Disposals in Accordance with 10 CFR 20.2002 and 10 CFR 40.13(a),'' which is undergoing a revision, allows for alternative disposal methods that are different from those already defined in the regulations and is most often used for burial of waste in hazardous or solid waste landfills permitted under the Resource Conservation and Recovery Act (RCRA). Should the NRC expand the existing guidance to include VLLW disposal or consider the development of a new guidance for VLLW disposal? Why or why not?

4. If the NRC were to create a new waste category for VLLW in 10 CFR part 61, what potential compatibility issues related to the approval of VLLW disposal by NRC Agreement States need to be considered and addressed? How might defining VLLW affect NRC Agreement State regulatory programs in terms of additional responsibilities or resources?

5. Following the Low-Level Radioactive Waste Policy Amendments Act of 1985, states formed regional compacts for the disposal of low-level radioactive waste. If the NRC were to create a new waste category for VLLW, does it fall within regional compact authority to control VLLW management and disposal? How might defining VLLW affect regional compacts in terms of additional responsibilities or resources?

6. Environmental Protection Agency-imposed waste analysis requirements for facilities that generate, treat, store, and dispose of hazardous wastes are defined in 40 CFR parts 264 through 270. How would NRC incorporate and apply waste analysis requirements for VLLW at RCRA Subtitle C and D facilities? Should the NRC impose concentration limits and/or treatment standards for VLLW disposal?

7. Are there any unintended consequences associated with developing a VLLW waste category?

8. What analytical methods/tools should be used to assess the risk of disposing of VLLW at licensed LLW disposal facilities or RCRA Subtitle C and D facilities? (*i.e.,* generic or site-specific)

9. How should economic factors be considered in the VLLW Scoping Study?

## IV. Public Meeting

To facilitate the understanding of the public and other stakeholders of the these issues and the submission of comments, the NRC staff has scheduled a public meeting for February 22, 2018 from 9:00 a.m. to 3:00 p.m. (EST) in the NRC's Two White Flint Auditorium at 11545 Rockville Pike, Rockville, MD. In addition, those wishing to participate by webinar will be able to view the presentation slides prepared by the NRC staff and electronically submit comments over the internet. Participants must register to participate in the webinar. Registration information may be found in the meeting notice at *https://www.nrc.gov/pmns/mtg?do=details&Code=20180033*). The meeting notice can also be accessed through the NRC's public website under the headings Public Meetings & Involvement > Public Meeting Schedule; see web page *https://meetings.nrc.gov/pmns/mtg.*

The NRC staff will also post the meeting notice on the Federal rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0026. The NRC staff may post additional materials related to this document, including public comments, on the Federal rulemaking website. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0026); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how

frequently you would like to receive emails (daily, weekly, or monthly).

The final agenda for the public meeting will be posted no fewer than 10 days prior to the meeting date. Those who are unable to participate in person or via webinar may choose to participate via teleconference by dialing the bridge number (800) 857–9840 and entering the pass code 4975456.

Dated at Rockville, Maryland, this 9th day of February, 2018.

For the Nuclear Regulatory Commission.

**Gregory F. Suber,**

*Acting Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–03083 Filed 2–13–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–335 and 50–389; NRC–2018–0025]**

## Florida Power and Light Company; St. Lucie Plant, Unit Nos. 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to comment, request a hearing, and to petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–67 and NPF–16, issued on October 2, 2003, and held by Florida Power and Light Company (FPL or the licensee) for the operation of St. Lucie Plant, Unit Nos. 1 and 2 (St. Lucie), located on Hutchinson Island in St. Lucie County, Florida. The proposed amendments would revise the Emergency Plan for St. Lucie to adopt a limited scope of the Nuclear Energy Institute (NEl) Emergency Action Level (EAL) scheme for the fire-related notification of unusual event.

**DATES:** Submit comments by March 16, 2018. Requests for a hearing or petition for leave to intervene must be filed by April 16, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0025 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0025. Address questions about NRC dockets to Jennifer Borges; telephone: 301–415–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the NRC Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Perry Buckberg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1383; email: *Perry.Buckberg@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2018–0025 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

*Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0025.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The application for amendment, dated January 31, 2018, is available in ADAMS under Accession No. ML18031B011.
- *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–2018–0025 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 will post all comment submissions at *http://www.regulations.gov* as well as enter 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 into ADAMS.

### II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–67 and NPF–16 issued to FPL for operation of St. Lucie, located on Hutchinson Island in St. Lucie County, Florida.

The proposed amendment would revise the Emergency Plan for St. Lucie to adopt a limited scope of the NEI EAL scheme for the fire-related notification of unusual event. Before any issuance of the proposed license amendments, 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 change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. No actual facility equipment or accident analyses are affected by the proposed changes.

The change revises the St. Lucie fire-related unusual event EAL scheme to be consistent with the NRC endorsed EAL scheme contained in NEI 99–01, Revision 6, ''Methodology for Development of Emergency Action Levels,'' but does not alter any of the requirements of the Operating License or the Technical Specifications.

Therefore, the proposed change 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 change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally, the proposed change does not involve a change in the methods governing normal plant operation, and all safety functions will continue to perform as previously assumed in the accident analyses. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of safety-related systems and components. The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis.

The proposed amendment does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The changes do not adversely impact plant operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change 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 if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes 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 person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave 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. 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/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (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.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in 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 must 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 the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must 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 the requirements at 10 CFR 2.309(f) 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. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of

this notice. Petitions and motions for leave to file new or amended contentions that are filed after the 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). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

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 establish 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 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 the 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 July 31, 2017. 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. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at 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 his or her 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 and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* 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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an 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 document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have 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 adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated January 31, 2018.

*Attorney for licensee:* William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

Dated at Rockville, Maryland, this 9th day of February, 2018.

For the Nuclear Regulatory Commission.

**Martha C. Barillas,**

*Acting Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2018–03003 Filed 2–13–18; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82662; File No. SR–DTC–2017–024]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Amend Procedures in the DTC Settlement Service Guide Relating to the Intra-Month Collection of Required Participants Fund Deposits

February 8, 2018.

On December 22, 2017, the Depository Trust Corporation (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2017–024, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on January 9, 2018.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

### I. Description of the Proposed Rule Change

The proposed rule change would amend DTC's Settlement Service Guide (''Guide'') [4] to (1) codify more completely DTC's current practices regarding when a DTC participant (''Participant'') [5] must deposit cash at DTC to satisfy an intra-month deficiency in the Participant's required contribution to DTC's Participants Fund [6] (''Deficiency''), and (2) make technical and clarifying changes to the Guide, as more fully described below.

#### *A. Background*

DTC requires Participants to contribute an aggregate amount of $1.15 billion to the Participants Fund.[7] That amount is collected through two components of the Participants Funds, the Core Fund and the Liquidity Fund, to which Participants must contribute, as applicable.[8]

DTC sets the total value of the Core Fund at $450 million, which is collected through two underlying funds: The Base Fund and the Incremental Fund.[9] Each Participant is required to contribute a minimum of $7,500 to the Base Fund.[10] Meanwhile, the Incremental Fund makes up the difference, if any, between the aggregate amount collected in the Base Fund and the total $450 million of the Core Fund. If there is a difference, DTC allocates the difference proportionally among all Participants.[11]

DTC sets the total value of the Liquidity Fund at $700 million.[12] The Liquidity Fund is allocated proportionately among Participants with affiliated families,[13] where the affiliated families have been authorized by DTC to have over $2.15 billion in intraday debits.[14]

The aggregate amount that a Participant is required to contribute to the Participants Fund is the Participant's Required Participants Fund Deposit (hereinafter, ''Required Deposit'').[15] In addition, Participants may make voluntary deposits to the Participants Fund, which DTC refers to as Voluntary Participants Fund Deposits (hereinafter, ''Voluntary Deposit'').[16] A Participant may choose to make a Voluntary Deposit in anticipation of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82434 (January 3, 2018), 83 FR 1046 (January 9, 2018) (SR–DTC–2017–024) (''Notice'').

[4] *Available at https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

[5] ''Participant'' is defined in the DTC Rules, Bylaws, Organization Certificate (''Rules'') as an entity to which DTC offers its services pursuant to the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures?pgs=1.*

[6] The Participants Fund is the fund in which DTC collects and holds cash from Participants in order to maintain sufficient liquidity resources in the event of a Participant default. Notice, 83 FR at 1047.

[7] Guide, *supra* note 4 at 48; Notice, 83 FR at 1047.

[8] *See* Guide, *supra* note 4 at 48–50 (explaining the components of the Participants Fund); *see also* Notice, 83 FR at 1047.

[9] *See* Guide, *supra* note 4 at 48.

[10] *Id.;* Notice, 83 FR at 1047.

[11] Guide, *supra* note 4 at 48. A Participant's contribution to the Incremental Fund is based on the average of the Participant's six largest intra-day liquidity exposures at DTC, over a rolling 60-business-day period. *Id.;* Notice, 83 FR at 1047.

[12] Guide, *supra* note 4 at 49.

[13] The Rules define an ''affiliated family'' as each Participant that controls (or is controlled by another Participant that has) direct or indirect ownership of more than 50 percent of the voting securities (or voting interests) of another Participant, and each such Participant is under the common control of the same entity. *Supra* note 5 at 2.

[14] Guide, *supra* note 4 at 49; Notice, 83 FR at 1047.

[15] Guide, *supra* note 4 at 47–48; Notice, 83 FR at 1047.

[16] Guide, *supra* note 4 at 47; Notice, 83 FR at 1047.

potential increases to its Required Deposit.[17]

A Participant's deposits to the Participants Fund, including both Required Deposits and Voluntary Deposits, if any, are considered the Participant's Actual Participants Fund Deposits (hereinafter, ''Actual Deposits'').[18] DTC can use a Participant's Actual Deposits to cover losses associated with the Participant's default.[19]

DTC calculates the Required Deposit of each Participant on a daily basis.[20] However, DTC states that Required Deposits generally do not materially change on a daily basis because the calculation uses a 60-business-day rolling average.[21] Therefore, DTC generally only collects funds to cover a Deficiency, if any, on a monthly basis—specifically, on the last business day of the month.[22]

Notwithstanding the above, DTC will require a Participant to satisfy an intra-month Deficiency if, when considering the Reference Amount, described below, the Deficiency meets or exceeds either the Standard Threshold or the Watch List Threshold, also described below.

The Reference Amount is the most recent Required Deposit amount that the Participant deposited to the Participants Fund, as compared to the Required Deposit amount that DTC calculates on a daily basis but does not necessarily require an intra-month deposit.[23] More specifically, the Reference Amount is the amount that the Participant deposited to the Participants Fund based upon a Required Deposit as calculated on (1) the last business day of the prior month, (2) the most recent intra-month business day when the Participant's Deficiency met or exceeded the Standard Threshold or the Watch List Threshold, as described below, or (3) the most recent intra-month business day when DTC collected an ''adequate assurance'' charge under Rule 9(A) of the Rules.[24]

The Standard Threshold for determining when a Participant must satisfy an intra-month Deficiency is when (1) the difference between the Participant's current Required Deposit calculation and the Reference Amount equals or exceeds $500,000 and (2) the difference is at least a 25 percent increase over the Reference Amount.[25]

The Watch List Threshold for determining when a Participant must satisfy an intra-month Deficiency is when (1) the Participant is on DTC's ''Watch List'' [26] and (2) the difference between the Participant's current Required Deposit calculation and the Reference Amount is at least a 10 percent increase over the Reference Amount.[27]

*B. Proposed Changes to the Guide*

The Guide currently does not define the Reference Amount used for the purpose of determining the Standard Threshold and Watch List Threshold, nor does the Guide describe the Watch List Threshold.[28] As such, DTC proposes to codify in the Guide its current processes for (1) determining the Reference Amount for each Participant and (2) applying the Watch List Threshold, as described above.[29]

DTC also proposes to modify the Guide to (1) revise and re-order text for enhanced readability and flow of content, (2) add subheadings, (3) revise informal references to terms already defined in the Rules to use the actual defined terms, and (4) make grammatical corrections.[30]

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [31] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(23)(ii) under the Act.[32]

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[33] As described above, the proposed rule change would codify DTC's practices regarding the Reference Amount and the Watch List Threshold. By adding these provisions to the Guide, the Guide would provide greater transparency to Participants regarding the criteria DTC uses to determine whether a Participant must increase its Required Deposit on an intra-month basis because of a Deficiency.

By providing Participants with such enhanced transparency, the proposal is designed to enable Participants to better anticipate when an intra-month deposit may be necessary. This increased foresight would help improve the likelihood that Participants are ready and able to make the deposit. As such, the proposal would help ensure that the Participants Fund is adequately funded and, thus, the appropriate amount of Actual Deposits is available to DTC, if it should need to manage a Participant default. Therefore, the Commission finds that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[34]

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[35] As described above, the proposed rule change also includes technical and clarifying changes to the text of the Guide that would enhance readability, make grammatical corrections, and add new section headings. These changes

[17] Notice, 83 at 1047. A Participant's Required Deposit may fluctuate based on the liquidity exposure associated with the Participant's settlement activity. *See* Guide, *supra* note 4 at 51. The Guide provides that when a Participant's Required Deposit has decreased, the Participant may choose to leave excess cash in the Participants Fund to reduce the level of administration that would otherwise be necessary should the Participant's Required Deposit later increase. *Id.* DTC also accepts Voluntary Deposits for such administrative purposes. *Id.*

[18] Notice, 83 FR at 1047.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See* Guide, *supra* note 4 at 50–51 (explaining daily calculations of the Required Deposit); *see also* Notice, 83 FR at 1048.

[24] Notice, 83 FR at 1048. Pursuant to Rule 9(A) of the Rules, if DTC is concerned with a Participant's operational or financial soundness, DTC may require adequate assurances of financial or operational capacity from the Participant. *Id.; see also* Rules, *supra* note 5, Rule 9(A), Section 2 (stating ''At the request of [DTC],'' a Participant ''shall immediately furnish [DTC] with such assurances as [DTC] shall require of the financial ability of the Participant . . . including deposits to the Participants Fund'').

[25] Notice, 83 FR at 1048.

[26] Notice, 83 FR at 1048. The Watch List is a list of Participants with credit risk rating of ''5,'' ''6,'' or ''7,'' as calculated by DTC's Credit Risk Rating Matrix, as well as Participants that, based on DTC's consideration of relevant factors, are deemed by DTC to pose a heightened risk to DTC and its Participants. *Id.* at 1047. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. *Id.*

[27] *Id.* at 1048–49.

[28] *Id.* at 1047.

[29] *Id.*

[30] *Id.* at 1049.

[31] 15 U.S.C. 78s(b)(2)(C).

[32] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(23)(ii).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] *Id.*

[35] *Id.*

would increase the precision and clarity of the Guide. This increased precision and clarity would help facilitate Participants' ability to better understand their respective rights and obligations regarding DTC's clearance and settlement of securities transactions. Accordingly, the Commission finds that the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[36]

Rule 17Ad–22(e)(23)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable Participants to identify and evaluate the risks and material costs they incur by participating in DTC.[37] As described above, the proposed rule change would (1) increase the Guide's transparency regarding DTC's procedures for the intra-month calculation of Required Deposits and (2) make other technical and clarifying changes to increase the Guide's readability. Increased transparency around a Participant's required intra-month deposit to the Participants Fund to satisfy a Deficiency, as well as the increased clarity in the readability of the Guide, are each changes that are designed to provide Participants with sufficient information to identify and evaluate risks and material costs in connection with their Required Deposit as participants of DTC. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(23)(ii).[38]

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[39] and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2017–024 be, and hereby is, *approved*.[40]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02977 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82666; File No. SR–ISE–2017–106]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Permit the Listing and Trading of NQX Index Options on a Pilot Basis

February 8, 2018.

On December 6, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on December 26, 2017.[3] On January 31, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is February 9, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act[6] and for the reasons stated above, the Commission designates March 26, 2018, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2017–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02981 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82670; File Nos. SR–DTC–2017–022; SR–FICC–2017–022; SR–NSCC–2017–018]**

## Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes To Amend the Loss Allocation Rules and Make Other Changes

February 8, 2018.

On December 18, 2017, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), and National Securities Clearing Corporation (''NSCC'') (collectively, ''Clearing Agencies''), each filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the loss allocation rules and make other changes (SR–DTC–2017–022, SR–FICC–2017–022, and SR–NSCC–2017–018), respectively (''Proposed Rule Changes''), pursuant to Section 19(b)(1) of the

[36] *Id.*

[37] 17 CFR 240.17Ad–22(e)(23)(ii).

[38] *Id.*

[39] 15 U.S.C. 78q–1.

[40] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82362 (December 19, 2017), 82 FR 61090.

[4] In Amendment No. 1, the Exchange revised its proposal to: (1) Add that raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided as part of the pilot data; and (2) revise the proposed duration of the pilot program such that the pilot would terminate on the earlier of: (i) Twelve months following the date of the first listing of the options; or (ii) June 30, 2019. When the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 to the public comment file for SR–ISE–2017–106 (available at: *https://www.sec.gov/comments/sr-ise-2017-106/ise2017106.htm*). Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Changes were published for comment in the **Federal Register** on January 8, 2018.[3] The Commission did not receive any comments on the Proposed Rule Changes.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notices for the Proposed Rule Changes is February 22, 2018.

The Commission is extending the 45-day time period for Commission action on the Proposed Rule Changes. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Changes so that it has sufficient time to consider and take action on the Proposed Rule Changes.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates April 8, 2018 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule changes SR–DTC–2017–022, SR–FICC–2017–022, and SR–NSCC–2017–018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02983 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR–DTC–2017–022); Securities Exchange Act Release No. 82427 (January 2, 2018), 83 FR 854 (January 8, 2018) (SR–FICC–2017–022); Securities Exchange Act Release No. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR–NSCC–2017–018).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82661; File No. SR–NYSEArca–2018–10]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

February 8, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 1, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (i) modify the credits the Exchange provides for routing certain orders to the New York Stock Exchange LLC (''NYSE''); (ii) delete a pricing tier; and (iii) delete certain obsolete dates from the Fee Schedule. The Exchange proposes to implement the fee changes effective February 1, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, to (i) modify the credits the Exchange provides for routing certain orders to the NYSE; (ii) delete a pricing tier, the Large Order Tier; and (iii) delete certain obsolete dates from the Fee Schedule. The Exchange proposes to implement the fee changes on February 1, 2018.

Primary Only (''PO'') Orders

A PO Order is designed to route to the primary listing market of the security underlying the order (*i.e.,* NYSE, Nasdaq Stock Market, etc.) immediately upon arrival and the order therefore does not rest on the Exchange's order book. Because PO Orders do not rest on the Exchange's book, the Exchange charges fees or provides credits for those orders based on the fees and credits of the destination primary listing market, which are the non-tier fees and credits that the Exchange is charged by the primary listing market that receives the orders. For Tier 1 and Tier 2 PO Orders that are routed to the NYSE, the Exchange currently provides a credit of $0.0014 per share for such orders.

In a recent rule filing, the NYSE modified its fee structure for equities transactions by decreasing the level of rebate that it provides to its members that provide liquidity from $0.0014 per share to $0.0012 per share.[4] In order to maintain the same relationship between the rate that the Exchange charges for a PO Order and the rebate provided by the destination venue, the Exchange is also amending the per share credit for PO Orders routed to the NYSE that provide liquidity to the NYSE to $0.0012 per share. The Exchange proposes corresponding changes to the Basic Rates pricing section of the Fee Schedule.

Large Order Tier

In April 2017, the Exchange filed a proposed rule change to adopt a new pricing tier to incentivize large order flow (''Large Order Tier'').[5] The Large Order Tier adopted a lower fee of $0.0010 per share to ETP Holders, including Market Makers, that execute an average daily volume (''ADV'') of 1,250,000 shares or greater of Market

[4] *See* Securities Exchange Act Release No. 82563 (January 22, 2018), 83 FR 3799 (January 26, 2018) (SR–NYSE–2018–03).

[5] *See* Securities Exchange Act Release No. 80516 (April 24, 2017), 82 FR 19775 (April 28, 2017) (SR–NYSEArca–2017–43).

Orders, Market-On-Close Orders, Limit-On-Close Orders and Auction-Only Orders executed in the Closing Auction from orders of 650,000 shares and greater (''Large Closing Orders'') and that have a ratio of Large Closing Order shares to total shares executed during the month of at least 35%. The Large Order Tier has not encouraged ETP Holders and Market Makers to increase their activity to qualify for this pricing tier as significantly as the Exchange had anticipated they would. As a result, the Exchange proposes to remove this pricing tier from the Fee Schedule.

Elimination of Obsolete Dates—Step-Up Tier

In September 2017, the Exchange filed a proposed rule change to adopt a second way by which an ETP Holder or Market Maker could qualify for the Step-Up Tier.[6] As an incentive for ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2017 and October 2017 only, the Exchange adopted lower requirements for ETP Holders and Market Makers to qualify for the pricing tier. Given that the months during which the incentive was applicable have passed, the Exchange proposes to delete from the Fee Schedule reference to the Step-Up Tier credits applicable to ETP Holders and Market Makers for the months of September 2017 and October 2017 as that language is now obsolete. This proposed change would have no impact on pricing.

Elimination of Obsolete Dates—ELP Program

In March 2017, the Exchange filed a proposed rule change to adopt the Exchange Traded Fund Liquidity Provider Program to incentivize ETP Holders and Market Makers (collectively, the ''ELPs'') to provide displayed liquidity to the NYSE Arca Book in NYSE Arca-listed Tape B Securities (''ELP Program'').[7] The ELP Program requires participating ELPs to quote at the NBBO for at least 15% of the time for the billing month (''Quoting Standard''), and display at least 2,500 shares that are priced no more than 2% away from the NBBO at least 90% of the time for the billing month (''Depth Standard''), in at least 50 ELP Securities, to qualify for the pricing incentive. For the months of March 2017, April 2017 and May 2017, ELPs were only required to meet to meet the Quoting Standard to qualify for the incremental credit provided under the ELP Program. Beginning June 2017, ELPs must meet both the Quoting Standard and the Depth Standard to qualify for the pricing incentive. Given that the months during which the Quoting Standard only was required have passed, the Exchange proposes to delete from the Fee Schedule reference to such months as that language is now obsolete. This proposed change would have no impact on pricing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to routing credits for PO Orders that provide liquidity to the NYSE are reasonable because the Exchange's credits for routing an order that does not rest on the Exchange's order book, but rather is designed to route to the primary listing market on arrival, are closely related to the NYSE's non-tier rebate for its members for providing liquidity, and the proposed change is consistent with the recent change to the NYSE Price List to lower its non-tier rebate for providing liquidity. While the proposed change would result in a decrease in the per share credit for PO Orders routed to the NYSE that provide liquidity to the NYSE, the rebate that the Exchange would provide to ETP Holders is competitive with the rate that NYSE provides to its members for providing liquidity and would maintain the same relationship between the rebate provided by the venue to which the PO Order is routed and the fees charged by the Exchange for such orders. Further, the proposed change is equitable and not unfairly discriminatory because the rebate would apply uniformly across pricing tiers and all similarly situated ETP Holders would be subject to the same credit.

The Exchange believes that it is reasonable to delete obsolete pricing tiers from the Fee Schedule because ETP Holders and Market Makers have not increased their activity to qualify for the Large Order Tier as significantly as the Exchange anticipated they would. The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the Large Order Tier because, as proposed, the pricing tier would be eliminated entirely—ETP Holders and Market Makers would no longer be able to qualify for this pricing tier. This aspect of the proposed rule change would result in the removal of obsolete text from the Fee Schedule and therefore add greater clarity to the Fee Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to delete reference to obsolete dates from the Fee Schedule. The Step Up Tier and the ELP Program adopted specific requirements that were applicable for certain months in 2017. Given the months during which the lower requirements were applicable have passed, the Exchange believes deletion of the outdated language will bring clarity to the Fee Schedule.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the routing credits would not place a burden on competition because the Exchange is maintaining the existing relationship between the rebate provided by the Exchange for PO Orders that are routed to the NYSE that provide liquidity on the NYSE and the non-tier rebate the NYSE provides to its members that provide liquidity. In addition, the removal of obsolete text from the Fee Schedule would not have any impact on inter- or intra-market competition because the proposed change would result in a streamlined Fee Schedule without any impact on pricing.

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 and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. Because

[6] *See* Securities Exchange Act Release No. 81601 (September 13, 2017), 82 FR 43633 (September 18, 2017) (SR–NYSEArca–2017–104).

[7] *See* Securities Exchange Act Release Nos. 80258 (March 16, 2017), 82 FR 14775 (March 22, 2017) (SR–NYSEArca–2017–28); and 80632 (May 9, 2017), 82 FR 22360 (May 15, 2017) (SR–NYSEArca–2017–50).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

competitors are free to modify their own fees and credits 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. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders 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 solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–10 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–NYSEArca–2018–10. 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–NYSEArca-2018–10 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02976 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82663; File No. SR–DTC–2017–023]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Restore the Timeframe for Processing Credit Post-Payable Adjustments

February 8, 2018.

On December 21, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2017–023, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on January 8, 2018.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

**I. Description of the Proposed Rule Change**

The proposed rule change would modify DTC's Distributions Service Guide (''Guide'') [4] to (i) increase the timeframe for accepting a request from an issuer or its agent (''Paying Agent'') for a post-payable adjustment (''PPA'') that results in a credit payment, and (ii) make technical changes to the Guide, as more fully described below.

*A. Current PPA Process*

On a daily basis, DTC collects and allocates distributions on securities held by DTC.[5] The distributions are commonly referred to as principle and income payments, and they include dividend, interest, principal, redemption, and maturity payments, as applicable.[6] Occasionally, an error can occur with a principal or income payment due to an error on the part of the Paying Agent, trustee, issuer, or a change in the principle factor or rate.[7] When an error occurs, Paying Agents can request that DTC issue a PPA. A PPA can result in a debit (''Debit PPA'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82433 (January 2, 2018), 83 FR 927 (January 8, 2017) (SR–DTC–2017–023) (''Notice'').

[4] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Distributions-Service-Guide-FINAL-January-2017.pdf.*

[5] Notice, 83 FR at 927.

[6] *Id.*

[7] *Id.*

or credit (''Credit PPA'') to the affected DTC participant (''Participant'').[8]

Upon the receipt of a PPA, affected Participants would need to make adjustments to their affected customers' accounts for any misapplied principal or income and any associated interest.[9] In addition, affected Participants may need to process adjustments against any customer that traded the security after the initial payment had occurred.[10]

Currently, DTC does not accept a request for a PPA, regardless of whether it would be a Debit PPA or a Credit PPA, beyond 90 calendar days after the initial payment date.[11] If a Paying Agent wants to make a PPA beyond 90 days, the adjustment cannot be processed through DTC.[12] Instead, the Paying Agent must request from DTC a listing of all affected Participants and positions.[13] Then, using that list, the Paying Agent must contact each affected Participant to make direct adjustments and/or payment arrangements outside of DTC.[14]

*B. Proposed Timeline for Credit PPAs*

DTC proposes to extend the 90-day cutoff for PPA Credits to one year.[15] DTC states that the new timeline for Credit PPAs would allow Paying Agents more time to correct allocations to Participants efficiently through DTC, rather than requiring the Paying Agent to make the Credit PPAs bilaterally with each Participant, outside of DTC.[16] DTC states that this efficiency would allow Participants, their customers, and end investors to receive their credits more quickly.[17]

The proposed rule change would not alter the timeline for Debit PPAs. DTC states that Debit PPAs create significant credit risk exposure for Participants, customers, and investors as more time passes.[18] DTC states that Participants have difficulty recovering debited funds from their customers that may no longer have an account, may not have available funds, or may no longer service the end investor.[19] Therefore, DTC would preserve the 90-day cutoff for Debit PPAs.

*C. Proposed Technical Changes to the Guide*

DTC also proposes some technical changes to the Guide. Specifically, DTC would modify the Guide to (i) remove an inaccurate statement that PPA adjustments appear on Participant statements—such adjustments do not appear on Participant statements; (ii) add the word ''principal'' to the list of payments that may be subject to a PPA—for consistency with the term ''P&I;'' and (iii) remove an incorrect reference to CMO/ABS securities.[20]

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [21] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission finds that this proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act.[22]

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[23] By extending the cutoff period from 90 days to one year for the processing of Credit PPAs through DTC, DTC would be providing centralized processing for Credit PPAs for a longer period. Enabling Paying Agents to avail themselves of such central processing for a longer period would help the Paying Agents avoid the manual process of bilaterally processing the Credit PPAs outside of DTC after 90 days. In doing so, the proposal would enable Paying Agents to correct errors in Credit PPAs more efficiently and effectively over a longer period. Therefore, the Commission finds the proposed extension from 90 days to one year for Credit PPAs to be processed by DTC would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[24]

The Commission also finds that DTC's technical changes to the Guide would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[25] Clarifying terms and descriptions in the Guide would help make the Guide more accurate and clear. Maintaining an accurate and clear Guide would enable Participants and other stakeholders to better understand their respective rights and obligations. Accordingly, the Commission finds that the proposed change to make technical changes to the Guide would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[26]

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act [27] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2017–023 be, and hereby is, *approved.*[28]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02978 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 927–28.
[19] *Id.* at 928.
[20] *Id.*
[21] 15 U.S.C. 78s(b)(2)(C).
[22] 15 U.S.C. 78q–1(b)(3)(F).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] 15 U.S.C. 78q–1.
[28] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[29] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82673; File No. SR–MIAX–2018–02]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 8, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section (1)(a)(iii) of the Fee Schedule to modify the volume threshold calculation methodology, in connection with the additional $0.02 per contract rebate offered to Members [3] for Priority Customer [4] orders executed in the PRIME [5] Auction as a PRIME Agency Order, pursuant to the Priority Customer Rebate Program.[6]

The Exchange currently offers Members the opportunity to qualify for an additional $0.02 per contract rebate in connection with certain types of executions on the Exchange if the Member or its Affiliates [7] meets certain qualifications. Specifically, any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher is credited an additional $0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order, over a threshold of 1,500,000 contracts in a month. Volume is recorded for and credits are delivered to the Member that submits the order to the Exchange.

The Exchange proposes to modify the volume threshold calculation methodology in connection with that additional $0.02 per contract rebate. The Exchange proposes to change the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month. The proposed threshold is above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month. National customer volume is the total volume reported by the Options Clearing Corporation (''OCC'') in MIAX Options classes in the ''customer'' range. Specifically, the Exchange proposes that any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher will be credited an additional $0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month.

There are no other changes to this rebate program. In particular, the Exchange currently excludes from the calculation certain types of orders, and those same types of orders will continue to be excluded using the new calculation methodology. Specifically, the Exchange excludes orders executed as QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Options Rule 1400. The Exchange will continue to exclude those same orders from this rebate program. The Exchange further notes that these exclusions are identical to the exclusions that apply to other aspects of the Priority Customer Rebate Program as well. There is also no change to the additional rebate amount of $0.02 per contract.

The Exchange believes that changing the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) will result in a threshold that is more consistently proportional to national customer volume executed during the relevant month, as actual national customer volume often changes on a month-to-month basis. Since the Priority Customer Rebate Program is designed to encourage Members to execute greater Priority Customer volume on the Exchange, having a more consistent proportional measure in relation to the number of national customer volume executed in a given month will better align this particular rebate program to the core purpose of the Priority Customer Rebate Program. In turn, the Exchange believes that this change will further incentivize Members to execute a greater number of Priority Customer orders in the Exchange's PRIME Auction mechanism.

The Exchange believes that increased PRIME and Priority Customer volume will attract more liquidity to the Exchange, which benefits all market participants. Increased PRIME and Priority Customer order flow should

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[5] The MIAX Options Price Improvement Mechanism (''PRIME'') is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. For a complete description of PRIME and of PRIME order types and responses, *see* Exchange Rule 515A.

[6] Under the Priority Customer Rebate Program, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding certain orders specified in Section (1)(a)(iii) of the Fee Schedule), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Section (1)(a)(iii) of the Fee Schedule.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, (''Affiliate''), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the process described in the Fee Schedule. *See* Section (1)(a)(i) of the Fee Schedule.

attract liquidity providers, which in turn should make the MIAX Options marketplace an attractive venue where Market Makers may submit narrow quotations with greater size, deepening and enhancing the quality of the MIAX Options marketplace. This should provide more trading opportunities and tighter spreads for other market participants and result in a corresponding increase in order flow from such other market participants.

The credits paid out as part of the Priority Customer Rebate Program are drawn from the general revenues of the Exchange.[8] The Exchange calculates volume thresholds on a monthly basis. The proposed rule change is scheduled to become operative on February 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that changing the volume threshold calculation methodology from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) in the Priority Customer Rebate Program for the additional $0.02 rebate for Priority Customer orders submitted into PRIME as PRIME Agency is consistent with Section 6(b)(4) of the Act in that it is fair, equitable and not unreasonably discriminatory. The rebate program is reasonably designed because it incentivizes providers of Priority Customer order flow to send order flow to the Exchange and, upon meeting certain volume criteria, enables them to receive the credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed change to the volume threshold calculation methodology is fair, equitable, and not unreasonably discriminatory because they will apply equally to all Priority Customer orders submitted as a PRIME Agency Order. All similarly situated Priority Customer orders are subject to the same rebate and volume calculations, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed volume threshold calculation is equitable and not unfairly discriminatory because, while only Priority Customer order flow that is submitted as a PRIME Agency Order over the proposed threshold qualifies for the rebate, an increase in overall Priority Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Market participants want to trade with Priority Customer order flow. To the extent Priority Customer order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that the proposed rule change modifying the volume threshold calculation methodology for the $0.02 rebate from a fixed number of contracts per month (1,500,000 per month) to a percentage of national customer volume in multiply-listed options classes listed on MIAX Options per month (above 0.60% of national customer volume in multiply-listed options classes listed on MIAX Options during the relevant month) is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade since the Exchange believes that it will result in a threshold that is more consistently proportional to national customer volume executed during the relevant month, as actual national customer volume often changes on a month-to-month basis. To the extent Member volume in Priority Customer orders and PRIME Agency Orders is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange which could result in more liquidity on the Exchange. The Exchange believes that offering all such market participants the opportunity to lower transaction fees by incentivizing them to transact Priority Customer order flow in turn benefits all market participants.

*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 Exchange believes the proposal is consistent with robust competition by increasing the intermarket competition for order flow from market participants. To the extent that there is additional competitive burden on market participants without Priority Customer order flow and those market participants that are not able to aggregate order flow with Affiliates, the Exchange believes that this should incent Members to direct volume to the Exchange in order to provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule

[8] Despite providing credits under the Priority Customer Rebate Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Priority Customer Rebate Program is in effect.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–MIAX–2018–02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–02. 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–MIAX–2018–02 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02986 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82674; File No. SR–NSCC–2018–001]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the By-Laws and Make Other Changes

February 8, 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 February 2, 2018, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the NSCC By-Laws (''By-Laws'') to (i) revise titles or offices and the powers and duties of the Board of Directors (''Board'') and certain designated officers of NSCC, (ii) revise the section describing the compensation of officers, and (iii) make certain technical changes and corrections.[3] The Rules [4] would also be amended to incorporate by reference the By-Laws and the Certificate of Incorporation of NSCC.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In NSCC's review of the By-Laws, NSCC has identified and is proposing the following changes to the By-Laws: (i) Revising certain Board and designated officer titles or offices and updating the related powers and duties, (ii) revising the section describing the compensation of officers, and (iii) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, NSCC is proposing to: (1) Change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in NSCC's management, (2) add the office of the Chief Executive Officer (''CEO''), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer (''CFO'') and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer (''COO''), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The By-Laws and the Certificate of Incorporation would each be incorporated by reference into NSCC's Rules & Procedures (''Rules''). No changes have been made to NSCC's Certificate of Incorporation since the most recently filed version of the Certificate of Incorporation. *See* Securities Exchange Act Release No. 13407 (March 25, 1977), 42 FR 17928 (April 4, 1977) (SR–NSCC–77–3).

[4] The Rules are *available at http://www.dtcc.com/legal/rules-and-procedures.* The By-Laws and the Certificate of Incorporation would be *available at http://www.dtcc.com/legal/rules-and-procedures.*

officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. NSCC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and the governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. NSCC believes these changes would facilitate the efficient governance and operation of NSCC.

The Rules would also be amended to incorporate by reference the By-Laws and Certificate of Incorporation of NSCC, as further described below. The following describes the proposed changes to the By-Laws and the Rules.

Proposed Changes to the By-Laws [5]

A. Changes to Certain NSCC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties

NSCC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below.

1. Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board

NSCC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (''Non-Executive Chairman of the Board''). This change in title reflects that this position is now held by an individual who is not part of NSCC's management (*i.e.,* a non-executive). In 2016, NSCC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of NSCC's management at that time became a non-executive. NSCC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of the Board even though he is no longer part of NSCC's management. Therefore, NSCC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. NSCC believes this proposed change would accurately reflect this organizational change. Furthermore, NSCC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board. To implement this proposed change, NSCC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board. Specifically, the following changes would be made:

a. In current Section 1.2 (Special Meetings), the references to Chairman would be revised to Non-Executive Chairman of the Board by adding the word ''Non-Executive'' before the second reference to Chairman in the first sentence and the phrase ''of the Board'' after such reference. In addition, the phrase ''by the Chairman'' in the first sentence of current Section 1.2 (Special Meetings) would be deleted because it would be repetitive to the language that is currently included later in this section.

b. In current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 5.1 (Certificates for Shares), the word ''Non-Executive'' would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of NSCC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of NSCC.

b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President and CEO.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include: (i) Presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would state that the ''performance of any such duty by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.''

b. NSCC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, NSCC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. NSCC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (''DTCC''), The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC'') and NSCC Mission Statement and Charter (''Board Mission Statement and Charter''), NSCC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, NSCC believes the proposed language described above

[5] NSCC last submitted a rule filing regarding changes to the By-Laws in 2006. *See* Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08).

would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

d. As further described below, in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and CEO. NSCC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.

e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), NSCC would add the Non-Executive Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. NSCC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO Into the Office of the President and CEO; Update the Related Powers and Duties

NSCC proposes to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO) because one individual is the President and CEO. NSCC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, NSCC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, NSCC proposes to make the changes to the By-Laws that are described below.

a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and current Section 3.12 (Compensation of Officers), the words ''and Chief Executive Officer'' would be added after each reference to President.

b. In current Section 5.1 (Certificates for Shares), the words ''the President'' would be deleted and replaced by the words ''President and Chief Executive Officer.''

c. Additionally, in current Section 1.2 (Special Meetings), the phrase '', or by the President,'' in the first sentence would be deleted because NSCC believes it is repetitive to language that appears later in the section.

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. NSCC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of NSCC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of NSCC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. NSCC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of NSCC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. NSCC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). NSCC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.

d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that ''performance of any such duty by the President shall be conclusive evidence of his power to act'' that appears in current Section 3.3 (Powers and Duties of the President) would be removed as NSCC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO.

e. As described above, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board. NSCC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

f. As described below, the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.

3. Add the Office of the CFO; Delete of the Office of the Comptroller

NSCC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of NSCC. Furthermore, references to the office of the Comptroller would be deleted. NSCC does not currently have a Comptroller nor does NSCC plan to appoint one. Therefore, NSCC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, NSCC would revise the By-Laws as described below.

a. In current Section 3.1 (General Provisions), CFO would be added and Comptroller would be removed from the list of designated officers of NSCC.

b. NSCC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of NSCC and upon request, would counsel and advise other officers of NSCC and perform other duties as agreed with the President and CEO or as determined by the Board. NSCC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. NSCC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.

c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign to him. Because the Treasurer directly reports to the CFO, NSCC believes it is appropriate for the CFO to assign powers and duties to the Treasurer.

d. NSCC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

NSCC would also delete references to the designated office of the COO in the By-Laws. NSCC believes this change is necessary because NSCC no longer has a COO nor does NSCC plan to appoint one. Specifically, NSCC would make the changes to the By-Laws described below.

a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of NSCC.

b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of NSCC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

NSCC proposes to change the title of Vice President to Executive Director and update the related powers and duties. NSCC believes these changes are necessary because NSCC has decided that the title of Executive Director is more widely used in the financial services industry for roles similar to those designated as Vice Presidents. In NSCC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. NSCC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. NSCC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.

b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. NSCC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.

c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of NSCC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.[6] Because individuals with the title of Executive Director report to Managing Directors, NSCC believes the reference to Vice President in this section would not be necessary.

e. In current Section 5.1 (Certificates for Shares), the reference to Vice President would be removed because Vice Presidents are no longer authorized to sign share certificates. As described above, NSCC decided that they do not have sufficient seniority to do so.

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

Managing Directors

a. In Section 1.8 (Presiding Officer and Secretary), the reference to the Managing Director would be removed because NSCC believes a Managing Director should not preside over a shareholder meeting unless specifically designated to do so by the Board.

b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. NSCC believes this proposed change would provide NSCC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

Vice Chairman of the Corporation

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

Board

a. In current Section 3.1 (General Provisions), NSCC proposes to add a parenthetical phrase explaining that the Board's power to appoint other officers includes, but is not limited to, the power to appoint a Vice Chairman of the

[6] With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

Corporation and one or more Executive Directors to enhance clarity.

b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, NSCC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation or (2) President and CEO. NSCC believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

Treasurer

In current Section 5.1 (Certificates for Shares), NSCC proposes to delete the reference to Treasurer from the list of authorized signatories because NSCC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

Assistant Treasurer

In current Section 5.1 (Certificates for Shares), NSCC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because NSCC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect NSCC's compensation setting practices. Current Section 3.12 states that: (i) The compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors and (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (''Compensation Committee Charter''), this is the process that is followed. In addition, NSCC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. NSCC believes the proposed changes are appropriate because they no longer reflect NSCC's compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

B. Technical Changes and Corrections

NSCC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

NSCC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. NSCC believes this proposed change would also provide NSCC with a broad base to act in accordance with relevant law without violating the By-Laws and thereby also provide NSCC with more flexibility. Specifically, NSCC proposes to make the following changes to the By-Laws:

a. In current Section 1.2 (Special Meetings), regarding special meetings for the election of directors, the reference to the provisions of Section 603 of the New York Business Corporation Law would be deleted and the phrase ''or as required by law'' would be added.

b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for shareholder meetings, the reference to the specific provisions and requirements of Section 623 of the New York Business Corporation Law would be deleted.

2. Technical Changes to Section Describing Audit Committee

NSCC would revise current Section 2.10 (Audit Committee) to conform to the description of the Audit Committee in the by-laws of FICC because the composition of such committee is the same for DTC, FICC, and NSCC and therefore, NSCC believes the description of such committee should be consistent. Specifically, NSCC proposes to delete the phrase ''appointed by the Board of Directors or directors, officers of employees of any shareholder of the'' and add the phrase ''or of The Depository Trust & Clearing'' in the first sentence as a conforming change and to be consistent with the by-laws of FICC.

3. Other Technical Changes and Corrections

In addition to the technical changes proposed above, NSCC proposes to make the additional technical and grammatical changes described below.

a. (i) In the headings for Articles II through VIII, each of ''ARTICLE II,'' ''ARTICLE III,'' ''ARTICLE IV,'' ''ARTICLE V,'' ''ARTICLE VI,'' ''ARTICLE VII,'' and ''ARTICLE VIII'' would be revised to boldfaced text to be consistent with Article I, (ii) in the headings for Articles I through II and Articles IV through VIII, each of the article titles would be revised from underlined text and/or boldfaced text to boldfaced text only to enhance readability and consistency, and (iii) in the headings for Article II, and Articles IV through VIII, a line space would be added before each article title to enhance readability and consistency.

b. In current Sections 1.1 through 5.4, the section titles would be revised from underlined text to italicized text to enhance readability.

c. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 5.1 (Certificates for Shares), conforming grammatical corrections would be made.

d. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of and Loans to Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board).

e. In current Section 2.11 (Compensation of and Loans to Directors), ''form'' would be deleted and replaced with ''from'' to correct a typographical error.

f. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties

of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

g. In current Section 3.10 (Powers and Duties of Assistant Secretaries), ''powe rs'' would be deleted and replaced with ''powers'' to correct a typographical error.

h. In current Section 4.1 (Directors and Officers), ''law'' would be deleted and replaced with ''Law'' to correct a typographical error.

i. Proposed Article IX (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

Proposed Changes to the Rules

NSCC proposes to add an addendum (Addendum V) to the Rules. Addendum V would be entitled ''By-Laws and Restated Certificate of Incorporation'' and would indicate that the By-Laws and the Certificate of Incorporation are incorporated by reference.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[7] NSCC believes the (a) proposed changes to the By-Laws described above, and (b) incorporation by reference of the By-Laws and the Certificate of Incorporation in the Rules are consistent with this provision. Specifically, NSCC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of NSCC and accurately reflect NSCC's current Board and management structure. NSCC also believes the changes to the powers and duties of the Board and designated officer positions are appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. NSCC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) The process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. NSCC also believes the technical changes and corrections to the By-Laws would enhance clarity and transparency in NSCC's organizational documents. Similarly, NSCC believes incorporating the By-Laws and the Certificate of Incorporation into the Rules would enhance clarity and transparency regarding NSCC's organizational documents because these organizational documents would be expressly identified in the same document as the Rules to which Members are subject. Therefore, NSCC believes these proposed changes are consistent with the requirement that NSCC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad–22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[8] NSCC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that NSCC's organizational documents accurately describe NSCC's organizational structure and that such organizational documents remain clear, transparent, and consistent. Therefore, NSCC believes these proposed changes are consistent with Rule 17Ad–22(e)(1) because they are designed to ensure that NSCC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.[9]

Rule 17Ad–22(e)(2) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants, and (3) specify clear and direct lines of responsibility.[10] NSCC believes the (a) proposed changes to the By-Laws described above and (b) incorporation by reference of the By-Laws and the Certificate of Incorporation in the Rules are designed to be consistent with Rule 17Ad–22(e)(2).[11] Specifically, NSCC believes that the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of NSCC, including the roles and lines of responsibility of various officers and the Board. NSCC also believes the proposed changes relating to the section describing the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. The proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. In addition, NSCC believes that incorporating the By-Laws and the Certificate of Incorporation into the Rules would enhance clarity and transparency as to NSCC's organizational documents because these organizational documents would be expressly identified in the same document as the Rules to which Members are subject. NSCC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of NSCC and therefore would enable NSCC to better serve its Members. As such, NSCC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore,

[7] 15 U.S.C. 78q–1(b)(3)(A).

[8] 17 CFR 240.17Ad–22(e)(1).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(2).

[11] *Id.*

NSCC believes these proposed rule changes are consistent with Rule 17Ad–22(e)(2) because they are designed to enhance clarity and transparency in NSCC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within NSCC's organizational structure.[12]

*(B) Clearing Agency's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) Accurately reflect NSCC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, and (3) enhance the clarity and readability of the By-Laws by making technical changes and corrections. The proposal to incorporate by reference the By-Laws and the Certificate of Incorporation would further enhance clarity and transparency because these organizational documents would be expressly identified in the Rules to which Members are subject. NSCC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its Members. Therefore, NSCC believes that the proposal would not have any effect on its Members and thus, would not have any impact or burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC has not received any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by it.

## III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2018–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2018–001 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02987 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82671; File No. SR–DTC–2018–001]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the By-Laws

February 8, 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 February 2, 2018, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the DTC By-Laws (''By-Laws'')[3] to (i) make changes to DTC's governance procedures, (ii) revise certain DTC Board of Directors (''Board'') and designated officer titles or offices and update the related powers and duties, (iii) revise the section describing the compensation of officers, and (iv) make certain other technical changes and corrections.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The By-Laws are included in the Rules, By-Laws and Organization Certificate of DTC (''Rules''), available at *http://www.dtcc.com/legal/rules-and-procedures.*

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In DTC's review of the By-Laws, DTC has identified and is proposing the following changes to the By-Laws: (i) Changing its internal governance procedures, (ii) revising certain Board and designated officer titles or offices and updating the related powers and duties, (iii) revising the section describing the compensation of officers, and (iv) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, DTC is proposing to: (1) Change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in DTC's management, (2) add the office of the Chief Executive Officer (''CEO''), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer (''CFO'') and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer (''COO''), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. DTC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and DTC's governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. DTC believes these changes would facilitate the efficient governance and operation of DTC.

Proposed Changes to the By-Laws [4]

A. Changes to DTC's Governance Procedures

DTC would revise the By-Laws to (1) change the frequency with which each of the Board and the Executive Committee is required to meet, (2) permit the Board to act by unanimous written consent, and (3) make a technical change by removing the word ''monthly'' from the phrase ''regular monthly meetings'' when describing Board meetings. DTC proposes to make the changes to the By-Laws that are described below.

1. Changes to the Frequency of Board Meetings and Executive Committee Meetings; Technical Change to the Description of Regular Meetings of the Board

Currently, the By-Laws require (1) the Board to meet for ten meetings per year with at least two meetings during any three-month period and (2) the Executive Committee to meet at least once in each 30-day period during which the Board does not meet. DTC is proposing to reduce the required frequency of its Board meetings and Executive Committee meetings to better align the frequency of DTC's Board meetings with those of Fixed Income Clearing Corporation and National Securities Clearing Corporation. DTC believes that reducing the frequency of DTC's Board meetings to better align the occurrence of these meetings would facilitate the efficient use of corporate resources. Specifically, DTC proposes to make the following changes to current Section 2.6 (Meetings) of the By-Laws to (1) reduce the required number of Board meetings and (2) eliminate the requirement that the Executive Committee meet at least once in each thirty-day period during which the Board does not meet:

a. The minimum required number of meetings of the Board in current Section 2.6 (Meetings) would be reduced from ten meetings per year with at least two meetings during any three-month period to six meetings per year with at least one meeting during any three-month period.

b. The provision in current Section 2.6 (Meetings) requiring the Executive Committee to meet during each 30-day period in which the Board does not meet would be deleted.

In addition, DTC proposes to make a technical change in current Section 2.6 (Meetings) by removing the word ''monthly'' from the phrase ''regular monthly meetings'' when describing that the Board may fix times and places for such meetings of the Board. The current provision refers to regular monthly meetings but also states that such meetings shall be held at least ten times a year. As such, DTC believes that the proposed language, which would state that the Board may fix times and places for regular meetings of the Board and no notice of such meetings need to be given, would improve clarity and consistency.

2. Unanimous Written Consent

DTC proposes to add proposed Section 2.9 (Action by Unanimous Written Consent), permitting the Board to act by unanimous written consent in lieu of a meeting. The Board would be permitted to take all actions that are required to or may be taken at a meeting by unanimous written consent. The provision would require that the written consent set forth the action to be taken, be signed by all of the directors, and be filed with the minutes of the proceedings of the Board. DTC has determined that the unanimous written consent provision would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner.

B. Changes to Certain DTC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties

DTC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below, and for the reasons described below.

1. Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board

DTC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (''Non-Executive Chairman of the Board''). This change in title reflects that this position is now held by an individual who is not part of DTC's management (*i.e.,* a non-executive). In 2016, DTC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of DTC's management at that time became a non-executive. DTC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of the Board even though he is no longer part of DTC's management. Therefore, DTC proposes

[4] DTC last submitted a rule filing regarding changes to the By-Laws in 2006. *See* Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08).

to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. DTC believes this proposed change would accurately reflect this organizational change. Furthermore, DTC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board. To implement this proposed change, DTC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board. Specifically, the following changes would be made:

a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 6.1 (Certificates for Shares), the word ''Non-Executive'' would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of DTC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of DTC.

b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President and CEO.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include: (i) Presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would state that the ''performance of any such duty by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.''

b. DTC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, DTC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (''DTCC''), DTC, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC'') Mission Statement and Charter (''Board Mission Statement and Charter''), DTC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, DTC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

d. As further described below, in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and CEO. DTC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.

e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), DTC would add the Non-Executive Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO into the Office of the President and CEO; Update the Related Powers and Duties

DTC proposes to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO) because one individual is the President and CEO. DTC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, DTC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, DTC proposes to make the changes to the By-Laws that are described below.

a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and current Section 3.12 (Compensation of Officers), the words ''and Chief Executive Officer''

would be added after each reference to President.

b. In current Section 6.1 (Certificates for Shares), the words ''the President'' would be deleted and replaced by the words ''President and Chief Executive Officer.''

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. DTC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of DTC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of DTC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. DTC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of DTC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. DTC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). DTC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.

d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that ''performance of any such duty by the President shall be conclusive evidence of his power to act'' that appears in current Section 3.3 (Powers and Duties of the President) would be removed as DTC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO. Furthermore, as noted above, the language stating that, in the absence of the Non-Executive Chairman, the President and CEO shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present would be deleted because, pursuant to the Board Mission Statement and Charter, that power resides with the presiding director who is elected annually by the DTC Board. DTC believes deleting this language would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

e. As described above, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

f. As described below, the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.

3. Add the Office of the CFO; Delete of the Office of the Comptroller

DTC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of DTC. Furthermore, references to the office of the Comptroller would be deleted. DTC does not currently have a Comptroller nor does DTC plan to appoint one. Therefore, DTC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, DTC would revise the By-Laws as described below.

a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of DTC.

b. DTC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of DTC and upon request, would counsel and advise other officers of DTC and perform other duties as agreed with the President and CEO or as determined by the Board. DTC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. DTC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.

c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign to him. Because the Treasurer directly reports to the CFO, DTC believes it is appropriate for the CFO to assign powers and duties to the Treasurer.

d. DTC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

DTC would also delete references to the designated office of the COO in the By-Laws. DTC believes this change is necessary because DTC no longer has a COO nor does DTC plan to appoint one. Specifically, DTC would make the changes to the By-Laws described below.

a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of DTC.

b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of DTC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

DTC proposes to change the title of Vice President to Executive Director and update the related powers and duties. DTC believes these changes are necessary because DTC has decided that the title of Executive Director is more widely used in the financial services industry for roles similar to those designated as Vice Presidents. In DTC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. DTC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. DTC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.

b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would removed. DTC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.

c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of DTC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.[5] Because individuals with the title of Executive Director report to Managing Directors, DTC believes the reference to Vice President in this section would not be necessary.

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

Managing Directors

a. In Section 1.2 (Special Meetings), the reference to the Managing Director would be added to the list of officers authorized to call special meetings of the stockholders to provide DTC's management with more flexibility by enabling additional persons within senior management to call special meetings of the Board.

b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. DTC believes this proposed change would provide DTC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

c. In current Section 6.1 (Certificates for Shares), Managing Directors would be removed from the list of officers authorized to sign certificates for shares. By removing Managing Directors, DTC would be able to limit the authorized signatories of certificates for shares of DTC to a smaller number of individuals within senior management.

Vice Chairman of the Corporation

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

Board

a. In current Section 3.1 (General Provisions), DTC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.

b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, DTC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation or (2) President and CEO. DTC believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

Treasurer

In current Section 6.1 (Certificates of Shares), DTC proposes to delete the reference to Treasurer from the list of authorized signatories because DTC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

Assistant Treasurer

In current Section 6.1 (Certificates of Shares), DTC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because DTC expects the Secretary or the Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect DTC's compensation setting practices. Current Section 3.12 states that: (i) The compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors and (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to

[5] With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (''Compensation Committee Charter''), this is the process that is followed. In addition, DTC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. DTC believes the proposed changes are appropriate because they no longer reflect DTC's compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

C. Technical Changes and Corrections

DTC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

DTC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. DTC believes this proposed change would also provide DTC with a broad base to act in accordance with relevant law without violating the By-Laws and thereby also provide DTC with more flexibility. Specifically, DTC proposes to make the following changes to the By-Laws:

a. In current Section 1.2 (Special Meetings), regarding stockholders' ability to compel the Secretary to call a special meeting of the stockholders for the election of directors, the reference to the provisions of Section 6003 of the New York Banking Law would be deleted.

b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for stockholder meetings, the reference to the specific provisions and requirements of Section 6022 of the New York Banking Law would be deleted.

c. In current Section 2.2 (Election and Term of Directors), regarding the directors' oath of office, the specific citation to Section 7015 would be removed. DTC also would clarify that the Banking Law is in fact referring to the New York Banking Law.

2. Technical Changes to Section Describing Audit Committee

DTC proposes to revise proposed Section 2.11 (Audit Committee) to conform the description of the composition of the Audit Committee to the description of the Audit Committee in the by-laws of FICC because the composition of such committee is the same for DTC, FICC and NSCC and therefore, DTC believes the description of such committee should be consistent. Specifically, DTC proposes to revise proposed Section 2.11 (Audit Committee) to state that the Board of Directors may appoint an Audit Committee consisting of three or more directors other than officers of DTC or DTCC. Furthermore, language stating that the Audit Committee will review the progress of all internal audits conducted by the Auditor (if there be one) and all periodic reports of such audits submitted to it by the Auditor pursuant to Section 3.9 and shall supervise, and cooperate and coordinate with, the Auditor in the performance of his duties would be deleted as a conforming change and for consistency with the by-Laws of FICC.

3. Other Technical Changes and Corrections

In addition to the technical changes proposed above, DTC proposes to make the additional technical and grammatical changes described below.

a. In the heading for current Article I, DTC proposes to delete ''STOCKHOLDERS'' and replace it with ''Stockholders'' and in the heading for current Article II, delete ''BOARD OF DIRECTORS'' and replace it with ''Board of Directors'' to be consistent with the headings of the other Articles in the By-Laws.

b. In current Section 1.2 (Special Meetings), current Section 1.3 (Record Date for Meetings and Other Purposes), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 6.1 (Certificates for Shares), conforming grammatical corrections would be made.

c. In current Section 1.10 (Inspectors of Election), each use of the word ''corporation'' would be capitalized so that it would read ''Corporation'' and the word ''such'' would be replaced with the word ''the'' before the word ''Corporation'' in the last sentence to correct typographical errors and enhance consistency and readability.

d. In current Section 2.3 (Newly Created Directorships and Vacancies), the extra space before and after the word ''of'' in the first sentence would be deleted.

e. In addition, additional spaces between the section number and the section title would be added in current Section 1.1 (Annual Meeting) through Section 1.12 (Written Consent of Stockholders Without a Meeting), in current Section 2.1 (Number of Directors) through current Section 2.7 (Quorum and Voting), proposed Section 2.8 (Non-Executive Chairman of the Board), proposed Section 2.10 (Executive Committee) through proposed Section 2.13 (Compensation of Directors), current Section 3.1 (General Provisions), proposed Section 3.3 (Powers and Duties of Managing Directors), proposed Section 3.4 (Powers and Duties of the Secretary), proposed Section 3.6 (Powers and Duties of the Treasurer), proposed Section 3.7 (Powers and Duties of the Auditor) through proposed Section 3.10 (Compensation of Officers), and current Section 6.1 (Certificates for Shares) through current Section 6.4 (Lost, Stolen or Destroyed Certificates).

f. In current Section 2.6 (Meetings), each use of the word ''board'' in the second paragraph would be capitalized to correct typographical errors and enhance consistency.

g. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board) and proposed Section 2.9 (Action by Unanimous Written Consent).

h. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

i. Proposed Article X (Gender References) would be added to clarify that the By-Laws are intended to be

gender neutral with any reference to one gender deemed to include the other.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[6] DTC believes the proposed changes to the By-Laws described above are consistent with this provision. Specifically, DTC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of DTC and accurately reflect DTC's current Board and management structure. DTC also believes the changes to the powers and duties of the Board and designated officer positions are appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. DTC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) The process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. DTC also believes the technical changes and corrections to the By-Laws would enhance clarity and transparency in DTC's organizational documents. DTC also believes that the proposed changes that would: (1) Reduce the minimum number of required Board meetings, (2) eliminate the requirement that the Executive Committee meet during each 30-day period in which the Board does not meet, and (3) authorize the Board to act by unanimous written consent in lieu of a meeting would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner. DTC also believes that removing the word ''monthly'' when describing that the Board may fix times and places of regular meetings of the Board would enhance clarity and consistency regarding the requirements associated with such meetings. Therefore, DTC believes these proposed changes are consistent with the requirement that DTC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad–22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[7] DTC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that DTC's organizational documents accurately describe DTC's organizational structure and that such organizational documents remain clear, transparent, and consistent. Therefore, DTC believes these proposed changes are consistent with Rule 17Ad–22(e)(1) because they are designed to ensure that DTC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.[8]

Rule 17Ad–22(e)(2) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants; and (3) specify clear and direct lines of responsibility.[9] DTC believes the proposed changes to the By-Laws described above are designed to be consistent with Rule 17Ad–22(e)(2).[10] Specifically, DTC believes the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of DTC, including the roles and lines of responsibility of various officers and the Board. DTC also believes that the proposed changes that would: (1) Reduce the minimum number of required Board meetings, (2) eliminate the requirement that the Executive Committee meet during each 30-day period in which the Board does not meet, and (3) authorize the Board to act by unanimous written consent in lieu of a meeting would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner. DTC also believes that removing the word ''monthly'' when describing that the Board may fix times and places of regular meetings would enhance clarity and consistency regarding the requirements associated with such meetings. DTC also believes the proposed changes relating to the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. In addition, the proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. DTC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of DTC, and therefore would enable DTC to better serve its Participants. As such, DTC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, DTC believes these proposed rule changes are consistent with Rule 17Ad–22(e)(2) because they are designed to enhance clarity and transparency in DTC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within DTC's organizational structure.[11]

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] 17 CFR 240.17Ad–22(e)(1).

[8] *Id.*

[9] 17 CFR 240.17Ad–22(e)(2).

[10] *Id.*

[11] *Id.*

*(B) Clearing Agency's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) Accurately reflect DTC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, (3) permit the Board to continue to make necessary decisions in a timely and efficient manner by reducing the minimum number of required Board meetings, authorizing the Board to act by unanimous written consent in lieu of meetings, and make other related changes, and (4) enhance the clarity, transparency, and readability of the By-Laws by making technical changes and corrections. DTC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its Participants. Therefore, DTC believes that the proposal would not have any effect on its Participants and thus, would not have any impact or burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has not received any written comments relating to this proposal. DTC will notify the Commission of any written comments received by it.

## III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2018–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2018–001 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02984 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82658; File No. SR–OCC–2017–007]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change Related to the Options Clearing Corporation's Margin Policy

February 7, 2018.

## I. Introduction

On December 11, 2017, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–OCC–2017–007. On December 18, 2017, OCC filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 26, 2017.[4] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

*A. Background*

As stated in the Notice, OCC filed the proposed rule change to formalize and update its Margin Policy, which describes OCC's approach for collecting margin and managing the credit exposure presented by its Clearing Members to ensure that the manner in which its margin methodologies are governed and implemented complies with Section 17A of the Act[5] and Rule 17Ad–22(e)(6) thereunder.[6] OCC stated that the Margin Policy is part of a broader framework used by OCC to promote compliance with Rule 17Ad–22(e)(6), including OCC's By-Laws, Rules, and other policies that are designed to support the resiliency of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, OCC modified a portion of its Margin Policy to: (i) State that OCC's Board of Directors (''Board'') is ultimately responsible for annual review and approval of the Policy, and (ii) correctly cite provisions in OCC's Rules governing its stock loan program. OCC did not propose any other changes in Amendment No. 1.

[4] Securities Exchange Act Release No. 82355 (Dec. 19, 2017), 82 FR 61060 (Dec. 26, 2017) (SR–OCC–2017–007) (''Notice'').

[5] 15 U.S.C. 78q–1.

[6] *See* Notice at 61061 (citing 17 CFR 240.17Ad–22(e)(6)).

OCC by ensuring that it appropriately sizes margin to market risks.[7]

The Margin Policy describes: (1) The treatment of the various types of positions held by Clearing Members in connection with margin calculations, (2) OCC's cross-margin programs with other clearing agencies, (3) the treatment of collateral included in margin calculations, (4) the model assumptions and market data OCC uses as inputs for its margin calculation methodologies, (5) OCC's margin calculation methodologies, (6) protocols surrounding OCC's exercise of margin calls and adjustments, and (7) daily backtesting and model validation that OCC conducts to measure performance of its margin methodologies. Each aspect of the Margin Policy is summarized below.

*B. The Proposed Change to OCC's Margin Policy*

1. Treatment of Various Types of Positions

The Margin Policy describes how OCC treats the various types of positions it accepts from different types of market participants. OCC utilizes multiple types of Clearing Member accounts in order to comply with the relevant customer protection and segregation requirements of the Commission and the Commodity Futures Trading Commission. For example, OCC segregates and excludes long securities options positions from its margin requirement calculation under the assumption that such positions are fully paid and pose no additional risk to OCC. According to OCC, accounting for different types of products in different types of accounts allows OCC to set margin requirements commensurate with the actual risks presented by these positions.

2. Cross-Margining

OCC maintains cross-margin programs with other clearinghouses and treats positions in index options, options on centrally cleared fund shares, and futures and options on futures held as part of one of the programs as if they were held within a single account at OCC.[8] According to OCC, its Margin Policy allows OCC to take these cross-margining agreements into consideration to establish a risk-based margin system that appropriately measures its credit exposure and portfolio effects across products.

3. Collateral

To mitigate its credit risk exposure, OCC generally requires Clearing Members to deposit collateral as margin with respect to each account type on the morning following the trade date. The Margin Policy provides a general description of how the use of deposits in lieu of margin and collateral in margins may affect margin calculations.[9] For example, the Margin Policy states that OCC permits Clearing Members to make deposits in lieu of margin, which enables them to meet their margin requirements for securities options by posting escrow deposits of acceptable collateral or specific deposits of the underlying security.[10]

OCC's Margin Policy also describes OCC's ''collateral in margins'' program.[11] Under this program, OCC computes margin requirements based on a combination of a Clearing Member's open positions in cleared contracts and any deposits of eligible collateral, while also incorporating scenarios that could exacerbate or mitigate risk exposure based upon the collateral type deposited. OCC states that the Margin Policy's recognition of risk interactions between open positions and clearing member collateral takes into account portfolio effects across products for the measurement of credit risk.[12]

4. Model Assumptions, Sensitivity Analyses and Market Data

The Margin Policy states that all of OCC's critical margin model assumptions should be consistent with OCC's default management assumptions. To ensure that OCC complies with this requirement, the Margin Policy provides for a monthly sensitivity analysis and review of its parameters and assumptions for business backtesting, the results of which are reported to OCC's Model Risk Working Group, and may be escalated to OCC's Management Committee.

The Margin Policy also requires OCC to take measures to ensure the quality and completeness of its market data, including the use of redundant sources for market data and pricing system infrastructure. The Margin Policy requires OCC to prioritize the quality and reliability of data when selecting vendors, and to protect its ability to obtain data in a variety of market conditions. OCC states that it protects the integrity of the data it receives by monitoring for delays, errors, or interruptions in the receipt or availability of price data. Further, the Margin Policy prescribes procedures for using alternative data, including settlement prices provided by a primary exchange or other data sources where final settlement values are not available from the listing exchange. The Margin Policy also states that OCC utilizes sound valuation models, system edit checks, and automated and manual controls with any price data it obtains.[13] Where OCC does not receive pricing information on a daily basis for a product, the Margin Policy states that OCC relies on modeled prices as a substitute for the daily price.[14]

5. Margin Methodology

OCC's Margin Policy includes a description of OCC's System for Theoretical Analysis and Numerical Simulations (''STANS''), which is its margin methodology for all positions it margins on a net basis.[15] STANS is a risk-based methodology that is designed to produce a margin requirement that exceeds OCC's minimum regulatory obligations through the use of an Expected Shortfall methodology (''ES''), which is effectively a weighted average of tail losses beyond the 99% Value-at-Risk (''VaR'') level. OCC states that STANS may produce significant variations in the ES in Clearing Member Accounts. Under its current approach, OCC relies upon the expert judgment of its staff to identify whether the variation demonstrates that STANS is not functioning as expected, but has no set variance level which would trigger further review. Under the proposed change, OCC would implement a new 5% tolerance for standard error in STANS, such that if the five percent threshold is reached, OCC must investigate further whether STANS is appropriately measuring the risk presented by a Clearing Member's account.

The Margin Policy also explains how STANS calculates margin by utilizing Monte Carlo simulations of portfolio values at a two-day risk horizon based on the behavior of various risk factors affecting: (i) Values at a two-day risk horizon, and (ii) values of Clearing Member accounts, including implied volatility surfaces of options for all equity and index risk factors.[16] OCC states that this two-day risk horizon is consistent with the STANS assumption

[7] *See id.* at 61061 (citing CCA Adopting Release, 81 FR 70786, 70812 (Oct. 13, 2016)), (explaining that the requirements of Rule 17Ad–22(e)(6) ''further support the resiliency of a covered clearing agency by requiring the covered clearing agency to have policies and procedures that are designed to appropriately size . . . margin to market risks'').

[8] *See id.*

[9] *See id.* at 61061–62.

[10] *See* Notice at 61061–62.

[11] *See id.* at 61062.

[12] *See id.*

[13] *See* Notice at 61062.

[14] *See id.* at 61062–63.

[15] *See id.* at 61063.

[16] *See* Notice at 61063.

of a two-day liquidation period for all positions margined on a net basis and is based on a thorough analysis of market conditions and the risks associated with the products OCC clears.[17]

The Margin Policy also provides for the daily evaluation of the market data that supports STANS and a monthly recalibration to ensure that it accounts for market conditions over the past month. This includes the use of ''scale factors'' to account for daily changes in market volatility between monthly recalibrations. Further, the Margin Policy has the ability to use alternatives to STANS for certain product accounts, including the ability to apply add-on charges and surcharges for certain Clearing Members who present higher risk levels, as well as the use of Standard Portfolio Analysis of Risk margin methodology (''SPAN'') for certain segregated futures accounts. According to OCC, these procedures are designed to ensure that OCC complies with the requirement that its risk based margin system calculates margin on a portfolio level and sets initial margin requirements that meet ''an established single-tail confidence level of at least 99 percent'' with respect to each portfolio's distribution of future exposure.

6. Margin Calls and Adjustments

The Margin Policy describes OCC's process for daily calculation and collection of margin requirements, as well as making intraday margin calls and adjustments. Pursuant to the Margin Policy, OCC issues margin calls during standard trading hours when unrealized losses exceeding 50% of an account's total risk charges are observed for that account based on start-of-day positions. The Margin Policy specifies the timing of such calls, price minimums, exceptions, and the necessary approvals that must be obtained. The Margin Policy also states that additional margin adjustments may be performed as the need arises following approval by an officer of OCC.[18]

7. Backtesting and Model Validation

The Margin Policy requires OCC to conduct daily backtesting for each margin account and to analyze in detail all accounts exhibiting losses in excess of calculated margin requirements. OCC states that any exceedances under the Margin Policy are required to be reported at least monthly and evaluated through OCC's governance process for model risk management, as well as an annual evaluation by OCC's independent Model Validation Group (''MVG'') of the overall performance of STANS and its associated models. The results of this annual MVG evaluation and any recommendations would then be presented to the OCC Board's Risk Committee.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[19] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[20] and Rule 17Ad–22(e)(6)[21] thereunder, as described in detail below.

### *A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act[22] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest. As described above, the Margin Policy provides a framework for managing the credit exposure presented to OCC by its Clearing Members through the calculation and collection of margin. That framework includes: (1) The treatment of the various types of positions held by Clearing Members in connection with margin calculations, (2) OCC's cross-margin programs with other clearing agencies, (3) the treatment of collateral included in margin calculations, (4) the model assumptions and market data OCC uses as inputs for its margin calculation methodologies, (5) OCC's margin calculation methodologies, (6) protocols surrounding OCC's exercise of margin calls and adjustments, and (7) daily backtesting and model validation that OCC conducts to measure performance of its margin methodologies. These matters, in turn, directly relate to OCC's ability to accurately risk manage Clearing Member portfolios by calculating and collecting an appropriate amount of collateral. The Commission believes that the proposed Margin Policy is designed to help ensure that OCC's margin methodology calculates and collects margin sufficient to mitigate OCC's credit exposure to a Clearing Member default. The Commission also believes that accurate calculation of margin is necessary to help ensure that OCC is able to risk manage the default of a Clearing Member without recourse to the assets of non-defaulting Clearing Members, which supports the safeguarding of securities and funds in OCC's custody or control. The Commission further believes that calculating and collecting sufficient margin would permit OCC to continue to perform its duties as a clearing agency after a default without disruption to non-defaulting market participants, thereby protecting investors and the public interest. Accordingly, the Commission finds that the proposed Margin Policy is designed to promote the accurate clearance and settlement of securities transactions, and is therefore consistent with Section 17A(b)(3)(F) of the Act.[23]

### *B. Consistency With Rule 17Ad–22(e)(6)*

Rule 17Ad–22(e)(6) generally requires each covered clearing agency that provides central counterparty services to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, cover its credit exposures to its participants through the establishment of a risk-based margin system that meets certain standards.[24]

1. Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) generally requires a covered clearing agency to establish a risk-based margin system that considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market.[25] The Commission believes that the Margin Policy describes and formalizes OCC's approach for collecting margin and managing the credit exposures of each of its Clearing Members to set margin requirements commensurate with the actual risks presented. The Margin Policy allows OCC to take into account the different types of products across different types of accounts, including the use of its existing STANS methodology to address the particular attributes and risk factors of the products being margined, using cross-margining agreements with other clearinghouses, excluding fully collateralized positions from its margin requirement, and permitting the use of deposits in lieu of margin and collateral in margins to incentivize Clearing Members to post collateral that reduces

[17] *See id.*

[18] *See* Notice at 61064.

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(6).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] *Id.*

[24] 17 CFR 240.17Ad–22(e)(6).

[25] 17 CFR 240.17Ad–22(e)(6)(i).

OCC's exposures in cleared contracts. Therefore, the Commission believes that the Margin Policy is consistent with Rule 17Ad–22(e)(6)(i).

2. Rule 17Ad–22(e)(6)(ii)

Rule 17Ad–22(e)(6)(ii) generally requires a covered clearing agency to establish a risk-based margin system that collects margin at least daily and have the operational capacity to make intraday margin calls.[26] The Margin Policy describes the process for calculating and collecting margin on a daily basis, and for making intraday margin calls and adjustments, as needed. The Margin Policy further specifies the timing of such calls, price minimums that must be collected, the process for allowing exceptions, and the necessary approvals that must be obtained. Therefore, the Commission believes that the Margin Policy establishes a process to collect margin daily and make intraday margin calls, and finds, therefore, that it is consistent with Rule 17Ad–22(e)(6)(ii).

3. Rule 17Ad–22(e)(6)(iii)

Rule 17Ad–22(e)(6)(iii) generally requires a covered clearing agency to establish a risk-based margin system that calculates margin sufficient to cover its potential future exposure to participants,[27] which the Commission defines as the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99%.[28] The Margin Policy states that OCC uses STANS to estimate ES, the weighted average of tail losses beyond the 99% VaR level, with a 5% tolerance to calculate margin with respect to each portfolio's distribution of future exposure. The Margin Policy further describes OCC's assumptions with respect to a two-day liquidation period that covers potential future exposure between the last margin collection and close-out of a position should there be Clearing Member default. Therefore, the Commission believes that the Margin Policy is intended to facilitate OCC's calculation of margin amounts sufficient to cover potential future exposure to participants, and, therefore, that the Margin Policy is consistent with Rule 17Ad–22(e)(6)(iii).

4. Rule 17Ad–22(e)(6)(iv)

Rule 17Ad–22(e)(6)(iv) generally requires a covered clearing agency to establish a risk-based margin system that uses ''reliable sources of timely price data'' and use ''procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.'' [29] The Margin Policy describes the measures OCC is required to take to ensure the quality and completeness of market data it acquires, including the use of redundant sources of market data, prioritizing the quality and reliability of data, and to prioritize the ability of vendors to provide data during market stress. The Margin Policy also requires OCC to use sound valuation models, system checks, and automated and manual controls for data it obtains, and to use primary exchange prices and alternatives, including modeling, in instances when data is not available or reliable. The Commission finds that the Margin Policy requires OCC to use reliable sources of timely price data, and describes procedures to address circumstances where such data is not readily available or reliable. Therefore, the Commission finds that the Margin Policy is consistent with Rule 17Ad–22(e)(6)(iv).

5. Rule 17Ad–22(e)(6)(v)

Rule 17Ad–22(e)(6)(v) generally requires a covered clearing agency to establish a risk-based margin system that uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[30] The Commission believes that the Margin Policy takes into account the risks and particular attributes of different products in different accounts and portfolios to permit OCC to set margin commensurate with the actual risks that the product presents to OCC. The Commission also believes that the use of cross-margining agreements, as described in the Margin Policy, allows OCC to set margins based upon the particular credit exposure and portfolio effects across products. The Commission further believes that the Margin Policy's allowance for offsets and exclusions for deposits in lieu of margin and collateral in margins permits OCC to set margin based upon the actual credit exposure to its Clearing Members. Accordingly, the Commission finds that the Margin Policy allows OCC to measure credit exposure in a manner that accounts for product risk factors and portfolio effects across products, and finds, therefore, that it is consistent with Rule 17Ad–22(e)(6)(v).

6. Rule 17Ad–22(e)(6)(vi)

Rule 17Ad–22(e)(6)(vi) generally requires a covered clearing agency to establish a risk-based margin system that is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified.[31] The Commission finds that the Margin Policy requires the MVG to perform an independent evaluation of the overall performance of OCC's margin model, and present its findings and recommendations to OCC's Board on at least an annual basis. The Margin Policy further requires OCC to conduct daily backtesting for each margin account and to analyze in detail all accounts that exhibit losses in excess of calculated margin. The Margin Policy also requires that any such exceedances be reported at least monthly and be evaluated through OCC's governance processes. The Commission believes that the Margin Policy establishes a process for ongoing monitoring, review, testing, and verification, and finds, therefore, that it is consistent with Rule 17Ad–22(e)(6)(vi).

7. Rule 17Ad–22(e)(6)(vii)

Rule 17Ad–22(e)(6)(vii) generally requires a covered clearing agency to establish policies and procedures designed to perform model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework.[32] The Commission finds that the Margin Policy requires an independent review of OCC's risk model be conducted at least annually by MVG, who then presents its findings and recommendations to the Risk Committee of OCC's Board. The Commission believes that the Margin Policy establishes policies and procedures to perform model validation not less than annually, and finds, therefore, that it is consistent with Rule 17Ad–22(e)(6)(vii).

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Margin Policy is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act [33] and Rule 17Ad–22(e)(6) thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[34] that the

[26] 17 CFR 240.17Ad–22(e)(6)(ii).

[27] 17 CFR 240.17Ad–22(e)(6)(iii).

[28] *See* Standards for Covered Clearing Agencies, 81 FR 70786, 70817 (Oct. 13, 2016) (citing 17 CFR 240.17Ad–22(a)(14)).

[29] 17 CFR 240.17Ad–22(e)(6)(iv).

[30] 17 CFR 240.17Ad–22(e)(6)(v).

[31] 17 CFR 240.17Ad–22(e)(6)(vi).

[32] 17 CFR 240.17Ad–22(e)(6)(vii).

[33] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–OCC–2017–007) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[35]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02973 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82665; File No. SR–C2–2018–003]**

## Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

February 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2018, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's website (*http://www.c2exchange.com/Legal/*), 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to decrease the Options Regulatory Fee (''ORF'') from $.0015 per contract to $.0014 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, meets the Exchange's total regulatory costs. The proposed fee change will be operative on February 1, 2018.

The ORF is assessed by C2 Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (OCC) in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, C2 Options reimburses its routing broker providing Routing Services pursuant to C2 Options Rule 6.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 6% of C2 Options' total regulatory costs for 2018. Thus, direct expenses are estimated to be approximately 94% of total regulatory costs for 2018. In addition, it is C2 Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. These expectations are estimated, preliminary and may change. [sic] There can be no assurance that our final costs for 2018 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange also notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[4] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies TPHs of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF also applies to customer-range transactions executed during Extended Trading Hours.

[4] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[8] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 Options 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, because it applies to all TPHs. The proposed ORF is comparable to fees charged by other options exchanges for the same or similar service. The Exchange believes any burden on competition imposed by the proposed rule change is outweighed by the need to help the Exchange adequately fund its regulatory activities to ensure compliance with the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

[8] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–C2–2018–003 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 No. SR–C2–2018–003. 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 No. SR–C2–2018–003, and should be submitted on or before March 7, 2018.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02980 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82657; File No. SR–OCC–2018–005]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Options Clearing Corporation's Schedule of Fees

February 8, 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 January 29, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below. Items I and II have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change by OCC would revise OCC's Schedule of Fees to introduce a cash management fee that would cover administrative and other operational expenses incurred by OCC in connection with maintaining cash deposits that are held in OCC's Federal Reserve bank account and passing-through to Clearing Members the interest earned on such deposits. The proposed changes to the Schedule of Fees can be found in Exhibit 5 to the proposed rule change. Material proposed to be added to OCC's Fee Schedule as currently in effect is marked by underlining and material proposed to be deleted is marked by strikethrough text; material proposed to be added to OCC's Fee Schedule by proposed rule change SR–OCC–2018–004 is marked by double underlining and material proposed to be deleted by proposed rule change SR–OCC–2018–004 is marked by double strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of this proposed rule change is to revise OCC's Schedule of Fees to introduce a cash management fee that would cover administrative and other operational expenses incurred by OCC in connection with maintaining cash deposits that are held in OCC's Federal Reserve bank account and passing-through to Clearing Members the interest earned on such deposits. The revised fee schedule would become effective on March 1, 2018.

By way of background, on January 12, 2018, Commission approved changes to OCC's By-Laws and Rules that establish a new minimum cash contribution requirement for OCC's Clearing Fund and provide for the pass-through to OCC's Clearing Members of interest income earned on cash Clearing Fund deposits held in OCC's Federal Reserve bank account.[6] As approved, the minimum cash contribution requirement will require OCC's Clearing Members to collectively contribute $3 billion in cash to OCC's Clearing Fund, with each Clearing Member's proportionate share of the minimum cash requirement being equal in percentage to its proportionate share of the Clearing Fund.[7] In addition, OCC's Executive Chairman, Chief Administrative Officer, or Chief Operating Officer, upon providing notice to the Risk Committee of OCC's Board of Directors, will have the ability, under certain limited circumstances, to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund.[8]

In connection with the minimum cash Clearing Fund requirement, substantially all of OCC's Clearing Fund deposits consisting of cash will be held in OCC's Federal Reserve bank account.[9] OCC will pass the interest income earned in such account through to its Clearing Members, provided that each such Clearing Member has provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment.[10] Interest earned will be calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits.[11] In maintaining these minimum cash balances in OCC's Federal Reserve bank account and facilitating the pass-through of interest earned on such balances, OCC will incur certain administrative and other operational expenses. These expenses will include the operation of the Federal Reserve bank account, certain systems enhancements needed to maintain minimum cash deposits and facilitate pass-through of interest earned, and staffing costs to operate the cash management and funding desk. In order to defray these expenses, OCC is proposing to implement a cash management fee.

The proposed cash management fee would be an annual rate equal to 5 basis points (0.05%), calculated on a 365-day calendar, and billed monthly on each Clearing Member's daily proportionate share of cash on deposit in OCC's Federal Reserve bank account.[12] This proposed change is designed to provide OCC with a level of revenue sufficient to cover OCC's administrative and operating expenses, as described above.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[13] The proposed cash management fee would cover administrative and other operational expenses incurred by OCC in connection with passing through to Clearing Members the interest earned on Clearing Fund cash deposits that are held in an account established by OCC at a Federal Reserve bank. OCC believes the proposed fee change is reasonable because the new cash management fee would be set at a level intended to cover OCC's expenses associated with maintaining a minimum amount of Clearing Fund cash (which requirement is designed to satisfy certain liquidity requirements under Rule 17Ad–22(e)(7)) and with passing-through to Clearing Members the interest earned on such deposits held in OCC's Federal Reserve bank account. Moreover, OCC believes that the proposed fee change would result in an equitable allocation of fees among its participants because it is a fee that would be equally applicable to all similarly situated participants (*i.e.,* Clearing Members). As a result, OCC believes that the proposed fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.[14] The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[6] *See* Securities Exchange Act Release No. 34–82502 (January 12, 2018), 82 FR 2825 (January 19, 2018) (SR–OCC–2017–019).

[7] *Id.* Each Clearing Member's proportionate share of the Clearing Fund is determined by the Clearing Fund allocation methodology in current Rule 1001.

[8] *See supra* note 6.

[9] *See supra* note 6. OCC retains discretion to maintain a small portion of Clearing Fund cash deposits in other accounts (*e.g.,* accounts with commercial banks) for various reasons, including facilitating normal substitution activity by its Clearing Members.

[10] *See supra* note 6. Interest earned will be calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits.

[11] *See supra* note 6.

[12] Accordingly, a Clearing Member can determine the monthly amount of its cash management fee by (1) dividing the annual interest rate by 365; (2) then multiplying the product by the Clearing Member's proportionate share of cash on deposit in OCC's Federal Reserve bank account for each calendar day in a given month; and (3) taking the sum all of the products in step (2) for the given month.

[13] 17 U.S.C. 78q–1(b)(3)(D).

[14] 17 U.S.C. 78q–1(b)(3)(D).

*(B) Clearing Agency's Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Act [15] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed cash management fee would apply equally to all Clearing Members. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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 [16] and Rule 19b–4(f)(2) [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

## 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–OCC–2018–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2018–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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–OCC–2018–005 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02972 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82669; File Nos. SR–DTC–2017–021; SR–FICC–2017–021; SR–NSCC–2017–017)**

## Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes To Adopt a Recovery & Wind-Down Plan and Related Rules

February 8, 2018.

On December 18, 2017, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), and National Securities Clearing Corporation (''NSCC'') (collectively, ''Clearing Agencies''), each filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt a recovery and wind-down plan and related rules (SR–DTC–2017–021, SR–FICC–2017–021, and SR–NSCC–2017–017), respectively (''Proposed Rule Changes''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Changes were published for comment in the **Federal Register** on January 8, 2018.[3] The Commission did not receive any comments on the Proposed Rule Changes.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notices for the Proposed Rule Changes is February 22, 2018.

The Commission is extending the 45-day time period for Commission action on the Proposed Rule Changes. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82432 (January 2, 2018), 83 FR 884 (January 8, 2018) (SR–DTC–2017–021); Securities Exchange Act Release No. 82431 (January 2, 2018), 83 FR 871 (January 8, 2018) (SR–FICC–2017–021); Securities Exchange Act Release No. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR–NSCC–2017–017).

[4] 15 U.S.C. 78s(b)(2).

Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Changes so that it has sufficient time to consider and take action on the Proposed Rule Changes.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates April 8, 2018 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule changes SR–DTC–2017–021, SR–FICC–2017–021, and SR–NSCC–2017–017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02982 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82672; File No. SR–FICC–2018–002]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the By-Laws and Make Other Changes

February 8, 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 February 2, 2018, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the FICC By-Laws (''By-Laws'') to (i) revise titles or offices and the powers and duties of the Board of Directors (''Board'') and certain designated officers of FICC, (ii) revise the section describing compensation of officers, and (iii) make certain technical changes and corrections.[3] The GSD Rules and the MBSD Rules would also be amended to incorporate by reference the By-Laws and the Restated Certificate of Incorporation.[4]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In FICC's review of the By-Laws, FICC has identified and is proposing the following changes to the By-Laws: (i) Revising certain Board and designated officer titles or offices and updating the related powers and duties, (ii) revising the section describing the compensation of officers and (iii) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, FICC is proposing to: (1) Change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in FICC's management, (2) add the office of the Chief Executive Officer (''CEO''), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer (''CFO'') and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer (''COO''), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. FICC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and FICC's governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. FICC believes these changes would facilitate the efficient governance and operation of FICC.

The GSD Rules and MBSD Rules would also be amended to incorporate by reference the Restated Certificate of Incorporation and the By-Laws, as further described below. The current Certificate of Incorporation would be restated to streamline this document, which FICC believes would enhance clarity and transparency. The following describes the proposed changes to the By-Laws, the Certificate of Incorporation, the GSD Rules, and the MBSD Rules.

*Proposed Changes to the By-Laws* [5]

*A. Changes to Certain FICC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties*

FICC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below.

1. Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board

FICC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (''Non-Executive Chairman of the Board''). This change in title reflects that this position is now held by an individual who is not part of FICC's management (*i.e.,* a non-executive). In 2016, FICC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of FICC's management at that time became a non-executive. FICC believed that it would be beneficial and desirable

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The By-Laws and the Restated Certificate of Incorporation would each be incorporated by reference into the FICC Government Securities Division Rulebook (''GSD Rules'') and the FICC Mortgage-Backed Securities Division Rulebook (''MBSD Rules'').

[4] The GSD Rules and the MBSD Rules are *available at http://www.dtcc.com/legal/rules-and-procedures.* The By-Laws and the Restated Certificate of Incorporation would be *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] FICC last submitted a rule filing regarding changes to the By-Laws in 2006. *See* Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08).

to continue to have this individual serve as chairman of the Board even though he is no longer part of FICC's management. Therefore, FICC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. FICC believes this proposed change would accurately reflect this organizational change. Furthermore, FICC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board. To implement this proposed change, FICC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board. Specifically, the following changes would be made:

a. In current Section 1.2 (Special Meetings), the references to Chairman would be revised to Non-Executive Chairman of the Board by adding the word ''Non-Executive'' before the second reference to Chairman in the first sentence and the phrase ''of the Board'' after such reference. In addition, the phrase ''by the Chairman'' in the first sentence of current Section 1.2 (Special Meetings) would be deleted because it would be repetitive to the language that is currently included later in this section.

b. In current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 5.1 (Certificates for Shares), the word ''Non-Executive'' would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of FICC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of FICC.

b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include (i) presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would also state that the ''performance of any such duty by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.''

b. FICC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, FICC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (''DTCC''), The Depository Trust Company (''DTC''), FICC and National Securities Clearing Corporation (''NSCC'') Mission Statement and Charter (''Board Mission Statement and Charter''), FICC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, FICC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

d. As further described below, in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and CEO. FICC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.

e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), FICC would add the Non-Executive Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO Into the Office of the President and CEO; Update the Related Powers and Duties

FICC proposes to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO) because one individual is the President and CEO. FICC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, FICC would revise certain references in the By-Laws from President to President

and Chief Executive Officer. Specifically, FICC proposes to make the changes to the By-Laws that are described below.

a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and current Section 3.12 (Compensation of Officers), the words ''and Chief Executive Officer'' would be added after each reference to President.

b. In current Section 5.1 (Certificates for Shares), the words ''the President'' would be deleted and replaced by the words ''President and Chief Executive Officer.''

c. Additionally, in current Section 1.2 (Special Meetings), the phrase '', or by the President,'' in the first sentence would be deleted because FICC believes it is repetitive to language that appears later in the section.

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. FICC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of FICC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of FICC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. FICC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of FICC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. FICC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). FICC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.

d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that ''performance of any such duty by the President shall be conclusive evidence of his power to act'' that appears in current Section 3.3 (Powers and Duties of the President) would be removed as FICC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO.

e. As described above, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.

f. As described below, the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.

3. Add the Office of the CFO; Delete of the Office of the Comptroller

FICC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of FICC. Furthermore, references to the office of the Comptroller would be deleted. FICC does not currently have a Comptroller nor does FICC plan to appoint one. Therefore, FICC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, FICC would revise the By-Laws as described below.

a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of FICC.

b. FICC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of FICC and upon request, would counsel and advise other officers of FICC and perform other duties as agreed with the President and CEO or as determined by the Board. FICC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. FICC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.

c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign to him. Because the Treasurer directly reports to the CFO, FICC believes it is appropriate for the CFO to assign powers and duties to the Treasurer.

d. FICC would delete current Section 3.8 (Powers and Duties of the

Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

FICC would also delete references to the designated office of the COO in the By-Laws. FICC believes this change is necessary because FICC no longer has a COO nor does FICC plan to appoint one. Specifically, FICC would make the changes to the By-Laws described below.

a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of FICC.

b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of FICC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

FICC proposes to change the title of Vice President to Executive Director and update the related powers and duties. FICC believes these changes are necessary because FICC has decided that the title of Executive Director is more widely used in the financial services industry for roles similar to those designated as Vice Presidents. In FICC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. FICC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. FICC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.

b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. FICC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.

c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of FICC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.[6] Because individuals with the title of Executive Director report to Managing Directors, FICC believes the reference to Vice President in this section would not be necessary.

e. In current Section 5.1 (Certificates for Shares), the reference to Vice President would be removed because Vice Presidents are no longer authorized to sign share certificates. As described above, FICC decided that they do not have sufficient seniority to do so.

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

Managing Directors

a. In Section 1.8 (Presiding Officer and Secretary), the reference to the Managing Director would be removed because FICC believes a Managing Director should not preside over a shareholder meeting unless specifically designated to do so by the Board.

b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. FICC believes this proposed change would provide FICC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

Vice Chairman of the Corporation

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

Board

a. In current Section 3.1 (General Provisions), FICC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.

b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, FICC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation, (2) President, or (3) President and CEO. FICC believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

Treasurer

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

Assistant Treasurer

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect FICC's compensation setting practices. Current Section 3.12 states that: (i) the compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors and (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the

[6] With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (''Compensation Committee Charter''), this is the process that is followed. In addition, FICC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. FICC believes the proposed changes are appropriate because they no longer reflect FICC's compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

*B. Technical Changes and Corrections*

FICC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

FICC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. FICC believes this proposed change would also provide FICC with a broad base to act in accordance with relevant law without violating the By-Laws and thereby also provide FICC with more flexibility. Specifically, FICC proposes to make the following changes to the By-Laws:

a. In current Section 1.2 (Special Meetings), regarding special meetings for the election of directors, the reference to the provisions of Section 603 of the New York Business Corporation Law would be deleted and the phrase ''or as required by law'' would be added.

b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for shareholder meetings, the reference to the specific provisions and requirements of Section 623 of the New York Business Corporation Law would be deleted.

2. Other Technical Changes and Corrections

In addition to the technical changes proposed above, FICC proposes to make the additional technical and grammatical changes described below.

a. In the heading for the By-Laws, ''AMENDED AND RESTATED'' would be deleted and ''BY–LAWS OF FIXED INCOME CLEARING CORPORATION'' would be revised to boldfaced text.

b. In the headings for Articles I through VIII, (i) each of ''ARTICLE I,'' ''ARTICLE II,'' ''ARTICLE III,'' ''ARTICLE IV,'' ''ARTICLE V,'' ''ARTICLE VI,'' ''ARTICLE VII,'' and ''ARTICLE VIII'' would be revised to boldfaced text and (ii) each of the article titles would be revised to boldfaced text to enhance readability.

c. In current Sections 1.1 through 2.11 and current Sections 4.1 through 5.4, the section number and section titles would be revised to italicized text to be consistent with current Sections 3.1 through 3.12.

d. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 5.1 (Certificates for Shares), conforming grammatical corrections would be made.

e. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of and Loans to Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board).

f. In current Section 2.11 (Compensation of and Loans to Directors), ''form'' would be deleted and replaced with ''from'' to correct a typographical error.

g. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

h. In current Section 4.1 (Directors and Officers), ''corporation'' would be deleted and replaced with ''Corporation'' to correct a typographical error.

i. Proposed Article IX (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

Proposed Changes to the Certificate of Incorporation

The current Certificate of Incorporation is comprised of several documents, including amendments that have been made throughout the history of FICC. In order to streamline this Certificate of Incorporation into one updated document that includes all provisions, FICC would restate the current Certificate of Incorporation as proposed in Exhibit 5C.

Proposed Changes to the GSD Rules and MBSD Rules

FICC proposes to add a section entitled ''By-Laws and Restated Certificate of Incorporation'' to each of the GSD Rules and MBSD Rules. This section would indicate that the Restated Certificate of Incorporation and the By-Laws are incorporated by reference.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[7] FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are consistent with this provision. Specifically, FICC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the

[7] 15 U.S.C. 78q–1(b)(3)(A).

powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of FICC and accurately reflect FICC's current Board and management structure. FICC also believes the changes to the powers and duties of the Board and designated officer positions are appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. FICC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) The process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. FICC also believes (1) the technical changes and corrections to the By-Laws and (2) the restatement of the Certificate of Incorporation into a simpler document would enhance clarity and transparency in FICC's organizational documents. Similarly, FICC believes incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would enhance clarity and transparency regarding FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. Therefore, FICC believes these proposed changes are consistent with the requirement that FICC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad–22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[8] FICC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that FICC's organizational documents accurately describe FICC's organizational structure and that such organizational documents remain clear, transparent, and consistent. In addition, FICC believes the proposed changes to restate the Certificate of Incorporation to simplify this governing document would enhance the clarity, transparency, and readability of this governing document. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad–22(e)(1) because they are designed to ensure that FICC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.[9]

Rule 17Ad–22(e)(2) requires that FICC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants, and (3) specify clear and direct lines of responsibility.[10] FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are designed to be consistent with Rule 17Ad–22(e)(2).[11] Specifically, FICC believes that the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of FICC, including the roles and lines of responsibility of various officers and the Board. FICC also believes the proposed changes relating to the section describing the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. The proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. In addition, the proposal to restate the current Certificate of Incorporation is designed to enhance the clarity, transparency, and readability of the current Certificate of Incorporation by simplifying it into one document. FICC also believes that incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and MBSD Rules would enhance clarity and transparency as to FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. FICC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of FICC and therefore would enable FICC to better serve its members. As such, FICC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, FICC believes these proposed rule changes are consistent with Rule 17Ad–22(e)(2) because they are designed to enhance clarity and transparency in FICC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within FICC's organizational structure.[12]

*(B) Clearing Agency's Statement on Burden on Competition*

FICC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) Accurately reflect FICC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, and (3) enhance the clarity and readability of the By-Laws by making technical changes and corrections. The proposed change to restate the current Certificate of Incorporation would enhance clarity and transparency by simplifying the provisions into one document. The proposal to incorporate by reference the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would further enhance clarity and transparency because these

[8] 17 CFR 240.17Ad–22(e)(1).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(2).

[11] *Id.*

[12] *Id.*

organizational documents would be expressly identified in the GSD Rules and the MBSD Rules to which members are subject. FICC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its members. Therefore, FICC believes that the proposal would not have any effect on its members and thus, would not have any impact or burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments received by it.

**III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2018–002 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2018–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2018–002 and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02985 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82659; File No. SR–ICEEU–2017–011]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Collateral and Haircut Policy

February 8, 2018.

**I. Introduction**

On November 2, 2017, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the ICE Clear Europe Collateral and Haircut Policy to incorporate certain changes to the calculation of absolute collateral limits for bonds provided as Permitted Cover by Clearing Members and make certain clarifications and updates and add certain general provisions.[3] The proposed rule change was published for comment in the **Federal Register** on November 17, 2017.[4] The Commission did not receive comments regarding the proposed rule change. On December 27, 2017, the Commission designated a longer period for Commission action on the proposed rule change.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description of the Proposed Rule Change**

The proposed rule change would amend ICE Clear Europe's Collateral and Haircut Policy to set the absolute collateral limits for bonds provided as Permitted Cover by Clearing Members so as to more accurately capture the trading liquidity of each bond. The proposal would also take into account ICE Clear Europe's committed repo facilities to permit Clearing Members to maintain collateral in excess of normal absolute limits.[6] In addition, the proposed rule change would revise the haircut calculation. Finally, the proposed rule change would update the Collateral and Haircut Policy to add certain general provisions designed to enhance ICE Clear Europe's governance. These changes are further described below.

With respect to setting absolute collateral limits for bonds provided as Permitted Cover by Clearing Members, ICE Clear Europe proposed to set limits for each bond issuer and collateral type at 10% of the average daily volume over the past three months, rounded to the nearest million.[7] The proposed rule change would also change the underlying data used in the calculation of the absolute limit from a repo survey of market participants to actual secondary market trading volume data provided by ICE Data Services, except where official trading volume data is

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used in this order but not defined herein have the same meanings specified in the ICE Clear Europe Clearing Rules.

[4] Securities Exchange Act Release No. 82063 (Nov. 13, 2017), 82 FR 54423 (Nov. 17, 2017) (SR–ICEEU–2017–011) (''Notice'').

[5] Securities Exchange Act Release No. 82405 (Dec. 27, 2017), 83 FR 181 (Jan. 2, 2018).

[6] As used herein, the term ''absolute limit'' refers to the maximum amount of bonds from an individual issuer that ICE Clear Europe will accept from a Member Group. *See* Notice, 82 FR at 54424.

[7] *Id.*

available from a primary source, such as a governmental agency or central bank.[8]

To complement the changes to the absolute collateral limits described above, ICE Clear Europe proposed changes to its haircut methodology. In particular, the proposed rule change would amend the haircut methodology to include a two-sided VaR estimation based on the largest absolute returns.[9] The proposed rule change would also amend the Collateral and Haircut Policy to note scenarios in which the ICE Clear Europe Clearing Risk Department may consider other factors in setting haircuts, such as the effects caused by changes in the different underlying bonds used to build bond price time-series or the impact of unexpected currency events on the calculation of cross-currency FX haircuts.[10]

In addition, the proposed rule change would also amend the Collateral and Haircut Policy to account for ICE Clear Europe's committed repo facilities. For example, in certain circumstances, ICE Clear Europe permits a Clearing Member to maintain a collateral bond position that otherwise exceeds the applicable absolute collateral limits if ICE Clear Europe is able to determine that it would be able to use its committed repo facility to convert the excess collateral securities into cash. In addition, to permit the use of repo facilities in this way, the proposed rule change also clarifies that the repo facilities are available at any time there is an intra-day liquidity need and not just in case of Clearing Member default.[11]

Finally, the proposed rule change would amend the Collateral and Haircut Policy to update references to internal ICE Clear Europe personnel, departments and committees and to explain the process for validation and oversight of the models used to support the Collateral and Haircut Policy.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[12] For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[13] and Rules 17Ad–22(e)(2) and (5) thereunder.[14]

### *A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.[15] The proposed rule change will enhance ICE Clear Europe's ability to control the credit, liquidity, and market risks stemming from the collateral it accepts by establishing a maximum amount of bonds from an individual issuer that ICE Clear Europe will accept from a Member Group as collateral. These new maximum amounts will be derived from actual secondary market trading volume data, and therefore should be more reliable than the prior absolute limits, which as noted above, were based on a repo survey of market participants as a proxy for trading liquidity. Therefore, these limits should be more accurate, and consequently, enhance ICE Clear Europe's ability to liquidate the bond collateral in a timely manner. Further, the proposed rule change also proposes to incorporate a two-sided VaR estimation based on the largest absolute returns for purposes of setting haircuts. Taken together these two changes should enhance ICE Clear Europe's ability to manage the credit, liquidity, and market risks it faces from posted collateral, and therefore enhance ICE Clear Europe's ability to safeguard securities and funds which are in its custody or control or for which it is responsible. Therefore, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible and, in general, protects investors and the public interest, and is therefore consistent with Section 17A(b)(3)(F) of the Act.[16]

### *B. Consistency With Rule 17Ad–22(e)(5)*

The Commission further finds that the proposed rule change is consistent with Rule 17Ad–22(e)(5). Rule 17Ad–22(e)(5) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually.[17]

The proposed rule change will enhance ICE Clear Europe's ability to control the liquidity and market risks stemming from the posting of collateral by establishing a maximum amount of bonds from an individual issuer that ICE Clear Europe will accept from a Member Group as collateral. The proposed rule change will improve the accuracy of the Collateral and Haircut Policy by taking into account the trading liquidity of the bond using secondary market trading volume data provided by ICE Data Services. Moreover, by updating the Collateral and Haircut Policy to incorporate a two-sided VaR estimation based on the largest absolute returns, the proposed rule change will capture a broader range of price volatility information, thereby enhancing ICE Clear Europe's ability to liquidate the bond collateral in a timely manner without losses beyond the given haircuts. The Commission finds that these aspects of the proposed rule change are intended to limit the assets ICE Clear Europe accepts as collateral to those with low credit, liquidity, and market risks, and to set and enforce appropriately conservative haircuts. Therefore, the proposed rule change is consistent with Rule 17Ad-22(e)(5).[18]

### *C. Consistency with Rule 17Ad–22(e)(2)*

Rule 17Ad–22(e)(2) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and support the public interest requirements in Section 17A of the Act applicable to clearing agencies, and the objectives of owners and participants.[19] The proposed rule change will update references to internal ICE Clear Europe personnel, departments and committees and will explain the process for validation and oversight of the models used to support the Collateral and Haircut Policy. Therefore, the Commission finds that the proposed rule change is consistent with the requirement in Rule 17Ad–

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(2), (5).

[15] 15 U.S.C. 78q-1(b)(3)(F).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(5).

[18] *Id.*

[19] 17 CFR 240.17Ad–22(e)(2)(i) and (iii).

22(e)(2) concerning governance arrangements that are clear and transparent and that support the public interest requirements of Section 17A of the Act applicable to clearing agencies and the objectives of participants.[20]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[21] and Rules 17Ad–22(e)(2) and (5) thereunder.

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act[22] that the proposed rule change (SR–ICEEU–2017–011) be, and hereby is, approved.[23]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02974 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82664; File No. SR–CBOE–2018–014]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

February 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Fees Schedule. The text of the proposed rule change is 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to decrease the Options Regulatory Fee (''ORF'') from $.0081 per contract to $.0049 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, meets the Exchange's total regulatory costs. The proposed fee change will be operative on February 1, 2018.

The ORF is assessed by Cboe Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 6.14B for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 10% of Cboe Options' total regulatory costs for 2018. Thus, direct expenses are estimated to be approximately 90% of total regulatory costs for 2018. In addition, it is Cboe Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. These expectations are estimated, preliminary and may change. [sic] There can be no assurance that our final costs for 2018 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange also notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[4] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies

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[20] *Id.*

[21] 15 U.S.C. 78q–1.

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF also applies to customer-range transactions executed during Extended Trading Hours.

[4] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

TPHs of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change.

The Exchange also proposes a minor clean up change to the Fees Schedule. Specifically, currently the ORF description mistakenly references footnote 45. The description will be amended to reference footnote 46, which was the Exchange's original intention.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[8] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Cboe Options 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, because it applies to all TPHs. The proposed ORF is comparable to fees charged by other options exchanges for the same or similar service. The Exchange believes any burden on competition imposed by the proposed rule change is outweighed by the need to help the Exchange adequately fund its regulatory activities to ensure compliance with the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2018–014 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 No. SR–CBOE–2018–014. 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 No. SR–CBOE–2018–014, and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02979 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82660; File No. SR–CboeBZX—2018–008]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

February 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule related to the Options Regulatory Fee. The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify the fee schedule applicable to the Exchange's options platform (''BZX Options'') to amend the rate of its Options Regulatory Fee (''ORF''). Currently, the Exchange charges an ORF in the amount of $0.0009 per contract side. The Exchange proposes to decrease the amount of ORF from $0.0009 per contract side to $0.0005 per contract side. The proposed change to ORF should continue to balance the Exchange's regulatory expenses against the anticipated revenue. The proposed fee change will be operative on February 1, 2018.

The per-contract ORF is assessed by the Exchange on each Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the ''customer'' range, regardless of the exchange on which the transaction occurs. The ORF is collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange. The ORF is also charged for transactions that are not executed by a Member but are ultimately cleared by a Member. Thus, in the case where a non-Member executes a transaction and a Member clears the transaction, the ORF is assessed to the Member who clears the transaction. Similarly, in the case where a Member executes a transaction and another Member clears the transaction, the ORF is assessed to the Member who clears the transaction.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 10% of BZX Options' total regulatory costs for 2018. Thus, direct expenses are estimated to be approximately 90% of total regulatory costs for 2018. In addition, it is BZX Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. There can be no assurance that our final costs for 2018 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.[5]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide Trading Permit Holders with such notice at least 30 calendar days prior to the effective date of the change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the decreased ORF is equitable and not unfairly discriminatory because it would be objectively allocated to Members in that

[5] The Exchange notes that its regulatory responsibilities with respect to compliance with options sales practice rules has been allocated to the Financial Industry Regulatory Authority, Inc. (''FINRA'') under a 17d–2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

it would be charged to all Members on all their transactions that clear as customer transactions at the OCC. The Exchange believes that decreasing the ORF is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustment noted herein will serve to continue to balance the Exchange's regulatory revenue against its anticipated regulatory costs.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the decreased level of the fee is reasonable and appropriate.

*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 ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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. 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. The decreased ORF continues to also be comparable to ORFs charged by other options exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeBZX–2018–008 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 No. SR–CboeBZX–2018–008. 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 No. SR–CboeBZX–2018–008, and should be submitted on or before March 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–02975 Filed 2–13–18; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0344 issued to First New England Capital, LP said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 3, 2018.

**A. Joseph Shepard,**

*Associate Administrator, Office of Investment and Innovation.*

[FR Doc. 2018–03089 Filed 2–13–18; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 07/07–0102 issued to Eagle Fund I, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: December 15, 2017.

**A. Joseph Shepard,**

*Associate Administrator for Investment and Innovation.*

[FR Doc. 2018–03088 Filed 2–13–18; 8:45 am]

**BILLING CODE P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA—2017–0054]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice a new matching program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program that we are currently conducting with the Internal Revenue Service (IRS).

This matching agreement sets forth the terms, conditions, and safeguards under which IRS will disclose to SSA certain return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustments and Medicare Part D premium increases under sections 1839(i) and 1860D–13(a)(7) of the Social Security Act (Act). (42 U.S.C. 1395r(i) and 1395w–113(a)(7) (42 U.S.C. 1395r(i) and 1395w–113(a)(7)), as enacted by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA; Pub. L. 108–173) and section 3308 of the Affordable Care Act of 2010 (Pub. L. 111–148).

**DATES:** The deadline to submit comments on the proposed matching program is 30 days from the date of publication in the **Federal Register**. The matching program will be applicable on April 1, 2018, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will expire on September 30, 2019.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, or email at *Mary.Ann.Zimmerman@ssa.gov.* All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

SSA has taken action to ensure that all of SSA's matching programs comply with the requirements of the Privacy Act, as amended.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

**PARTICIPATING AGENCIES**

SSA and IRS

**AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:**

Section 6103(1)(20) of the Internal Revenue Code authorizes IRS to disclose specified return information to SSA with respect to taxpayers whose Part B and/or Part D prescription drug coverage insurance premium(s) may (according to IRS records) be subject to premium subsidy adjustment pursuant to section 1839(i) or premium increase pursuant to section 1860D–13(a)(7) of the Social Security Act (Act) for the purpose of establishing the amount of any such adjustment or increase. The return information IRS will disclose includes adjusted gross income and specified tax-exempt income, collectively referred to in this agreement as modified adjusted gross income (MAGI). This return information will be used by officers, employees, and contractors of SSA to establish the appropriate amount of any such adjustment or increase.

Sections 1839(i) and 1860D–13(a)(7) of the Act (42 U.S.C. 1395r(i) and 1395w–113(a)(7)) require SSA to determine the amount of a beneficiary's premium subsidy adjustment, or premium increase, if the MAGI is above the applicable threshold as established in section 1839(i) of the Act (42 U.S.C. 1395r(i)).

**PURPOSE(S):**

The purpose of this matching program is to set forth the terms, conditions, and safeguards under which IRS will disclose to SSA certain return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustments and Medicare Part D premium increases under sections 1839(i) and 1860D–13(a)(7) of the Act (42 U.S.C. 1395r(i) and 1395w–113(a)(7)), as enacted by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA; Pub. L. 108–173) and section 3308 of the Affordable Care Act of 2010 (Pub. L. 111–148).

**CATEGORIES OF INDIVIDUALS:**

SSA will disclose to IRS the name and Social Security number (SSN) of beneficiaries who are either enrolled in, or have become entitled to, Medicare Part B and Part D. IRS will extract and

transmit MAGI data for such beneficiaries pertaining to the tax year beginning in the second calendar year preceding the year for which the premium adjustment is being calculated.

**CATEGORIES OF RECORDS:**

When individuals enroll for the Medicare Part B or Medicare prescription drug coverage, or both, they are entitled to both under 1839(i) and 1860D–13(a)(7) section of the Act. On a weekly basis, SSA will provide IRS with this information with respect to Medicare Part B and Part D beneficiaries.

When there is a match of enrollee identifier, and the MAGI data shows income above the applicable threshold establish pursuant to section 1839(i) of the Act, IRS will disclose to SSA information about the Part B and Part D enrollee's who:

a. Are enrolled in Medicare under the rules in section 1837 of the Act (42 U.S.C. 1395p) and have not disenrolled from Medicare Part B;

b. have filed applications specifically for Medicare Part B;

c. have been determined to have retroactive Medicare Part B entitlement; or

d. have been provided to SSA as enrolled in Medicare Part D by CMS.

Hereinafter, the beneficiaries described above will be referred to as ''enrollees.''

As part of the weekly transmission, SSA will include the name, SSN, premium year, and income threshold amounts for new enrollees. Once each year, on a date in October agreed to at the time between IRS and SSA, SSA will provide the name, SSN, premium year, and income threshold amounts for all enrollees. SSA will use information obtained in this annual request to determine Part B and Part D adjustments for the coming premium year. At the time of the agreed upon annual exchange, SSA will include the name, SSN, premium year, income threshold amounts, and requested tax year with respect to all enrollees who asked SSA to use a more recent tax year or for enrollees for whom IRS provided three year old return information on the initial request. SSA will use the information obtained to correct Part B and Part D adjustment amounts for the requested premium year.

**SYSTEM(S) OF RECORDS:**

SSA will provide IRS with identifying information with respect to enrollees from the Master Beneficiary Record system of records, 60–0090, last fully published at 71 **Federal Register** (FR) 1826 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007) and at 78 FR 40542 (July 5, 2013).

[FR Doc. 2018–02956 Filed 2–13–18; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 10313]**

### Meeting on United States-Morocco Free Trade Agreement Environment Chapter Implementation, Working Group on Environmental Cooperation, and Public Session

**AGENCY:** Department of State.

**ACTION:** Announcement of meetings; solicitation of suggestions; invitation to public session.

**SUMMARY:** The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the governments of the United States and Kingdom of Morocco (the governments) intend to hold a meeting to review implementation of the Environment Chapter of the United States-Morocco Free Trade Agreement (FTA), a meeting of the United States-Morocco Working Group on Environmental Cooperation (Working Group), and a public session in Rabat, Morocco, on March 13, 2018, at the Ministry of Environment, to discuss implementation of the Environment Chapter and Joint Statement on Environmental Cooperation.

**DATES:** The public session will be held on March 13, 2018, in Rabat, Morocco at the Ministry of Environment. Suggestions on the meeting agenda and/or the 2018–2021 Plan of Action should be provided no later than March 8, 2018, to facilitate consideration.

**ADDRESSES:** Those interested in attending the public session should email Eloise Canfield at *CanfieldME@state.gov* to find out the time of the session. Suggestions on the meeting agenda and/or the 2018–2021 Plan of Action should be emailed to *CanfieldME@state.gov* or faxed to Eloise Canfield at (202) 647–5947, with the subject line ''United States-Morocco Environmental Cooperation.''

**FOR FURTHER INFORMATION CONTACT:** Eloise Canfield, (202) 647–4750 or at *CanfieldME@state.gov.*

**SUPPLEMENTARY INFORMATION:** During the meetings, the governments will review and discuss implementation of the Environment Chapter of the FTA. The governments will also discuss how the United States and Morocco can work together to protect and conserve the environment, highlight past bilateral environmental cooperation, review activities under the 2014–2017 Plan of Action, and develop a 2018–2021 Plan of Action. The Department of State and USTR invite the members of the public to submit written suggestions on items to include on the meeting agenda and in the 2018–2021 Plan of Action.

The Department of State and USTR also invite interested persons to attend a public session where the public will have the opportunity to ask about implementation of both the Joint Statement and the Environment Chapter of the United States-Morocco FTA. The Environment Chapter of the FTA includes obligations on each Party to ensure that its environmental laws and policies provide for and encourage high levels of environmental protection, effectively enforce its environmental laws, and provide opportunities for public participation on matters related to the implementation of the chapter. In the Joint Statement, the governments of the United States and Morocco (1) recognize ''the importance of protecting the environment while promoting sustainable development in concert with the expanded bilateral trade and investment ties accompanying the United States-Morocco Free Trade Agreement ('FTA')'' and (2) indicate their intent ''to pursue efforts to enhance bilateral environmental cooperation. . . .'' In paragraph 5 of the Joint Statement, the governments establish the Working Group to coordinate and review environmental cooperation activities. As envisioned in the Joint Statement, the Working Group develops Plans of Action, reviews and assesses cooperative environmental activities pursuant to the Plan of Action, recommends ways to improve such cooperation, and undertakes such other activities as may seem appropriate to the governments.

Through this notice, the United States is soliciting the views of the public with respect to the 2018–2021 Plan of Action. Members of the public, including NGOs, educational institutions, private sector enterprises, and all other interested persons are invited to submit written suggestions regarding items for inclusion in the meeting agendas or in the 2018–2021 Plan of Action. Please include your full name and identify any organization or group you represent. We encourage submitters to refer to:

- United States-Morocco Joint Statement on Environmental Cooperation;
- 2014–2017 Plan of Action Pursuant to the United States-Morocco Joint Statement on Environmental Cooperation;

• Chapter 17 of the United States-Morocco Free Trade Agreement; and

• Final Environmental Review of the United States–Morocco Free Trade Agreement.

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/morocco/index.htm*.

**Robert Wing,**

*Acting Director, Office of Environmental Quality and Transboundary Issues, Department of State.*

[FR Doc. 2018–03117 Filed 2–13–18; 8:45 am]

**BILLING CODE 4710–09–P**

## TENNESSEE VALLEY AUTHORITY

### Environmental Impact Statement for 2019 Update to the Integrated Resource Plan

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Notice of intent.

**SUMMARY:** The Tennessee Valley Authority (TVA) is conducting a study of its energy resources in order to update and replace the Integrated Resource Plan (IRP) and the associated Supplemental Environmental Impact Statement (EIS) that it completed in 2015. The IRP is a comprehensive study of how TVA will meet the demand for electricity in its service territory over the next 20 years. The 2015 IRP is being updated in response to major changes in electrical utility industry trends since 2015, including flat to slightly declining load growth, advances in the development of distributed energy resources and the integration of those resources in the electric grid. As part of the study, TVA intends to prepare a programmatic EIS to assess the impacts associated with the implementation of the updated IRP. TVA will use the EIS process to elicit and prioritize the values and concerns of stakeholders; identify issues, trends, events, and tradeoffs affecting TVA's policies; formulate, evaluate and compare alternative portfolios of energy resource options; provide opportunities for public review and comment; and ensure that TVA's evaluation of alternative energy resource strategies reflects a full range of stakeholder input. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

**DATES:** To ensure consideration, comments on the scope and environmental issues must be postmarked, emailed or submitted online no later than April 16, 2018. To facilitate the scoping process, TVA will hold public scoping meetings; see *http://www.tva.gov/irp* for more information on the meetings.

**ADDRESSES:** Written comments should be sent to Ashley Pilakowski, NEPA Compliance Specialist, 400 West Summit Hill Dr., WT 11D, Knoxville, TN 37902–1499. Comments may also be submitted online at: *www.tva.gov/irp,* or by email at *IRP@tva.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general information about the NEPA process, please contact Ashley Pilakowski at the address above, by email at *aapilakowski@tva.gov.* For general information on the IRP process, contact Hunter Hydas, Tennessee Valley Authority, 1101 Market Street, MR 3M–C, Chattanooga, TN 37402 or by email at *jhhydas@tva.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

#### TVA Power System

TVA operates the nation's largest public power system, providing electricity to about 9 million people in an 80,000-square mile area comprised of most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It provides wholesale power to 154 independent local power companies and 56 directly served large industries and federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis and directs TVA to sell power at rates as low as are feasible.

Dependable generating capability on the TVA power system is approximately 37,000 megawatts. TVA generates most of the power it distributes with 3 nuclear plants, 7 coal-fired plants, 9 simple-cycle combustion turbine plants, 7 combined-cycle combustion turbine plants, 29 hydroelectric dams, a pumped-storage facility, a methane-gas cofiring facility, a diesel-fired facility, and 16 small solar photovoltaic facilities. A portion of delivered power is provided through long-term power purchase agreements. In 2017, 25 percent of TVA's power supply was from coal; 38 percent from nuclear; 16 percent from natural gas; 9 percent from non-renewable purchases; 7 percent from hydro; and 5 percent from renewable power purchase agreements. TVA transmits electricity from these facilities over 16,000 circuit miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding its region and purchases and sells power on an economic basis almost daily.

#### Resource Planning

TVA develops an Integrated Resource Plan to identify the most effective energy resource strategies that will meet TVA's mission and serve the people of the Valley for the next 20 years. In 2015, TVA completed the Integrated Resource Plan and associated Supplemental EIS. Since 2015, several industry-wide changes have led TVA to begin development of the new IRP and associated EIS ahead of the 5-year cycle identified in the 2015 IRP. Natural gas supplies are abundant and are projected to remain available at lower cost. The electric system load is expected to be flat, or even declining slightly, over the next ten years. The price of renewable resources, particularly solar, continues to decline. Consumer demand for renewable and distributed energy resources (including distributed generation, storage, demand response, energy services, and energy efficiency programs) is growing.

#### Proposed Issues To Be Addressed

Based on discussions with both internal and external stakeholders, TVA anticipates that the scope of the IRP EIS will include the cost and reliability of power, the availability and use of renewable and distributed energy resources, the effectiveness and implementation of demand side management options, the effect of energy efficiency programs, and the relationship of the economy to all of these options. The IRP EIS will address the effects of power production on the environment, including climate change, the effects of climate change on the Valley, and the waste and byproducts of TVA's power operations.

Because of its nature as a planning document, the IRP will not identify specific locations for new resource options. Site-specific environmental effects of new resource options will be addressed in later site-specific assessments tiered off this programmatic EIS. Therefore, in this programmatic environmental impact statement, TVA anticipates that the environmental effects examined will primarily be those

at a regional level with some extending to a national or global level. Preliminary issues identified by TVA that will be reviewed in this analysis include:

- Emissions of greenhouse gases,
- fuel consumption,
- air quality,
- water quality and quantity,
- waste generation and disposal,
- land use,
- ecological,
- cultural resources,
- socioeconomic impacts and environmental justice.

TVA invites suggestions concerning the list of issues which should be addressed. TVA also invites specific comments on the questions that will begin to be answered by this IRP:

- How do you think energy usage will change in the next 20 years in the Tennessee Valley region?
- Should the diversity of the current power generation mix (*e.g.,* coal, nuclear power, natural gas, hydro, renewable resources) change? If so, how?
- How should distributed energy resources be considered in TVA planning?
- How should energy efficiency and demand response be considered in planning for future energy needs and how can TVA directly affect electricity usage by consumers?
- And how will the resource decisions discussed above affect the reliability, dispatchability (ability to turn on or off energy resources) and cost of electricity?

**Analytical Approach**

TVA employs a scenario planning approach when developing an IRP. The major steps in this approach include identifying the future need for power, developing scenarios and strategies, determining potential supply-side and demand-side energy resource options, developing portfolios associated with the strategies and ranking strategies and portfolios. The 2015 IRP, developed with extensive public involvement, evaluated six alternative energy resource strategies which differed in the amount of purchased power, energy efficiency and demand response efforts, renewable energy resources, nuclear generating capacity additions, and coal-fired generation. The alternative strategies were analyzed in the context of five different scenarios that described plausible future economic, financial, regulatory and legislated conditions, as well as social trends and adoption of technological innovations. TVA then developed a preferred alternative, the Target Power Supply Mix, based on guideline ranges for key energy resources. In developing the Target Power Supply Mix, TVA took into account its least-cost planning requirement and customer priorities of power cost and reliability, as well as other comments it received during the public comment periods. The Target Power Supply Mix established ranges, in MW, for coal plant retirements and additions of nuclear, hydroelectric, demand response, energy efficiency, solar, wind, and natural gas capacity. TVA anticipates using an analytical approach similar to that of the 2015 IRP/EIS described above. The number of alternative energy resource strategies and scenarios to be evaluated may differ from the 2015 IRP/EIS and will be determined after the completion of scoping.

**Scoping Process**

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that (1) issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided.

With the help of the public, TVA will identify the most effective energy resource strategy that will meet TVA's mission and serve the people of the Valley for the next 20 years. To ensure that the full range of issues and a comprehensive portfolio of energy resources are addressed, TVA invites members of the public as well as Federal, state, and local agencies and Indian tribes to comment on the scope of the IRP EIS. As part of the IRP process and in addition to other public engagement opportunities, TVA is assembling representatives from key stakeholders to participate in a working group that will discuss tradeoffs associated with different resource options and assist TVA in developing an optimal energy resource strategy.

Comments on the scope of this IRP EIS should be submitted no later than the date given under the **DATES** section of this notice. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of the comments received during this scoping period, TVA will summarize public and agency comments, identify the issues and alternatives to be addressed in the EIS, and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the U.S. Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft IRP and EIS and also hold public meetings for this purpose. TVA expects to release the draft IRP and EIS in late 2018. TVA anticipates issuing the final IRP and EIS in 2019.

Dated: February 8, 2018.

**M. Susan Smelley,**

*Director, Environmental Compliance and Operations.*

[FR Doc. 2018–03027 Filed 2–13–18; 8:45 am]

**BILLING CODE 8120–08–P**

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting Notice

**Meeting No. 18–01**

The TVA Board of Directors will hold a public meeting on February 16, 2018, in the Missionary Ridge Auditorium of the Chattanooga Office Complex, 1101 Market Street, Chattanooga, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 9:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

**STATUS:** Open.

Agenda

Chair's Welcome

Discussion of committee membership

Old Business

Approval of minutes of the November 9, 2017, Board Meeting

New Business

1. Report from President and CEO
2. Report of the Finance, Rates, and Portfolio Committee
3. Report of the Audit, Risk, and Regulation Committee
4. Report of the Nuclear Oversight Committee
5. Report of the External Relations Committee

A. FACA Charter Renewals

6. Report of the People and Performance Committee
7. Information Items

A. Conveyance of Power System Assets to a Customer

B. Committee Membership

*For more information:* Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan

to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 9, 2018.

**Sherry A. Quirk,**

*General Counsel.*

[FR Doc. 2018–03138 Filed 2–12–18; 11:15 am]

**BILLING CODE 8120–08–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. USTR–2018–0001]**

## Procedures To Consider Additional Requests for Exclusion of Particular Products From the Solar Products Safeguard Measure

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** On January 23, 2018, the President imposed a safeguard measure on imports of crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products such as modules (other CSPV products), consisting of (1) a tariff-rate quota on imports of CSPV cells not partially or fully assembled into other products, with an unchanged rate of duty for the within-quota quantity and an increase in the rate of duty applicable to articles entered in excess of that quantity; and (2) an increase in the rate of duty on imports of other CSPV products, as provided for in the Proclamation's annex. This notice establishes the procedures to request the exclusion of a particular product from the safeguard measure, the criteria for describing a particular product for which exclusion is sought, and identifies the factors that the Office of the United States Trade Representative (USTR) may take into consideration when determining whether to exclude a particular product. It also solicits requests for exclusion of a particular product from the safeguard measure.

**DATES:**

March 16, 2018, at 11:59 p.m. EST: Deadline for the submission of requests for exclusion of a particular product from the safeguard measure.

April 16, 2018 at 11:59 p.m. EST: Deadline for the submission of comments in response to requests for exclusion of a particular product from the safeguard measure.

**ADDRESSES:** USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section III below. The docket number is USTR–2018–0001. For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–9666. All non-confidential versions of submissions will be posted in the docket for public inspection.

**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

Following receipt of a petition from Suniva, Inc., a producer of CSPV products in the United States, that was later joined by SolarWorld Americas, Inc., another producer of CPSV products in the United States (collectively, petitioners), the ITC instituted an investigation under section 202 of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2252), to determine whether there were increased imports of CSPV products in such quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing like or directly competitive products. The ITC notice of institution (82 FR 25331) identified the scope of the products covered by this investigation as CSPV cells, whether or not partially or fully assembled into other products, of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof) formed by any means, whether or not the cell has undergone other processing, including, but not limited to cleaning, etching, coating, and addition of materials (including, but not limited to metallization and conductor patterns) to collect and forward the electricity that is generated by the cell. The scope of the investigation also included photovoltaic cells that contain crystalline silicon in addition to other materials, such as passivated emitter rear contact cells, heterojunction with intrinsic thin layer cells, and other so-called ''hybrid'' cells.

The notice of institution identified products covered and excluded by the scope of the investigation. Specifically, the scope of the 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 shall be the total combined surface area of all CSPV cells that are integrated into the consumer good; and
- CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.

On the basis of information developed during the investigation, the ITC determined pursuant to section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that CSPV products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry and made additional findings under the implementing statutes of certain free trade agreements or other statutory provisions related to certain preferential trade programs.

### II. Products Excluded From the Application of the Safeguard Measure

On October 25, 2017 (82 FR 49469), the Trade Policy Staff Committee (TPSC) provided details concerning the process it would use to make a recommendation to the President on actions he should take to facilitate the efforts of the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. The process included an opportunity to file initial and responsive comments regarding this question and a public hearing on December 6, 2017, during which commenters testified regarding their submissions and addressed the claims and arguments of others. As part of this process, a number of interested persons requested the exclusion of products from application of the safeguard measure.

Presidential Proclamation 9693 of January 23, 2018 (83 FR 3541) excluded certain particular products:

- 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.

## III. Procedure To Request the Exclusion of Additional Particular Products

The Proclamation directed the United States Trade Representative to publish a notice establishing procedures for requests for the exclusion of particular products from the safeguard measure. The Proclamation provides that if the Trade Representative determines, after consultation with the Secretaries of Commerce and Energy (the interagency group), that a particular product should be excluded, the Trade Representative can modify the Harmonized Tariff Schedule of the United States (HTS) provisions created in the Proclamation's annex to exclude that particular product from the safeguard measure upon publication of the determination in the **Federal Register**. The Proclamation also instructed the Trade Representative to establish procedures for requests for exclusion of a particular product from the safeguard measure.

USTR invites interested persons to submit comments identifying a particular product for exclusion from the safeguard measure and providing reasons why the product should be excluded. USTR will evaluate each request on a case-by-case basis and will grant only those exclusions that do not undermine the objectives of the safeguard measures.

### *A. Requests for Exclusion of Particular Products*

Any request for exclusion clearly 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 products that are subject to the safeguard measures. USTR will 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. USTR will not consider requests that identify the product using criteria that cannot be made available to the public.

In evaluating requests for exclusion, the interagency group may consider the following factors or information:

• The names and locations of any producers, in the United States and foreign countries, of the particular product;

• Total U.S. consumption of the particular product, if any, by quantity and value for each year from 2014 to 2017, the projected annual consumption for each year from 2018 to 2022, and any related information about the types of consumers;

• Details concerning the typical use or application of the particular product;

• Total U.S. production of the particular product for each year from 2014 to 2017, if any;

• The identity of any U.S.-produced substitute for the particular product, total U.S. production of the substitute for each year from 2014 to 2017, and the names of any U.S. producers of the substitute;

• Whether the particular product or substitute for the particular product may be obtained from a U.S. producer;

• Whether qualification requirements affect the requestor's ability to use domestic products;

• Whether the particular product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities;

• Inventories of the particular product in the United States;

• Whether excluding the particular product from the safeguard measure would result in a benefit or advantage to the long-term competitiveness of the solar manufacturing supply chain in the United States, including by fostering research and development, supporting manufacturing innovation, or by leading to the development of differentiated products that command higher prices;

• The ability of U.S. Customs and Border Protection to administer the exclusion; and

• Any other information or data that interested persons consider relevant to an evaluation of the request.

As indicated above, the Trade Representative, in consultation with the Secretaries of Commerce and Energy, will grant only those exclusions that do not undermine the objectives of the safeguard measure. Any exclusion will be effective upon publication of the exclusion determination in the **Federal Register**.

Where necessary, an agency participating in the interagency group may contact interested persons to discuss the procedures or information referenced above or to gain additional information.

USTR strongly discourages the submission of business confidential information. Any request that contains business confidential information must be accompanied by a public version that does not contain the business confidential information, which will be posted on *Regulations.gov*.

When interested persons identify factors in addition to those listed above that they consider relevant to evaluating whether a particular product should be excluded from the safeguard measure, they should explain how the factor would affect the domestic industry's efforts to make a positive adjustment to import competition or the social and economic benefits or costs associated with the safeguard measure.

### *B. Comments on Requests for Exclusions*

After the submission of requests for exclusion of a particular product, interested persons will have an opportunity to comment on the requests, indicate whether they support or oppose any of them, and provide reasons for their view. You can view requests for exclusions on *www.regulations.gov* by entering docket number USTR–2018–0001 in the search field on the home page. If an interested person submits a request for exclusion of a particular product and, during the

responsive comment period, no objection to that request is received, USTR may conclude there are no reasons to prevent a determination that the particular product should be excluded from the safeguard measure, and may conclude, based on the interagency group's review of the request, any comments on the requests, and other relevant information, that the product should be excluded.

*C. Future Requests*

At this time, USTR will not consider requests for exclusion received after March 16, 2018. USTR will monitor developments in the U.S. market for CSPV products and, if warranted, provide for additional requests for exclusion at a later date.

*D. Submission Instructions*

USTR seeks requests and responses to requests with respect to the issues described in Section III.A through a public comment process. To be assured of consideration, you must submit written comments by 11:59 p.m. EST on March 16, 2018, and any written responses to those comments by 11:59 p.m. EST on April 16, 2018. All comments must be in English and must identify on the reference line of the first page of the submission ''Comments Regarding Requests for Product Exclusions From the Solar Products Safeguard Measure.''

We strongly encourage commenters to make on-line submissions using the *www.regulations.gov* website. To submit comments via *www.regulations.gov,* enter docket number USTR–2018–0001 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' For further information on using *www.regulations.gov,* please consult the resources provided on the website by clicking ''How to Use Regulations.gov'' on the bottom of the home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. We prefer that you provide comments as an attached document in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the ''Type Comment'' field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

As noted above, we strongly discourage the submission of business confidential information and its inclusion may prevent a full consideration of the product exclusion request. In any event, including business confidential information in a submission should be extremely circumscribed. Additionally, the filer must provide a public version and the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter.

As indicated above, filers of submissions containing business confidential information must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

We emphasize that submitters are strongly encouraged to file comments through *www.regulations.gov.* You must make arrangements for any alternative method of submission with Yvonne Jamison at (202) 395–9666 in advance of transmitting a comment. You can find general information about USTR at *www.ustr.gov.*

We will post comments in the docket for public inspection, except business confidential information. You can view comments on *www.regulations.gov* by entering docket number USTR–2018–0001 in the search field on the home page.

**Edward Gresser,**

*Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.*

[FR Doc. 2018–03048 Filed 2–13–18; 8:45 am]

**BILLING CODE 3290–F8–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity for Public Comment on a Disposal of 17.6 Acres of Airport Land at Manchester-Boston Regional Airport, Manchester, NH

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

**ACTION:** Request for public comments.

**SUMMARY:** Notice is being given that the FAA is considering a request from the Manchester-Boston Regional Authority to dispose of 17.6 acres of airport land. The parcel is located three miles south of the airport and surrounded by residential development. Considering its remote location and no aviation development potential, disposal of the property is approved. The airport will obtain fair market value for the disposal and the proceeds deposited into the airport's account for operation and maintenance of the facility.

**DATES:** Comments must be received on or before March 16, 2018.

**ADDRESSES:** You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts on January 29, 2018.

**Gail B. Lattrell,**

*Deputy Director, ANE–600.*

[FR Doc. 2018–02942 Filed 2–13–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0104; FMCSA–2012–0322; FMCSA–2012–0154; FMCSA–2015–0326; FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2015–0329]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0104; FMCSA–2012–0322; FMCSA–2012–0154; FMCSA–2015–0326; FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2015–0329. 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

#### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 11 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in 49 CFR 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

#### II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

#### III. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 11 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of January and are discussed below.

As of January 6, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 3 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for

interstate CMV drivers: John Brown (MN), Jerry Doose (MN); and Donald Howton (WI).

The drivers were included in docket numbers FMCSA–2015–0326; and FMCSA–2015–0329. Their exemptions are applicable as of January 6, 2018, and will expire on January 6, 2020.

As of January 14, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 8 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Canoyer, Geoffery (MN)
Nelson DeLeon (FL)
Jerry Ferguson (TX)
Sue Gregory (UT)
William Larson (NC)
James Queen (TX)
Morris Townsend (NC)
Charles Wirick (MD)

The drivers were included in docket numbers FMCSA–2014–0104; FMCSA–2012–0322; FMCSA–2012–0154; FMCSA–2013–0122; FMCSA–2013–0123. Their exemptions are applicable as of January 14, 2018, and will expire on January 14, 2020.

**Conditions and Requirements**

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**IV. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**V. Conclusion**

Based upon its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in 49 CFR 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03070 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0022]**

### 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 43 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 March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0022 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. 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 43 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. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

## II. Qualifications of Applicants

*John H. Armstead*

Mr. Armstead, 50, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Armstead understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Armstead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Montana.

*Christopher M. Barton*

Mr. Barton, 44, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Barton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barton 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 Hampshire.

*Gary E. Bennett*

Mr. Bennett, 63, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Bennett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Teresa M. Billig*

Ms. Billig, 61, has had ITDM since 2012. Her endocrinologist examined her in 2017 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. Billig understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Billig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Pennsylvania.

*Deanne M. Burris*

Ms. Burris, 48, has had ITDM since 2011. Her endocrinologist examined her in 2017 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. Burris understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Burris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017

and certified that she does not have diabetic retinopathy. She holds an operator's license from Connecticut.

*Clarence L. Canty, Jr.*

Mr. Canty, 50, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Canty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Canty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Sergio Carrasco*

Mr. Carrasco, 46, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Carrasco understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carrasco meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Phillip B. Claro*

Mr. Claro, 60, has had ITDM since 2009. His endocrinologist examined him in 2017 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. Claro understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Claro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

*William D. Cucinello*

Mr. Cucinello, 69, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Cucuinello understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cucuinello meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alaska.

*Brian L. Culver*

Mr. Culver, 58, has had ITDM since 1999. His endocrinologist examined him in 2017 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. Culver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Culver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

*Richard L. Dalrymple*

Mr. Dalrymple, 60, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Dalrymple understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dalrymple meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Delmar W. Daoust, Jr.*

Mr. Daoust, 58, has had ITDM since 2007. His endocrinologist examined him in 2017 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. Daoust understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daoust meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

*Shanay M. Davis*

Ms. Davis, 25, has had ITDM since 2015. Her endocrinologist examined her in 2017 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. Davis understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from New Jersey.

*Daniel Drozdowski*

Mr. Drozdowski, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Drozdowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Drozdowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Christopher R. Everitt*

Mr. Everitt, 51, has had ITDM since 2008. His endocrinologist examined him in 2017 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. Everitt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Everitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Quitman Gardner, Jr.*

Mr. Gardner, 42, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Gardner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gardner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Mississippi.

*Charles E. Godbolt*

Mr. Godbolt, 58, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Godbolt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Godbolt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Louisiana.

*William A. Gordon*

Mr. Gordon, 43, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Grodon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gordon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*John T. Green, Jr.*

Mr. Green, 66, has had ITDM since 2002. His endocrinologist examined him in 2017 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. Green understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Green meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

*Rick E. Hammond*

Mr. Hammond, 40, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Hammond understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hammond meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Robert W. Harkins*

Mr. Harkins, 65, has had ITDM since 1975. His endocrinologist examined him in 2017 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. Harkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Leonard C. Harris*

Mr. Harris, 64, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Harris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

*Byron K. Hicks*

Mr. Hicks, 58, has had ITDM since 2006. His endocrinologist examined him in 2017 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. Hicks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hicks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Howard L. Hill*

Mr. Hill, 61, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Hill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Marcus E. Hughes*

Mr. Hughes, 67, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Hughes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hughes 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.

*Ernest T. Johnson*

Mr. Johnson, 57, has had ITDM since 2015. His endocrinologist examined him in 2017 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 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Kevin J. Lotz*

Mr. Lotz, 35, has had ITDM since 1988. His endocrinologist examined him in 2017 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. Lotz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lotz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

*Mitchell R. McCormick*

Mr. McCormick, 24, has had ITDM since 2000. His endocrinologist examined him in 2017 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. McCormick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCormick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Marsdon J. Mercury*

Ms. Mercury, 32, has had ITDM since 2014. Her endocrinologist examined her in 2017 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. Mercury understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Mercury meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from New York.

*Jeffrey J. Mezzacappa*

Mr. Mezzacappa, 56, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Mezzacappa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mezzacappa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

*Anthony A. Opipare*

Mr. Opipare, 66, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Opipare understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Opipare meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Mark C. Payne*

Mr. Payne, 45, has had ITDM since 1999. His endocrinologist examined him in 2017 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. Payne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Robert L. Pieri*

Mr. Pieri, 61, 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. Pieri understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pieri meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Rick J. Poillucci*

Mr. Poillucci, 58, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Poilluci understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Poilluci meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Rafael Sanitago*

Mr. Santiago, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Santiago understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Santiago meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

*Nathan M. Schaffer*

Mr. Schaffer, 40, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Schaffer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schaffer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Timothy J. Somers*

Mr. Somers, 42, has had ITDM since 1996. His endocrinologist examined him in 2017 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. Somers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Somers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

*Wade L. Swenson*

Mr. Swenson, 56, has had ITDM since 1986. His endocrinologist examined him in 2017 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. Swenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Patrick A. Turner*

Mr. Turner, 40, has had ITDM since 1993. His endocrinologist examined him in 2017 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. Turner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Turner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Georgia.

*Andrew A. Utley*

Mr. Utley, 26, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Utley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Utley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Daniel J. Ward*

Mr. Ward, 29, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Ward understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ward meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*David G. White*

Mr. White, 52, has had ITDM since 1994. His endocrinologist examined him in 2017 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. White understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Alabama.

*Rocky L. Wood*

Mr. Wood, 64, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0022 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0022 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 8, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03055 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0003]**

### Hours of Service of Drivers: Application for Exemption; National Electrical Contractors Association

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the National Electrical Contractors Association (NECA) has applied for an exemption from the requirement to use an electronic logging device (ELD) to record driver hours-of-service (HOS) on commercial motor vehicles (CMVs) used by contractors to install, repair, and maintain the infrastructure of electrical utilities. NECA believes the ELD requirement unnecessarily burdens its members' operations. It proposes to continue to use paper to record the HOS of these drivers. NECA states that CMV operations under the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on NECA's application for exemption.

**DATES:** Comments must be received on or before March 16, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2018–0003 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. If you submit a comment, please include the docket number for this notice (FMCSA–2018–0003), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0003'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in 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.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

The HOS rules (49 CFR part 395) prescribe the drive-time limits and rest requirements for interstate drivers of CMVs. The rules also require most drivers of CMVs in interstate commerce, and their motor carriers, to use ELDs—not handwritten logbooks—to document their HOS duty status (49 CFR 395.8(a)(1)(i)).

NECA's 4,000 members are contractors who install, repair and maintain the infrastructure of electrical utilities. The contractors employ line workers who drive utility-service CMVs during their duty day. NECA states that the number of CMV drivers who would be eligible for this exemption is difficult to estimate; it states that the fleet of one ''large'' contractor consists of 13,766 CMVs.

NECA seeks exemption from the requirement that motor carriers and their CMV drivers use an ELD to record driver HOS. The actual operation of the CMVs by the line workers is so limited that the ELD requirement is triggered infrequently. By this application for exemption, NECA seeks greater ''consistency'' in the regulatory environment in which its line workers operate. It states that it is ''cumbersome'' to meet the costs and logistical challenges of recording HOS electronically, and that the resulting safety benefit is negligible given the limited scope of the CMV operations of this industry. NECA states that if provided the exemption, its CMV drivers would remain fully subject to the HOS standards and continue to record their HOS on the customary paper RODS. NECA states that its operations under the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. A copy of NECA's application for exemption is available for review in the docket for this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03063 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0028]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 23 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0028 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. 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 23 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in

the first two years with their experiences in the final year.

**II. Qualifications of Applicants**

*Michael W. Belknap*

Mr. Belknap, 52, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Based upon my examination and with due regard for public safety, it is my decision that Mr. Belknap's eyesight is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Belknap reported that he has driven straight trucks for 35 years, accumulating 525,000 miles, and tractor-trailer combinations for 35 years, accumulating 262,500 miles. He holds a Class A CDL from Vermont. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Scott M. Cavanaugh*

Mr. Cavanaugh, 33, has had nystagmus in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, ''Therefore, it is my opinion that Scott has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Cavanaugh reported that he has driven straight trucks for 12 years, accumulating 108,000 miles. He holds an operator's license from Oklahoma. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James M. Ferry*

Mr. Ferry, 52, has a retinal detachment in his right eye due to a traumatic incident in 1991. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In summary, it is my opinion that Mr. James Ferry meets the tasks required to operate a commercial vehicle.'' Mr. Ferry reported that he has driven straight trucks for 33 years, accumulating 825,000 miles, and tractor-trailer combinations for 31 years, accumulating 2.17 million miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jacob A. Hehr*

Mr. Hehr, 27, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2017, his ophthalmologist stated, ''Vision is sufficient to operate a commercial vehicle per Sheridan Lam, MD.'' Mr. Hehr reported that he has driven straight trucks for eight years, accumulating 108,000 miles, and tractor-trailer combinations for three years, accumulating 36,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Mike B. Houston*

Mr. Houston, 42, has a corneal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''Despite the fact Mr. Houston has a corneal scar in his right eye, in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Houston reported that he has driven straight trucks for ten years, accumulating 400,000 miles, and tractor-trailer combinations for ten years, accumulating 400,000 miles. He holds a Class A CDL from Oregon. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Marvin R. Knecht*

Mr. Knecht, 67, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2017, his optometrist stated, ''Marvin has adequate vision to pass the commercial driving standards.'' Mr. Knecht reported that he has driven straight trucks for 50 years, accumulating 525,000 miles, and tractor-trailer combinations for 45 years, accumulating 3.6 million miles. He holds a Class A CDL from North Dakota. His driving record for the last three years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 20 mph.

*Paul H. Knott*

Mr. Knott, 51, has complete loss of vision in his left eye due to a traumatic incident in 1987. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''In my professional opinion, considering the longevity of his driving career, the longstanding, stable nature of his eye condition, and his ability to meet the requirements for CDL licensure, I also believe Mr. Scott is capable of safely and properly operating his vehicle(s).'' Mr. Knott reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds an operator's license from North Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Randolph W. Lewis*

Mr. Lewis, 55, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/15, and in his left eye, 20/60. Following an examination in 2017, his optometrist stated, ''In my opinion these findings demonstrate that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for four years, accumulating 80,000 miles, and tractor-trailer combinations for 29 years, accumulating 1.45 million miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*John M. Moore*

Mr. Moore, 51, has complete loss of vision in his right eye due to melanoma. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''He has sufficient vision to perform his driving task under a commercial vehicle.'' Mr. Moore reported that he has driven straight trucks for 25 years, accumulating 500,000 miles, and tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds an operator's license from Louisiana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Martin Munoz*

Mr. Munoz, 45, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''I certify that in my opinion, Mr. Munoz has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Munoz reported that he has driven straight trucks for seven years, accumulating 94,500 miles. He holds an operator's license from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Edwin Quiles*

Mr. Quiles, 58, has retinal scarring in his left eye due to a traumatic incident in 1977. The visual acuity in his right eye is 20/20, and in his left eye, 20/250. Following an examination in 2017, his optometrist stated, ''It is my opinion that Mr. Quiles has adequate vision to operate a commercial vehicle.'' Mr. Quiles reported that he has driven straight trucks for five years, accumulating 75,000 miles, and tractor-trailer combinations for 35 years, accumulating 2.9 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Vernon L. Reed*

Mr. Reed, 61, has had a branch retinal vein occlusion in his left eye since 2014. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2017, his ophthalmologist stated, ''I believe that Vernon Reed has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Reed reported that he has driven straight trucks for 12 years, accumulating 192,000 miles, and tractor-trailer combinations for 36 years, accumulating 3.6 million miles. He holds a Class A CDL from Oregon. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Joshua A. Rhynd*

Mr. Rhynd, 27, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, ''He does have sufficient vision to perform the commercial driving tasks required.'' Mr. Rhynd reported that he has driven straight trucks for four years, accumulating 520,000 miles, and tractor-trailer combinations for five years, accumulating 1.12 million miles. He holds a Class A CDL from Maine. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Douglass L. Riddell*

Mr. Riddell, 62, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''This letter certifies that Douglas L. Riddell in my medical opinion has sufficient vision to perform the driving tasks required to safely operate a commercial vehicle.'' Mr. Riddell reported that he has driven straight trucks for 30 years, accumulating 540,000 miles, and tractor-trailer combinations for 15 years, accumulating 120,000 miles. He holds a Class AM1 CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Michael C. Stevelman*

Mr. Stevelman, 25, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stevelman reported that he has driven straight trucks for seven years, accumulating 105,000 miles. He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Sedrick Straughter*

Mr. Straughter, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2017, his ophthalmologist stated, ''This is to certify that, in my medical opinion, Mr. Straughter has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Straughter reported that he has driven tractor-trailer combinations for ten years, accumulating 1 million miles. He holds a Class A CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Michael Talley*

Mr. Talley, 51, has a chorioretinal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''DR *[SIC]* LANKA HEREBY TESTIFIES THAT IN HIS MEDICAL OPINION, MR. TALLEY HAS THE SUFFICIENT VISION TO PERFORM THE DRIVING TASKS REQUIRED TO OPERATE A COMMERCIAL VEHICLE.'' Mr. Talley reported that he has driven tractor-trailer combinations for 30 years, accumulating 2.1 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Edward G. Thurston, III*

Mr. Thurston, 53, has had a macular scar in his right eye since 2004. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Eddie has sufficient vision for operating a commercial vehicle.'' Mr. Thurston reported that he has driven tractor-trailer combinations for 18 years, accumulating 1.3 million miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Gerald A. Vaughn*

Mr. Vaughn, 59, has had a retinal scar in his right eye since 2004. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Gerald Vaughn has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Vaughn reported that he has driven straight trucks for ten years, accumulating 100,000 miles, and tractor-trailer combinations for 15 years, accumulating 2.25 million miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*John Henry R. Viljoen*

Mr. Viljoen, 38, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''According the *[sic]* visual acuity and his peripheral vision and his color perception, it appears he has sufficient visual function to operate a commercial vehicle.'' Mr. Viljoen reported that he has driven straight trucks for five years, accumulating 100,000 miles. He holds an operator's license from North Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Kenneth E. Wheland*

Mr. Wheland, 56, has had a retinal detachment in his left eye since 2014. The visual acuity in his right eye is 20/20, and in his left eye, 20/125. Following an examination in 2017, his optometrist stated, ''In my opinion, Mr. Wheland retains vision sufficient to operate a commercial vehicle.'' Mr. Wheland reported that he has driven straight trucks for 18 years, accumulating 5.4 million miles, tractor-trailer combinations for 22 years, accumulating 12.1 million miles, and

buses for 18 years, accumulating 6.3 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Richard E. Wixom*

Mr. Wixom, 56, has a retinal detachment in his right eye due to a traumatic incident in 2015. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''I certify that Richard has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wixom reported that he has driven tractor-trailer combinations for 15 years, accumulating 2.25 million miles. He holds a Class CA CDL from Michigan. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Mohammad J. Yousufzai*

Mr. Yousufzai, 41, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2017, his optometrist stated, ''In my medical opinion, Mr. Yousufzai has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Yousufzai reported that he has driven straight trucks for three years, accumulating 36,780 miles. He holds a Class A CDL from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0028 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0028 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03034 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0020]**

### 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 51 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 March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0020 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

**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., e.t., Monday through Friday, except Federal holidays. If you have questions

regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. 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 51 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. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

## II. Qualifications of Applicants

*Tina M. Adams*

Ms. Adams, 52, has had ITDM since 2017. Her endocrinologist examined her in 2017 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. Adams understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from New York.

*Steven A. Bain*

Mr. Bain, 50, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Bain understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bain meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Rhode Island.

*Joseph M. Ballard*

Mr. Ballard, 36, has had ITDM since 2009. His endocrinologist examined him in 2017 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. Ballard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ballard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

*Edward L. Barron*

Mr. Barron, 59, has had ITDM since 2011. His endocrinologist examined him in 2017 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. Barron understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barron meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy.

He holds an operator's license from Texas.

*James A. Beck*

Mr. Beck, 58, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Beck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Kentucky.

*George R. Benson*

Mr. Benson, 50, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Benson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Benson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Jason D. Bonham*

Mr. Bonham, 45, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Bonham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bonham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

*Dennis L. Bowden*

Mr. Bowden, 60, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Bowden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bowden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Harry C. Davis*

Mr. Davis, 68, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Warren E. Davis*

Mr. Davis, 57, has had ITDM since 2009. His endocrinologist examined him in 2017 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. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

*Anderson N. Debitencourte*

Mr. Debitencourte, 41, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Debitencourte understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Debitencourte meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*George M. Dickherber*

Mr. Dickherber, 65, has had ITDM since 2007. His endocrinologist examined him in 2017 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. Dickherber understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dickherber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

*Craig A. Dixon*

Mr. Dixon, 59, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Dixon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

*Sandra M. Fazio*

Ms. Fazio, 44, has had ITDM since 1982. Her endocrinologist examined her in 2017 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. Fazio understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Fazio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from New Hampshire.

*Thomas M. Gibbs*

Mr. Gibbs, 58, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Gibbs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gibbs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Willi M. Goolsbey*

Ms. Goolsbey, 38, has had ITDM since 1995. Her endocrinologist examined her in 2017 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. Goolsbey understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Goolsbey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from New Mexico.

*Eli J. Goudreau*

Mr. Goudreau, 22, has had ITDM since 2011. His endocrinologist examined him in 2017 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. Goudreau understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goudreau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

*John W. Green*

Mr. Green, 67, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Green understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Green meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Delight A. Halfred*

Ms. Halfred, 56, has had ITDM since 2017. Her endocrinologist examined her in 2017 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. Halfred understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Halfred meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from South Dakota.

*Vernell Harris*

Mr. Harris, 71, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Harris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

*Robert L. Harris*

Mr. Harris, 41, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Harris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Tennessee.

*Donald R. Heupel*

Mr. Heupel, 59, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Heupel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heupel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Michael J. Hobbs*

Mr. Hobbs, 57, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Hobbs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hobbs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Arnold Hollins*

Mr. Hollins, 56, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Hollins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hollins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

*Sarvar Kachiev*

Mr. Kachiev, 51, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Kachiev understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kachiev meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Sidney G. Lehman*

Mr. Lehaman, 63, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Lehman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lehman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*John H. Lowe, Jr.*

Mr. Lowe, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Lowe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lowe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

*Robert R. Martin*

Mr. Martin, 60, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kansas.

*Christopher C. McMurray*

Mr. McMurray, 66, has had ITDM since 2017. His endocrinologist examined him in 2017 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. McMurray understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McMurray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Davis K. Mensah*

Mr. Mensah, 42, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Mensah understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Mensah meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Jeffrey R. Meyer*

Mr. Meyer, 42, has had ITDM since 2007. His endocrinologist examined him in 2017 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. Meyer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

*Kurtis A. Nichols*

Mr. Nichols, 51, has had ITDM since 1971. His endocrinologist examined him in 2017 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. Nichols understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nichols meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Marty G. Niles*

Mr. Niles, 51, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Niles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Niles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

*Darrell E. Oliver*

Mr. Oliver, 46, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Oliver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oliver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

*Timothy P. Oliver*

Mr. Oliver, 39, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Oliver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oliver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oregon.

*Fred W. Payne*

Mr. Payne, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Payne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

*Ronald L. Pellack, Jr.*

Mr. Pellack, 48, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Pellack understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pellack meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Edward F. Poe*

Mr. Poe, 53, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Poe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Poe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

*Clint A. Richter*

Mr. Richter, 33, has had ITDM since 1992. His endocrinologist examined him in 2017 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. Richter understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Daniel G. Roach*

Mr. Roach, 64, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Roach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Mark S. Schellhammer*

Mr. Schellhammer, 56, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Schellhammer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schellhammer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Edward R. Sutton*

Mr. Sutton, 76, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Sutton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sutton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

*Maurice L. Talley*

Mr. Talley, 53, has had ITDM since 2009. His endocrinologist examined him in 2017 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. Talley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Talley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nevada.

*Brandon L. Tatman*

Mr. Tatman, 43, has had ITDM since 2007. His endocrinologist examined him in 2017 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. Tatman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tatman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

*Austin M. Thies*

Mr. Thies, 21, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Thies understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thies meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

*Robert J. Tischler*

Mr. Tischler, 31, has had ITDM since 2001. His endocrinologist examined him in 2017 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. Tischler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tischler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

*Michael Tucker*

Mr. Tucker, 63, has had ITDM since 2000. His endocrinologist examined him in 2017 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. Tucker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tucker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Leonard J. Warnock*

Mr. Warnock, 57, has had ITDM since 2017. His endocrinologist examined him

in 2017 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. Warnock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Warnock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*John R. Wohlers*

Mr. Wohlers, 53, has had ITDM since 1991. His endocrinologist examined him in 2017 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. Wohlers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wohlers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

*David L. Woodfill*

Mr. Woodfill, 57, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Woodfill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woodfill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Daniel J. Woodring*

Mr. Woodring, 46, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Woodring understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woodring meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0020 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0020 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03057 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 77 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m. e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management

System (FDMS) Docket No. FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193 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. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

## I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding 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 77 individuals listed in this notice have requested renewal of their exemptions from the diabetes standard in 49 CFR 391.41(b)(3), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

## II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 77 applicants has satisfied the renewal conditions for obtaining an exemption from the diabetes requirement (77 FR 3549; 77 FR 5870; 77 FR 13685; 77 FR 17116; 78 FR 78479; 78 FR 79062; 79 FR 12567; 79 FR 13086; 81 FR 14210). They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of March and are discussed below:

As of March 5, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 31 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 79062; 79 FR 12567; 81 FR 14210):

David E. Ames (IL)
Christopher D. Burks (MA)
Larry D. Burton (IL)
Anthony D. Chrisley (CA)
Henry Collins (MO)
John B. Conway, Jr. (NC)
Douglas E. Erney (IN)
William C. Flom (IA)
Brian A. Griep (IA)
Ronnie Harrington (MS)
Andrew P. Hines (OH)
Aaron C. Kaplan (CA)
Sigmund E. Keller (NY)
Derl T. Martin (MO)
Ronald E. Mullard (AL)
Justin C. Orr (OH)
Kevin L. Otto (OH)
Larry H. Painter (PA)
Robert K. Patterson (IA)
Albert M. Purdy (PA)
Adam Ranzy (MO)
Thomas F. Scanlon (NJ)
Harrison G. Simmons (MO)
Scott A. Stout (FL)
Walter D. Strang, IV (CT)
Mark A. Torres (MA)
Eric A. Vernon (IA)
Marvin L. Vonk (IA)
Kelly J. Walstad (MN)
John R. Wappes (OH)
Rickey A. Wulf (IA)

The drivers were included in docket number FMCSA–2013–0193. Their exemptions are applicable as of March 5, 2018, and will expire on March 5, 2020.

As of March 7, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 3549; 77 FR 13685; 78 FR 78479; 79 FR 13086; 81 FR 14210):

Chad E. Anger (WI)
Edward Blake (GA)
Brian Chase (VA)
Nicholas P. Dube (RI)
James W. Dusing (MN)
Manel Elizondo (TX)
Michael K. Farris (IN)
Menino Fernandes (IL)
Craig J. Gadley, Sr. (NY)
Mary F. Guilfoy (IN)
Matthew E. Hay (TX)
Edward S. Ionescu (IL)

Jeffrey P. James (AR)
Tracy N. Jenkins (DE)
Gregory A. King (NC)
Matthew R. Linehan (NY)
Cory A. Meadows (OH)
Ashun R. Merritt (GA)
Herbert A. Morton (CA)
Jayrome B. Rimolde (MN)
Gale Roland (PA)
John L. Scherette (WA)
Kelly T. Scholl (MN)
James P. Shurkus (NH)
Gregory G. Sisco (IA)
Travers L. Stephens (GA)
Brittany K. Tomasko (CA)
Daren Warren (NY)
Alan T. Whalen (NY)
Thomas L. Whitley (IN)
Randall S. Williams (PA)
Tomme J. Wirth (IA)
Joshua C. Wyse (OH)
Rowland P. Yee (HI)

The drivers were included in docket numbers FMCSA–2011–0368; FMCSA–2013–0192. Their exemptions are applicable as of March 7, 2018, and will expire on March 7, 2020.

As of March 23, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 5870; 77 FR 17116; 81 FR 14210):

Roger L. Arcan, Jr. (MA)
Marsha M. Colberg (WA)
Robert D. Crissinger (MN)
Scott W. Forsyth, Jr. (CO)
Fritz D. Gregory (UT)
Anthony P. Kesselring (FL)
Don R. Kivi (ND)
Vincent Ligotti (NY)
Michael R. Miller (PA)
Jack L. Phippen (WI)
Richard A. Purk (CA)
Jack A. Tidey (AR)

The drivers were included in docket number FMCSA–2011–0381. Their exemptions are applicable as of March 23, 2018, and will expire on March 23, 2020.

### IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must submit an annual ophthalmologist's or optometrist's report; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

### V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

### VI. Conclusion

Based upon its evaluation of the 77 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03056 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0006]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0006 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. 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 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

## II. Qualifications of Applicants

*Russell A. Anklam*

Mr. Anklam, 52, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''Based on Mr. Anklam's good peripheral vision in each eye and his exceptional driving record, I feel he is more than qualified to operate a commercial vehicle.'' Mr. Anklam reported that he has driven straight trucks for 30 years, accumulating 3.6 million miles, tractor-trailer combinations for 15 years, accumulating 1.2 million miles, and buses for five years, accumulating 250,000 miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Rodney P. Barfield*

Mr. Barfield, 50, has a prosthetic right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''It is my opinion that Rodney Barfield has sufficient vision to operate a commercial motor vehicle safely, there should be no restrictions imposed.'' Mr. Barfield reported that he has driven straight trucks for seven years, accumulating 315,000 miles, and tractor-trailer combinations for 19 years, accumulating 2,660,000 miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Kenneth W. Blake, Jr.*

Mr. Blake, 60, has had central serous chorioretinopathy in his left eye since August 2014. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2017, his optometrist stated, ''In my medical opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Blake reported that he has driven straight trucks for 18 years, accumulating 180,000 miles. He holds a Class B CDL from Kansas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Efrain R. Cisneros*

Mr. Cisneros, 54, has aphakia in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2017, his optometrist stated, ''Excellent vision in the right eye, able to perform driving tasks of a commercial vehicle.'' Mr. Cisneros reported that he has driven straight trucks for 11 years, accumulating 528,000 miles, and tractor-trailer combinations for four years, accumulating 300,000 miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Justin D. Craft*

Mr. Craft, 57, has corneal scarring in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2017, his optometrist stated, ''Mr. Craft has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Craft reported that he has driven straight trucks for 16 years, accumulating 400,000 miles. He holds an operator's license from Arkansas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James E. Haener*

Mr. Haener, 66, has a corneal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my medical opinion, James Haener has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Haener reported that he has driven straight trucks for 45 years, accumulating 225,000 miles, and tractor-trailer combinations for 45 years, accumulating 225,000 miles. He holds a Class A CDL from Idaho. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Curvin L. Martin*

Mr. Martin, 40, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my opinion, Mr. Martin has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Martin reported that he has driven tractor-trailer combinations for 19 years, accumulating 1.9 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; he disregarded a traffic lane.

*Robert L. Redding*

Mr. Redding, 54, has aphakia in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/800. Following an examination in 2017, his optometrist stated, ''Please let this letter serve as notice that Mr. Redding does have sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Redding reported that he has driven straight trucks for 21 years, accumulating 315,000 miles. He holds a Class B CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Gerald L. Wheeler*

Mr. Wheeler, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''Mr. Wheeler has, in my opinion, sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wheeler reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds an operator's license from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*George J. Worthington, Jr.*

Mr. Worthington, 58, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, ''His ability to operate a commercial motor vehicle should not be limited due to his long-standing amblyopia of the left eye.'' Mr. Worthington reported that he has driven straight trucks for 30 years, accumulating 300,000 miles. He holds an operator's license from New York. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jonas L. Yoder*

Mr. Yoder, 57, has had a branch retinal vein occlusion in his left eye since 1995. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''Despite the vision deficiency of the left eye, it is my professional medical opinion that Jonas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Yoder reported that he has driven straight trucks for five years, accumulating 400,000 miles. He holds a Class B CDL from Nebraska. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0006 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0006 and click ''Search.''

Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03064 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–27801; FMCSA–2007–28536; FMCSA–2008–0175; FMCSA–2008–0267; FMCSA–2009–0207; FMCSA–2011–0192; FMCSA–2013–0181; FMCSA–2013–0182]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 99 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to http//*www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

#### II. Background

On November 27, 2017, FMCSA published a notice announcing its decision to renew exemptions for 99 individuals from the insulin-treated diabetes mellitus prohibition in 49 CFR 391.41(b)(3) to operate a CMV in interstate commerce and requested comments from the public (82 FR 56111). The public comment period ended on December 27, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

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.

#### III. Discussion of Comments

FMCSA received no comments in this preceding.

#### IV. Conclusion

Based upon its evaluation of the 99 renewal exemption applications and comments received, FMCSA confirms its' decision to exempt the following drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce in 49 CFR 391.64(3):

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of October and are discussed below:

As of October 3, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 47291; 76 FR 61139):

Michael J. Alexander (MO)
Dean A. Chamberlin (NE)
Ronald D. Fatka (IA)
Frank B. Hernandez (MN)
Dale A. Iverson (UT)
John H. Krastel, Jr. (MD)
Edward Linhart (MA)
Larry D. Matson (MT)
David W. Payne (KS)
Jim B. Robertson II (KY)
Donald M. Rush, Jr. (GA)
Barry A. Sircy (KY)
John S. Starchevich (IA)
Michael B. Tortora (VT)
Charlotte C. Watson (CA)
Shaun M. Wheeler (CT)

The drivers were included in docket number FMCSA–2011–0192. Their exemptions are applicable as of October 3, 2017, and will expire on October 3, 2019.

As of October 15, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 43 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 45480; 72 FR 58360; 73 FR 45519; 73 FR 61188; 78 FR 50486; 78 FR 65031):

Scott M. Aitcheson (MI)
Robert V. Balmes (IL)
Kenneth M. Brinker (SD)
Daniel A. Brown (IN)
Floyd G. Burbach (SD)
Frederick J. Caldarelli III (KS)
Jay P. Cave (IL)
William J. Compton (MI)
Brian R. Current (IA)
Mark A. Davis (AR)
Todd J. Donnelly (IA)
Carmine J. Fossile (MA)
Steven M. French (MI)
Philip P. Gray (VA)
John L. Hansen (MT)
Michael G. Harp (OK)
Darin D. Harries (MN)
James M. Holland (WA)
William E. Hollowell (MI)
Matthew S. Hooker (IN)
Cindy L. Hushin-Brink (PA)
Gregory A. Iverson (IA)
Bradley M. Johnson (ID)
Mark A. Jones (WI)
Michael J. Keating (IL)
Richard D. Knoche (IL)
Jonathan D. Koehn (NE)
Edward M. Mason (KY)
Harold W. McCullough (NE)
Kurt V. Miller (IL)
Tyree L. Murdock II (FL)
Thomas L. Nesbit (PA)
Richard Rodriguez (KS)
Scott D. Schultz (MN)
Mark W. Seem (IN)

Marvin R. Shipman (GA)
Chris W. Smaltz (AZ)
Randy E. Veit (IL)
Edwin C.E. Whitcomb (ND)
Steven S. Whitt, Sr. (MO)
Derek J. Wright (AL)
Donald W. Yeager (PA)
Mick B. Zoske (IA)

The drivers were included in docket numbers FMCSA–2007–27801; FMCSA–2008–0175; FMCSA–2013–0182. Their exemptions are applicable as of October 15, 2017, and will expire on October 15, 2019.

As of October 18, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Justin R. Freeman (ID) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 38435; 78 FR 63294).

This driver was included in docket number FMCSA–2013–0181. The exemption is applicable as of October 18, 2017, and will expire on October 18, 2019.

As of October 19, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 50442; 72 FR 59332; 74 FR 41486; 74 FR 53583):

Jim E. Chester (IN)
Blaine H. Holmes (UT)
James R. Hudson (AZ)
Roger L. Kaufman (KY)
Clifford L. Rayl (IN)
Steven J. Shaw (NV)
Scott L. Stamstad (WI)
Kendell R. Strassman (WI)
Maurice L. Wedel (KS)

The drivers were included in docket numbers FMCSA–2007–28536; FMCSA–2009–0207. Their exemptions are applicable as of October 19, 2017, and will expire on October 19, 2019.

As of October 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (73 FR 52451; 73 FR 63041):

Michael B. Bennington, Sr. (PA)
Larry J. Eischens (SD)
David J. Hanzl (NY)
Thomas R. Jones (OH)
John G. Schaible, Jr. (NY)
Rory J. Seleman (IL)
Chase M. Wells (NY)
Laurie E. White (NY)
Craig E. Wolf (IL)

The drivers were included in docket number FMCSA–2008–0267. Their exemptions are applicable as of October 22, 2017, and will expire on October 22, 2019.

As of October 23, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 38435; 78 FR 63294):

Craig W. Blackner (UT)
John L. Fischer (ND)
Douglas E. Gibbs (TX)
Clarence H. Holliman Jr. (MS)
Tracy S. Johnson (FL)
Chad D. Labonte (ID)
Jason J. Marks (LA)
Keith R. McKeever (PA)
Alberto Ramirez (CA)
Brian S. Ruth (AK)
Ronald S. Smith (NJ)
Lawrence E. Starks, Sr. (IN)
Calvin C. Wallingford (NY)

The drivers were included in docket number FMCSA–2013–0181. Their exemptions are applicable as of October 23, 2017, and will expire on October 23, 2019.

As of October 28, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Ricky A. Root (IL) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50486; 78 FR 65031).

This driver was included in docket number FMCSA–2013–0182. The exemption is applicable as of October 28, 2017, and will expire on October 28, 2019.

As of October 30, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50486; 78 FR 65031):

Peter Engel (PA)
Jhon A. Fitzgerald (ME)
Lewis E. Forrester (PA)
Ray Harrison (MD)
Charles LaBruno (PA)
Shawn E. Marks (PA)
Donald G. Staggs (CA)

The drivers were included in docket number FMCSA–2013–0182. Their exemptions are applicable as of October 30, 2017, and will expire on October 30, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03069 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0003]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA confirms its decision to exempt twenty six individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on the dates stated in the discussions below. The exemptions expire on the dates stated in the discussions below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and

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

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

## II. Background

On October 3, 2016 FMCSA published a notice announcing receipt of applications from 26 individuals requesting an exemption from the hearin requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (FR 81 68096). The public comment period ended on November 3, 2016 and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951. 49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

## III. Discussion of Comments

FMCSA received one comment in this proceeding. Deb Carlson, from the Minnesota DMV office, noted that Matthew R. Burgoyne is no longer a Minnesota CDL holder and that he changed his state of record to Idaho.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the hearing standard in 49 CFR391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS), for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to drive in intrastate commerce, The Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in 49 CFR 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashed or accidents as defined in 49 CFR 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 26 exemption applications, FMCSA exempts the following drivers from the hearing standard, 49 CFR 391.41(b)(11), subject to the requirements cited above:

Kay Baden (OR)
Wyatt M. Baldwin (NV)
Moises Becerra (TX)
Matthew R. Burgoyne (ID)
Pedro H. Calas (FL)
David T. Carlson (WI)
Marco A. Cisneros (CA)
Mark B. Cole (CA)
Filipe S. Fernandez (FL)
Joshua Gelona (OK)
William D. Gum (TX)
Reginald C. Holmes (AZ)
Gary D. McBride (FL)
Brent D. McCaffery (IA)
Benjeol C. Morton (GA)
Anthony S. Papa (OH)
Eduardo Pedregal (TX)
Charles L. Pitt (AL)
David Y. Pro (CA)
Leonardo Pupo-Tuperet (WA)
Edgar J. Ramos (IL)
Ronald D. Rumsey (IA)
Johnny Seng (RI)
Michael Sladick (OH)
Brian J. Walthall (KS)
Jack Whitewater (FL)

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 8, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03035 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0235]**

## Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 27 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on January 11, 2018. The exemptions expire on January 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

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*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

### II. Background

On December 11, 2017, FMCSA published a notice announcing receipt of applications from 27 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 58253). The public comment period ended on January 10, 2018, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

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.

### III. Discussion of Comments

FMCSA received one comment in this proceeding. Vicky Johnson stated that Minnesota Department of Public Safety is in favor of granting exemptions to the following Minnesota drivers: Guy K. Paquette and Joseph M. Pellish, Jr.

### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 11, 2017, **Federal Register** notice (82 FR 58253) and will not be repeated in this notice.

These 27 applicants have had ITDM over a range of one to 31 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

### V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

### VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

### VII. Conclusion

Based upon its evaluation of the 27 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Larry L. Alirez (NM)
Samuel L. Boothe (MO)
Edward C. Carlson (MA)

Andrew W. Carstens (IN)
Timothy R. Conaway (DE)
Ronald E. Cope, Sr. (TN)
Jeffrey Dockhorn (NJ)
Elias O. Eniade (MO)
Michael L. Evans (IN)
Billy E. Hickman, Jr. (MO)
Lejuan K. Holmes (TX)
Roy J. McDonald (NY)
Michael D. Mook (IA)
Nathon J. Owens (IN)
Guy K. Paquette (MN)
Robert C. Payne (VA)
Lyle S. Pearson (IL)
Joseph M. Pellish, Jr. (MN)
Daniel R. Plecki (IL)
Victor H. Pulgarin-Gomez (NJ)
Stephen D. Reintsma (IA)
Charles W. Wakefield (MS)
John L. Whitehead, Jr. (TN)
Keith L. Wilson (WI)
Adam J. Writz (ID)
Rave Y. Yarron (MD)
Willie C. Young (TX)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03046 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0058]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 91 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on December 26, 2017. The exemptions expire on December 26, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

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*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

#### II. Background

On October 11, 2017, FMCSA published a notice announcing receipt of applications from 91 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (FR 82 47294). The public comment period ended on November 13, 2017 and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

#### III. Discussion of Comments

FMCSA received two comments in this proceeding. Don Lefeve, President and CEO of the Commercial Vehicle Training Association (CVTA) wrote opposing over the road training of hearing-impaired individuals, pointing out the Safety Risks and the Liability it poses, and in addition expressed concerns for the far reaching ramifications of allowing deaf or hard of hearing drivers to test, train and/or drive commercially and concerns regarding the process by which hearing exemptions are granted from parts 49 CFR 394.41. FMCSA acknowledges CVTA's concerns and a response to these comments will be published in a subsequent notice.

Ira Levinson, a hearing exemption applicant wrote inquiring when he may expect to receive his exemption.

*Basis for Exemption Determination*

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial

Driver's License Information System (CDLIS), for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in 49 CFR 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

**IV. Conditions and Requirements**

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

**V. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VI. Conclusion**

Based upon its evaluation of the 91 exemption applications, FMCSA exempts the following drivers from the hearing standard, 49 CFR 391.41(b)(11), subject to the requirements cited above:

Mario Alverado (CA)
Shey C. Amberson (FL)
Kasseth Andrews (MA)
Steven Andrews (FL)
Randy Bailey (NJ)
Ivan Batista (NJ)
Larry G. Beeson (NC)
Deontae Blanks (TX)
Daryl A. Broker (MN)
Justin Brooks (WA)
Daniel Camp (GA)
Joseph Caplan (CT)
Vincente Carreon (TX)
Richard N. Casto (OH)
Blair D. Chappell (PA)
Christa B. Coppley (NC)
Leslie Crump (IN)
William Darnell (AZ)
Travis K. Davisson (IA)
Sean M. Dearsman (OH)
Shane DiBernado (CO)
James Edmonson (LA)
Gary Effner (MA)
Mitchell R. Estill (MO)
Jerey Exum (TX)
William F. Farrell (WI)
Lucius Fowler (IL)
Bruce Francechi (NY)
Buddy Gann (IN)
Blanca Gerardo (TX)
Teela Gilmore (GA)
Douglas M. Gray (OR)
John Grebenc (MN)
Kimberly Gumm (IN)
Conrad Hause (MD)
John Hayt III (FL)
Raymond E. Henk (TX)
Jorge L. Hernandez (TX)
Andrew J Hippler (ID)
Charles Holbrook (MD)
Paul Hoover (PA)
Buford G Hudson (KY)
Thomas Gensen (IA)
Charles J. Jernigan, Jr. (SC)
James M. Johnson (MN)
Matthew Jones (CA)
Ronald L. Jones (OK)
Wayne A. Kramas (WI)
Daniel Krytosek (MN)
Nicholas Kulasa (IL)
Ryan R. Larkin (MA)
Aaron S. Leader (AZ)
Brian Levinson (FL)
Benjamin Lockwood (TX)
Srephen O. Lothamer (MI)
Pete Love Jr. (NE)
John R. Martikainen (CT)
Cory McDaniel (PA)
Jamarques McMahon (TX)
Ty McRae (GA)
David. W. Morgan (ID)
Coltin Mueller (WI)
Eddie P. Naquin (TX)
Ernest O. Noel (IN)
Robert C. Oliver (WA)
Tim S. Oyler (UT)
Douglas Pfueger (MO)
Charles L. Pitt (AL)
Jonathan Pitts (MD)
Robert F. Quintero (IL)
Jonathan Ramos (NE)
James E. Redmond (IL)
Lucas Robinson (OH)
David Rowe (CO)
Dustin Sargent (TX)
Carl Seabough (FL)
Johnny Seng (RI)
Michael Singleton (TX)
Marshall Smith (TX)
Lonnie D. Stockton (TX)
Robert S. Swafford (OK)
Michael Swetnam (TX)
Courtney D. Turner (VA)
Cory Twombly (NY)
Gary Wallace (NC)
James R. Wilson (MS)
Melanie Wilson (TX)
Ricky M. Winslow (MI)
Jerry E. Wright (NC)
Kedir Yimamu (VA)
Edward J. Zozaya (AZ)

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03044 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0002]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 33 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on September 6, 2016. The exemptions expire on September 6, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office

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**SUPPLEMENTARY INFORMATION:**

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You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

## II. Background

On August 1, 2016 FMCSA published a notice announcing receipt of applications from thirty three individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (81 FR 50594). The public comment period ended on August 31, 2016 and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person: First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

## III. Discussion of Comments

FMCSA received one comment in this preceeding. The Florida Department Highway Safety and Motor Vehicles expressed concerns for the far reaching ramifications of allowing deaf or hard of hearing drivers to test, train and/or drive commercially and concerns regarding the process by which hearing exemptions are granted from parts 49 CFR 394.41. FMCSA acknowledges the Florida Department of Highway Safety and Motor Vehicles concerns and a response to these comments will be published in a subsequent notice.

*Basis for Exemption Determination*

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS), for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in 49 CFR 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

## IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

## V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VI. Conclusion

Based upon its evaluation of the thirty three exemption applications, FMCSA exempts the following drivers from the hearing standard, 49 CFR 391.41(b)(11), subject to the requirements cited above:

Pricilla Brackenridge (IL)
David Balay Chappelear (TX)
Donald Coen (NY)
Mathias Conway (MI)
Gary A. Cordano (CA)
Harvey Culver (TX)
Charles DePriest (TX)
William R. English (TX)
Samuel Fernell (OH)
Richard Fisher (PA)
Russell Fleming (GA)
Ronald Freeze (OK)
Carlos Gonzales (GA)
Zachary Gullett (OH)
Richard Hoots (AZ)
Carlos Lee Jackson (TX)
Richard Kahalewai-Campbell (HI)
Randall Lutsey (PA)
Reynaldo Martinez (TX)
Julio C. Medrano (WA)

Keith Miller (MO)
Brian J. Minch (MA)
Katrina Parker (NJ)
Walt Pindor (AZ)
Robert Samarian (MI)
D'Nielle Smith (OH)
Michael Smith (CO)
Daniel Stroud (UT)
Michael Sweet (GA)
James Watters (OH)
Gerald Westfall (PA)
Derek Zamot (FL)

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 8, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03045 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0290]**

### 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 51 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 March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0290 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. 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 51 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. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum

period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

**II. Qualifications of Applicants**

*Carl W. Anderson*

Mr. Anderson, 43, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Anderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Thomas J. Anderson*

Mr. Anderson, 62, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Anderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

*Jorge A. Barra-Del Valle*

Mr. Barra-Del Valle, 60, has had ITDM since 1987. His endocrinologist examined him in 2017 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. Barra-Del Valle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barra-Del Valle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Utah.

*Jeffery L. Bennett*

Mr. Bennett, 60, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Bennett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*William T. Bookamer, Jr.*

Mr. Bookamer, 65, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Bookamer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bookamer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Tennessee.

*Ronnie J. Boyd*

Mr. Boyd, 56, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Boyd understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boyd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Tennessee.

*Travis R. Breakiron*

Mr. Breakiron, 22, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Breakiron understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Breakiron meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Corey D. Calvert*

Mr. Calvert, 61, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Calvert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Calvert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*Jon Conley*

Mr. Conley, 46, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Conley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Kiva J. Coppage*

Ms. Coppage, 26, has had ITDM since 2014. Her endocrinologist examined her in 2017 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. Coppage understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Coppage meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class C CDL from Missouri.

*Peter F. Cox*

Mr. Cox, 52, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Cox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Kerry P. Daniels*

Mr. Daniels, 70, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Daniels understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daniels meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

*Joshua M. Dekker*

Mr. Dekker, 27, has had ITDM since 2001. His endocrinologist examined him in 2017 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. Dekker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dekker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

*Miguel A. Disla*

Mr. Disla, 35, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Disla understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Disla meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Jon R. Easterla*

Mr. Easterla, 22, has had ITDM since 2005. His endocrinologist examined him in 2017 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. Easterla understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Easterla meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

*Andrew M. Erickson*

Mr. Erickson, 21, has had ITDM since 2003. His endocrinologist examined him in 2017 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. Erickson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Erickson meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wyoming.

*Martie L. Eubanks*

Mr. Eubanks, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Eubanks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eubanks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Dwight G. Farnworth*

Mr. Farnworth, 61, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Farnworth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Farnworth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Idaho.

*John A. Gott*

Mr. Gott, 34, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Gott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Maryland.

*Ian C. Hall*

Mr. Hall, 41, has had ITDM since 1985. His endocrinologist examined him in 2017 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. Hall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Michigan.

*Carl L. Harville, Jr.*

Mr. Harville, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Harville understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harville meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Terry L. Helderman*

Mr. Helderman, 55, has had ITDM since 2008. His endocrinologist examined him in 2017 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. Helderman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Helderman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

*James M. Hershey*

Mr. Hershey, 64, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Hershey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hershey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Glee D. Jacobs*

Ms. Jacobs, 58, has had ITDM since 2012. Her endocrinologist examined her in 2017 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. Jacobs understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Jacobs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Kansas.

*Thomas V. Johnson*

Mr. Johnson, 28, has had ITDM since 1993. His endocrinologist examined him in 2017 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 ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Indiana.

*Deavan T. Jones*

Mr. Jones, 21, has had ITDM since 1997. His endocrinologist examined him in 2017 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. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

*Bryant C. Kongsted*

Mr. Kongsted, 61, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Kongsted understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kongsted meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Maryland.

*Sandra K. Kostka*

Ms. Kostka, 46, has had ITDM since 2013. Her endocrinologist examined her in 2017 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. Kostka understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Kostka meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from Minnesota.

*Geoffrey A. Kusman*

Mr. Kusman, 58, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Kusman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kusman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Chadwick L. Lekwa*

Mr. Lekwa, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Lekwa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lekwa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

*Craig W. Lockwood*

Mr. Lockwood, 56, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Lockwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lockwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Joseph A. Malone*

Mr. Malone, 55, has had ITDM since 1997. His endocrinologist examined him in 2017 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. Malone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Malone meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Chance P. Masterson*

Mr. Masterson, 50, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Masterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Masterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oregon.

*Harold W. Meade*

Mr. Meade, 66, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Meade understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Korey E. Molina*

Mr. Molina, 24, has had ITDM since 2006. His endocrinologist examined him in 2017 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. Molina understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Molina meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Steven G. Ojala*

Mr. Ojala, 25, has had ITDM since 2001. His endocrinologist examined him in 2017 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. Ojala understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ojala meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

*Kathy L. Pospichal*

Ms. Pospichal, 47, has had ITDM since 2013. Her endocrinologist examined her in 2017 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. Pospichal understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Pospichal meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Wisconsin.

*Robert S. Reyes*

Mr. Reyes, 41, has had ITDM since 1976. His endocrinologist examined him in 2017 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. Reyes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reyes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Robert D. Risk*

Mr. Risk, 43, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Risk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Risk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

*David L. Robson*

Mr. Robson, 69, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Robson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Todd D. Rue*

Mr. Rue, 55, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Rue understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rue meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a CDL from Minnesota.

*Luis A. Saavedra*

Mr. Saavedra, 58, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Saavedra understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saavedra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

*Timothy S. Smith*

Mr. Smith, 57, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Michael E. Smyth*

Mr. Smyth, 64, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Smyth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smyth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Idaho.

*Dennis N. Spake*

Mr. Spake, 50, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Spake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Vincent F. Stafford*

Mr. Stafford, 53, has had ITDM since 1996. His endocrinologist examined him in 2017 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. Stafford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stafford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

*Frederick W. Stevens*

Mr. Stevens, 56, has had ITDM since 2001. His endocrinologist examined him in 2017 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. Stevens understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stevens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

*Jason E. Stocker*

Mr. Stocker, 45, has had ITDM since 2000. His endocrinologist examined him in 2017 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. Stocker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stocker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Vermont.

*Thomas L. Tallon*

Mr. Tallon, 59, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Tallon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tallon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Michael L. Vanalstine*

Mr. Vanalstine, 61, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Vanalstine understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vanalstine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Ralph O. Weathers*

Mr. Weathers, 45, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Weathers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weathers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

**III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

**IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0290 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

**V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0290 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03059 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2017–0234]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 27 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on November 14, 2017. The exemptions expire on November 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**II. Background**

On October 11, 2017, FMCSA published a notice announcing receipt of applications from 27 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 47301). The public comment period ended on November 13, 2017, and five comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

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.

**III. Discussion of Comments**

FMCSA received five comments in this proceeding from Ms. Marisol Aguilar. These comments are outside of the scope of the notice.

**IV. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and

discussed in detail in the October 11, 2017 **Federal Register** notice (82 FR 47301) and will not be repeated in this notice.

These 27 applicants have had ITDM over a range of one to 63 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10). Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 27 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

James J. Aden (MN)
Serafim S. Amaral (CA)
John E. Biel (PA)
Adam D. Comer (AR)
Timothy P. Conner (VA)
Miguel P. Flores (WA)
Mark J. Fulks (IA)
Daniel Gonzalez, III (TX)
Chad A. Hayden (IN)
Joseph F. Hubenka (NE)
Galen M. Hurd, III (SC)
Edward S. Jacobs (MI)
Jason D. Jones (OK)
David M. Kelly (MD)
Robert A. Leboffe (PA)
Tanner H. Littlefield (RI)
Veneta K. Mayor (NV)
Randy J. Nekuda (NE)
Thomas M. Reece (NC)
Michael L. Rivera (NY)
Gary L. Robbins (OR)
Eddie Rodriguez, Jr. (TX)
Erwin R. Rud (MN)
Diane L. Simmons (ID)
Russell Van Alphen (MA)
Thomas C. Williams (KS)
Glen E. Wray, Jr. (PA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03031 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2009–0290; FMCSA–2009–0289; FMCSA–2011–0300; FMCSA–2013–0190; FMCSA–2013–0191; FMCSA–2015–0338; FMCSA–2015–0339; FMCSA–2015–0340]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 186 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2009–0290; FMCSA–2009–0289; FMCSA–2011–0300; FMCSA–2013–0190; FMCSA–2013–0191; FMCSA–2015–0338; FMCSA–2015–0339; FMCSA–2015–0340 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., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

## I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption 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 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 186 individuals listed in this notice have requested renewal of their exemptions from the diabetes standard in 49 CFR 391.41(b)(3), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

## II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 186 applicants has satisfied the renewal conditions for obtaining an exemption from the diabetes requirement (74 FR 55890; 74 FR 65836; 75 FR 1449; 75 FR 4622; 76 FR 71112; 77 FR 532; 78 FR 65034; 78 FR 68139; 79 FR 3917; 79 FR 4807; 80 FR 77408; 80 FR 79402; 80 FR 81415; 80 FR 81667). They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of January and are discussed below:

As of January 5, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 71112; 77 FR 532; 80 FR 81667):

Mark A. Aspden (MA)
Rodney C. Backus (NY)
Gary L. Breitenbach (SC)
Gerald R. Curran (PA)
Matthew G. Denisov (NC)
Steven W. Gerling (IA)
Jackie D. Greenlee (MO)
Gregory L. Horton (GA)
Justin W. Jackson (OK)
David T. Kylander (MO)
Kevin A. Perdue (MD)
Michael E. Pleak (IN)
Christopher C. Stephenson (KS)
Todd J. Timmerman (WI)
Richard L. White (MS)
Paul A. Wright (NY)

The drivers were included in docket number FMCSA–2011–0300. Their exemptions are applicable as of January 5, 2018, and will expire on January 5, 2020.

As of January 11, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (74 FR 55890; 75 FR 1449; 80 FR 81667):

Eric M. Butz (OH)
Rita A. Cefaratti (CT)
Gerald F. Crowley (NY)
Scott J. Denham (MN)
Larry E. Dickerson (GA)
David E. Ginter (PA)
William H. Goebel (IA)
Joseph L. Gray, III (PA)
Ryan R. Harris (IA)
Carroll J. Hartsell (WV)
Keith M. Huels (AZ)
Daniel R. Jackson (PA)
Curtis W. Keelin, Jr. (WY)
Patrick J. Krueger (WI)
Tammy Lynn F. Manuel (SC)
Francisco J. Martinez (MA)
Andrew W. Myer (NE)
Chad A. Nelson (UT)
David W. Olson (AZ)
Mark E. Pascoe (WI)
Terry L. Riddell (IN)
Roger L. Summerfield (WI)
Jimmy P. Wright (TX)

The drivers were included in docket number FMCSA–2009–0289. Their exemptions are applicable as of January 11, 2018, and will expire on January 11, 2020.

As of January 14, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 26 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 77408):

Jessie L. Arrant, Jr. (GA)
Joseph M. Benech (RI)
Shane M. Burgard (MN)
Wesley O. Davis (SC)
Steven P. DelPizzo (PA)
Gregory P. Doyle (CO)
Timothy D. Funk (IL)
Diane M. Greenberg (VA)

Brent P. Griswold (NY)
Earl E. Hudson, III (SC)
Gregory A. Huffman (TX)
Robert D. Lair, Jr. (AR)
Mark A. Leman (IL)
Michael S. Massa (PA)
Derek D. Patrick (MI)
Joseph M. Petrucci (NH)
James W. Prather (OH)
Edward O. Prosser (RI)
Dennis L. Ruff (WA)
William J. Shrader (CA)
Ronald L. Smith (KS)
Wayne D. Smith (VT)
Carnnell A. Taite (MI)
Robert S. Townsend (NH)
Zachary C. Warrick (NE)
Zachary C. White (CA)

The drivers were included in docket number FMCSA–2015–0338. Their exemptions are applicable as of January 14, 2018, and will expire on January 14, 2020.

As of January 21, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 35 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 79402):

Randall S. Blight (MI)
George S. Callahan (IN)
Myron D. Collins (CO)
Paul E. Costello (NE)
Pete J. Dewitt (CA)
Frank A. Earullo (IL)
Isadios P. Harris (NJ)
David A. Heine (ND)
Logan L. Jackson (CA)
Elie Jean (NJ)
Dean L. Jerpseth (MN)
Terrence P. Lescamela (MI)
Russell D. Logan (NC)
Tommaso Maccarrone (NJ)
Raymond Mendez (NY)
Anthony J. Miller (PA)
Marlin D. Milliken (PA)
Charles A. Mims (AL)
Gustavo A. Mojica (FL)
Timmothy S. Pederson (SD)
Carlos J. Perez-Beltran (PA)
Seth A. Piel (WI)
Carlos M. Pinto, (NY)
Peter C. Poungded (CA)
Michael D. Prestby (IA)
Wilson Rosado (IN)
Jason G. Ross (CA)
Sandra J. Sexton (IL)
Jacob A. Small (NJ)
Dale L. Vaughan (MO)
Tyler J. Vogt (IL)
Christoph Wagner (NJ)
Russell J. Welke (WI)
Donald L. Westbrook (PA)
David M. Wike (NC)

The drivers were included in docket number FMCSA–2015–0339. Their exemptions are applicable as of January 21, 2018, and will expire on January 21, 2020.

As of January 23, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 65034; 79 FR 3917; 80 FR 81667):

Clair H. Gilmore (WA)
Michael Kollos (MN)
Daniel T. Lindahl (WI)
James F. McSweeney (NH)
Eric W. Miller (IN)
William J. Rodgers (PA)
Mark A. Rosenau (MN)
Daniel B. Shaw (FL)
John C. Thomas (IN)
Richard Wasko (FL)
Douglas E. Wilhoit (PA)
Richard A. Wilk (OH)

The drivers were included in docket number FMCSA–2015–0338. Their exemptions are applicable as of January 23, 2018, and will expire on January 23, 2020.

As of January 28, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 21 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (74 FR 65836; 75 FR 4622; 80 FR 81667):

Bob A. Bauer (WI)
Michael P. Berger (ND)
William D. Blosch (GA)
Victor M. Brunner (WI)
Tom L. Cooley (KS)
Robert G. Dohman, Jr. (ND)
Danny E. Edmonson (GA)
Andrew C. Everett (AZ)
Donald W. Hansen (ND)
Joseph S. Hernandez (NM)
Jordan T. Johnston (IN)
Jere W. Kirkpatrick (OH)
Kyle A. Leach (NE)
Robert J. Lewis, Jr. (VT)
Stacy R. Oberholzer (PA)
Michael S. Ogle (GA)
Walter L. Patrick (TN)
Richard A. Piercefield, Sr. (MI)
Kevin A. Roginski (PA)
Bruce M. Stockton (MO)
Todd R. Vickers (MD)

The drivers were included in docket number FMCSA–2009–0290. Their exemptions are applicable as of January 28, 2018, and will expire on January 28, 2020.

As of January 29, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 53 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 68139; 79 FR 4807; 80 FR 81415; 80 FR 81667):

Elmer W. Barrall (DE)
Earl Bland (MO)
Kevin Bracken (PA)
Donald L. Callahan (KY)
Robert A. Collins (NJ)
Michael A. Craig (NC)
Roderick E. Dean (NJ)
Edward C. DeFrancesco (CT)
Eugene N. Dirl (PA)
Kevin F. Dykes (MA)
Jonathan Eggers (MN)
Richard L. Engle (KY)
Christopher J. Frank (NY)
Matthew E. Fry (KS)
Gilbert N. Fugate (IN)
Scott C. Garbiel (ME)
Al Glover, Jr. (LA)
Jimmy H. Goacher (NC)
Jim B. Gonzalez (OR)
William F. Hamann (KY)
Nathaniel K. Hamilton (TX)
Michael D. Henry (OH)
Jon C. Hicks (PA)
Kevin F. Hoffman (PA)
Jerry A. Huffman (NC)
Daurell A. Jones (MD)
Jerry J. Klosterman (OH)
Joseph E. Kolb (NY)
Larry C. Krueger (NE)
Chad M. Kuck (AK)
Craig A. Lemponen (OH)
Donald R. Leonard Jr. (NH)
Matthew P. Ludwig (NY)
Keith B. Masters (NH)
Sandra R. Moultrie (GA)
Jeffrey A. Olson (IA)
Howard L. Peacock (KS)
Chauncey W. Pittman (IN)
Brandon C. Rhinehart (MD)
James E. Richardson (NY)
Gerald C. Rosencrans (PA)
Henry J. Russo (NJ)
Richard G. Schumann (NJ)
Donald R. Sine, Jr. (WV)
Jefferson L. Smith (MA)
Troy T. Sunnarborg (MN)
Dennis E. Taunton (ID)
Phillip A. Trent (VA)
Deborah D. Watson (MI)
Ronnie C. Webb (MT)
William R. White (MI)
Curtis L. Worsfold (NE)
Jason D. Zagorski (NC)

The drivers were included in docket numbers FMCSA–2013–0191; FMCSA–2015–0340. Their exemptions are applicable as of January 29, 2018, and will expire on January 29, 2020.

**IV. Conditions and Requirements**

The exemptions are extended subject to the following conditions: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an

annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must submit an annual ophthalmologist's or optometrist's report; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**V. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VI. Conclusion**

Based upon its evaluation of the 186 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03047 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0021]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny applications from 97 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**II. Background**

FMCSA received applications from 97 individuals who requested an exemption from the FMCSRs prohibiting persons with ITDM from operating a CMV in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(3).

**III. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

**IV. Conclusion**

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(3). Therefore, the 97 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(3).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 12 applicants met the diabetes requirements of 49 CFR 391.41(b)(3) and do not need an exemption:

Jerome E. Bembry (FL)
Scott J. Blair (MI)
Bryan D. Cash (MI)
John C. Czar (PA)
James P. Despirito (PA)
Lawrence Jackson (MO)
Curtis L. Jones (NY)
Wesley A. McLaughlin (PA)
Francisco Paz (TX)
Keith R. Smith (MN)
Eloy O. Valdez (CA)
Matthew Windle (GA)

The following 55 applicants were not operating CMVs in interstate commerce:

Warren E. Akiona (WA)
Mohammed B. Alnounou (MI)
Robert F. Aubert (IA)
David G. Barclay (PA)
Roy E. Barticciotto (NY)
Lucrecia Bethea (NJ)
Michael A. Bogardus (NY)
Vincent F. Brewer (MI)

Christopher W. Brown (FL)
Rodney W. Buxkemper (TX)
Douglas R. Christian (GA)
Marie A. Clark (MA)
Daniel G. Close (AL)
Timothy P. Deignan (MA)
Roy D. Draughon (OH)
Saul Garcia (CA)
John A. Gott (MD)
Paul T. Haegele (ND)
David A. Heard (SD)
Marvin M. Heatherly (TN)
Justin M. Herb (IN)
Daniel T. Hernandez (TX)
Terry D. Higdon (TN)
Donald F. Higgins (IN)
Steven W. Hobbs (GA)
Demarco L. Johnson (GA)
Howard Jones (NY)
Hoyt M. Jordan (IA)
David E. Logan (OR)
Aner A. Maldonado (IL)
Robert R. Martinez (CA)
Daniel P. McCartney (IL)
James A. McFail (DC)
Richard A. Miller (PA)
Domenic Moffo (CT)
James P. Moran (WV)
James L. Morgan, Jr. (NC)
Steven E. Novitski (WI)
Mark A. Nowakowski (WA)
Michael A. Ragan (MD)
Timothy E. Reilly (CT)
Michael L. Roberts (IA)
Jesus P. Sanchez (AZ)
Rafael Santiago (FL)
Dewey D. Shawver (WA)
Kenneth J. Sortman (OH)
Wendell A. Sowards (OH)
Edward R. Sutton (CA)
Austin M. Thies (IA)
Hughes Tranquille (NY)
Robert E. Trumbull (OH)
Ronald L. Weaver (PA)
Walter S. Whitehorn (AK)
Bruce A. Willard (NH)
Ricky D. Yates (GA)

The following two applicants have had more than one hypoglycemic episode requiring hospitalization or the assistance of others, or has had one such episode but has not had one year of stability following the episode: Steven G. Donovan, (MO); Dagmar E. Kark, (WA).

The following four applicants had other medical conditions making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations:

Carl Bouie (MD)
Kenneth D. Ettinger (PA)
Leonard W. Narragon (TX)
Roger G. Rousseau (WA)

The following three applicants did not have endocrinologists willing to make statements that they are able to operate CMVs from a diabetes standpoint: Mohd Issa R.A. El Muhtaseb, (IL); Eleazar Pina, (IL); Robert B. Puckett, (IL).

The following two applicants have peripheral neuropathy or circulatory insufficiency of the extremities likely to interfere with the ability to operate a CMV: Flavio Pereira, (MA); Charlie T. Melson, (GA).

The following applicant does not meet the minimum age criteria outlined in 49 CFR 391.41(b)(1) which states that an individual must be at least 21 years old to operate a CMV in interstate commerce: Michael J. Sabarese, (NJ).

The following 18 applicants were exempt from the diabetes standard:

Troy L. Bunch (NC)
Shawn M. Cody (IN)
Rodger L. Davis (VA)
Stuart A. Desautel (WA)
Gary D. Detwiler (CA)
Gary M. Fuller (IN)
Herman Harris (SC)
Kenneth L. Johnson (FL)
Paul Key (IL)
Leodon L. Killinger (ME)
James C. Lewis (LA)
Mario M. Moreno (CA)
Robert C. Newell (KY)
Pedro Pagan (NY)
Horace G. Perry (TX)
Domingo D. Rangel (TX)
Dale Z. Stephens (PA)
David D. Trupia (NY)

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03030 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0254]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0254 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. 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 six individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). 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 epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8),* paragraphs 3, 4, and 5.]

The advisory criteria states the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Before certification is considered, it is suggested that a six-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a five-year period or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders, (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (MEP) (78 FR 3069).

## II. Qualifications of Applicants

*Eriki M. Galloway*

Mr. Galloway, 48, has a history of a seizure disorder and has been seizure free since 1987. He takes anti-seizure medication, with the dosage and frequency remaining the same since 1981. His physician states that he is supportive of Mr. Galloway receiving an exemption.

*Aaron J. Harms*

Mr. Harms, 29, has a history of epilepsy and has been seizure free since 2004. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2004. His physician states that he is supportive of Mr. Harms receiving an exemption.

*Matthew Heinen*

Mr. Heinen, 41, has a history of epilepsy and has been seizure free since 2004. He takes anti-seizure medications, with the dosages and frequencies remaining the same since 2004. His physician states that she is supportive of Mr. Heinen receiving an exemption.

*Grant M. Johnson*

Mr. Johnson, 31, has a history of a seizure disorder and has been seizure free since 1999. He takes anti-seizure medication, with the dosage and frequency remaining the same since 1999. His physician states that he is supportive of Mr. Johnson receiving an exemption.

*Derick Pendergrass*

Mr. Pendergrass, 35, has a history of a seizure disorder and has been seizure free since 2005. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2005. His physician states that he is supportive of Mr. Pendergrass receiving an exemption.

*Paul D. Vitous*

Mr. Vitous, 59, has a history of epilepsy and has been seizure free since 2007. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Vitous receiving an exemption.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

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.

### IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0254 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

### V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0254 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03065 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0167]**

### Parts and Accessories Necessary for Safe Operation, Lamps and Reflective Devices; Application for an Exemption From STEMCO LP

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant STEMCO LP's (STEMCO) application for a limited 5-year exemption to allow motor carriers to operate certain commercial motor vehicles (CMVs) that are equipped with STEMCO's TrailerTail® aerodynamic device with rear identification lamps and rear clearance lamps that are mounted lower than currently permitted by the Agency's regulations. The Federal Motor Carrier Safety Regulations (FMCSRs) require rear identification lamps and rear clearance lamps to be located ''as close as practicable to the top of the vehicle.'' While the TrailerTail® aerodynamic device is currently mounted slightly below the roof of the vehicle, STEMCO states that this offset prevents the device from delivering the maximum available fuel economy benefit as opposed to mounting it flush with the top of the vehicle which may block the visibility of the rear identification lamps and rear clearance lamps. The Agency has determined that locating the rear identification lamps and rear clearance lamps lower on the trailers and semitrailers, mounted at the same level as the stop lamps, tail lamps, and turn signals will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jose Cestero, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–5541; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to 49 CFR part 381, FMCSA has authority to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305(a)).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the terms and conditions of the exemption, as well as its effective period (up to 5 years). The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

### STEMCO Application for Exemption

STEMCO, on behalf of motor carriers utilizing its TrailerTail® aerodynamic devices, applied for an exemption from 49 CFR 393.11 to allow rear identification lamps and rear clearance lamps to be mounted lower than currently permitted by the Agency's regulations.

Table 1 of section 393.11, ''Required lamps and reflectors on commercial motor vehicles,'' specifies the requirements for lamps, reflective devices and associated equipment by the type of CMV. All CMVs manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment,'' in effect at the time of manufacture of the vehicle. Rear identification lamps must be mounted as close as practicable to the top of the vehicle. One lamp must be as close as practicable to the vertical centerline and one on each side of the center lamp with the lamp centers spaced not less than 6 inches or more than 12 inches apart, and all on the same level. One rear clearance lamp must be located on each side of the vertical centerline of the vehicle to indicate overall width, both of which must be on the same level and as high as practicable.

In February 2015, STEMCO purchased ATDynamics and its TrailerTail® product line, a collapsible

boat tail technology that improves the rear aerodynamic shape of CMV trailers. In its application, STEMCO states that motor carriers are evaluating the TrailerTail® rear aerodynamic device to help meet (1) proposed standards from the U.S. Environmental Protection Agency (EPA) and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) that would establish the next phase of greenhouse gas (GHG) emissions and fuel efficiency standards for medium- and heavy duty vehicles,[1] [2] and (2) the California Air Resources Board (CARB) Tractor-Trailer Greenhouse Gas Regulation for dry van and refrigerated van type trailers that has been in effect since 2010.

For newly manufactured trailers, STEMCO states that the TrailerTail® top panel is mounted 1.5–3.5 inches below the roof of the trailer in order to comply with the FMVSS No. 108 and FMCSR mounting location requirements for rear identification and clearance lamps. However, STEMCO states:

This inset creates an unaerodynamic gap as airflow transitions from the trailer roof onto the TrailerTail panels and has prevented TrailerTails from delivering the maximum available fuel economy benefit. Wind tunnel flow visualization highlights the contrast in airflow between flush and inset panels and our own internal testing estimates an additional 0.14 delta $C_DA$ (measured drag area) gain and 70 million gallons of annual diesel fuel savings can be achieved simply by installing TrailerTails flush with the trailer roof. In order to evaluate the actual performance of flush mounted TrailerTail aerodynamic systems on actual fleet based fuel economy, it is necessary to request relief from the location requirements for upper identification lamps and rear clearance lamps on commercial van trailers and box trucks. Additionally, these lower clearance and identification lamp locations will pave the way for the commercial launch of collapsible boat tails for roll door box trailers, where the rear upper header is a critical mounting location of boat tail components.

In support of its application, STEMCO states that ''The relocation of the rear identification lamps and rear clearance lamps to a lower location on the trailer or box truck are equivalent to the current required lamp location on a flatbed trailer or intermodal chassis, so no safety impact is anticipated.'' In addition, according to the application:

STEMCO believes that there will be no safety impact from the relocation of both the rear identification lamps and the rear clearance lamps to a location on an approximate horizontal plane with other rear lamps. NHTSA issued legal interpretations from 1968 until approximately 1999 to trailer manufacturers to allow the lower mounting location for rear identification lamps and rear clearance lamps when there was no ''practicable'' means of installing the lamps ''as close as practicable to the top of the vehicle.'' NHTSA subsequently issued an interpretative rule on April 5, 1999, 64 FR 16358, suggesting that trailer manufacturers could no longer mount lamps at the lower location as narrow lamps were now readily available, and NHTSA would no longer defer to a manufacturer's subjective determination of practicability for locating lamps in the rear upper header location on van trailers and box trucks. However, NHTSA noted in that same Notice that they did not intend to bring enforcement actions based on this interpretive rule immediately. Subsequently, trailer manufacturers continued to manufacture van trailers and box trucks with the rear identification lamps and rear clearance lamps mounted lower on the vehicles on an approximate horizontal plane with the other required lamps.

STEMCO states that without the exemption, it will be unable to verify fleet performance of a higher performance TrailerTail® design that is expected to provide the maximum available fuel economy benefit that may be necessary in order to meet future fuel efficiency requirements.

**Comments**

On June 10, 2016, FMCSA published a notice of the STEMCO application and asked for public comment (81 FR 37662). The Agency received comments from the American Trucking Associations (ATA), the Transportation Safety Equipment Institute (TSEI), and Wabash National Corporation (Wabash).

ATA supported STEMCO's application, stating:

Efficiency-improving technologies include tractor aerodynamics, fuel-efficient tires, idle reduction equipment, speed governors, use of lighter weight equipment and aerodynamic trailer skirts and tails. ATA supports efforts to improve fuel efficiency and actions to improve coordination between federal agencies to advance fuel efficiency in the trucking industry . . .

According to the U.S. Environmental Protection Agency's SmartWay program trailer tails can improve heavy truck fuel efficiency by five percent. STEMCO's wind tunnel testing suggests that an additional 0.14 percent improvement can be achieved if its trailer tail is mounted flush with the top of the trailer. In order to verify this finding, STEMCO should be allowed to test the device in an actual on-road environment with a fleet of heavy trucks.

As FMCSA is aware, there are many trailer types throughout the motor carrier industry. Some trailers, like flatbeds and intermodal chassis, are required to have lighting systems on the rear frame of the trailer to comply with FMVSS 108 and 49 CFR 393.11. And, since these trailer types have no upper frame or doors at the rear of the trailer, it is not possible for them to have marker or identification lamps similar to those required on van trailers. Unless the FMCSA has research and data showing the marker and identification lights on a van trailer improve safety over and above the light configuration on flatbed trailers and/or intermodal chassis, etc., the agency should grant the exemption for evaluation purposes.

TSEI and Wabash both expressed concerns that allowing the identification and clearance lamps to be mounted lower than currently required, on the same horizontal plane with the stop, turn, and tail lamps, may not maintain a level of safety that is equivalent to or greater than the level of safety without the exemption because other motorists might not be able to adequately distinguish large trucks and trailers from other passenger other vehicles. TSEI stated:

STEMCO's application does not appear to take into account the important role signal lighting plays in vehicle conspicuity. The signal lighting on heavy duty vehicles does more than provide ''intention'' (*e.g.,* stop or turn) signals; it also provides conspicuity (*e.g.,* conspicuity triangle created between the identification lamp cluster and the stop/tail/turn lamps. The Agency should be cautious about infringing upon the longstanding relationship between the signal and conspicuity aspects of heavy duty lighting in the absence of supporting data concerning the effects on trailer conspicuity.

TSEI acknowledges that many vehicles utilize low mounting positions due to the construction of the vehicle. Presumably, the practicability language in FMCSR and FMVSS accounts for differences in mounting positions. As NHTSA has explained, ''[s]ince the various types of trailers differ from one another in their configuration, NHTSA believes that the method of compliance that may be appropriate for one type may not be for another. For example, van-type trailers have distinct rectangular side and rear perimeters to which conspicuity enhancing materials could be easily applied, while tank-type, platform trailers, or others do not.'' 56 FR 63475 (Dec. 4, 1991) (Notice of proposed rulemaking regarding increasing conspicuity of trailers which have an overall width of 80 inches or more to enhance the likelihood of

[1] On October 25, 2016, EPA and NHTSA jointly published a final rule establishing rules for a comprehensive Phase 2 Heavy-Duty (HD) National Program that will reduce greenhouse gas (GHG) emissions and fuel consumption from new on-road medium- and heavy-duty vehicles and engines, helping to address the challenges of global climate change and energy security (81 FR 73478). NHTSA's fuel consumption standards and EPA's carbon dioxide ($CO_2$) emission standards are tailored to each of four regulatory categories of heavy-duty vehicles: Combination tractors; trailers used in combination with those tractors; heavy-duty pickup trucks and vans; and vocational vehicles. The rule also includes separate standards for the engines that power combination tractors and vocational vehicles.

[2] In response to letters submitted by the Truck Trailer Manufacturers Association seeking reconsideration of the October 2016 final rule, both EPA and NHTSA decided on August 17, 2017 to conduct additional rulemaking on the issues of GHG emissions and fuel efficiency standards for medium- and heavy-duty vehicles.

their detection at night and conditions of reduced visibility).

But acknowledging these differences does not demonstrate that lowering the mounting position to accommodate an aerodynamic device would not adversely affect safety. Because STEMCO has not provided any data on the safety impact of lowering the height of rear identification lamps and rear clearance lamps, STEMCO has not provided a basis for evaluating their statement that the lower placement will not adversely affect safety, particularly with respect to the trailers' conspicuity.

Similarly, Wabash stated:

The ability of motorists to distinguish large trucks and trailers from passenger vehicles is an essential component of crash avoidance because of size, maneuvering, and the speed differences between the two types of vehicles. High mounted identification lamps uniquely identify large trucks and wide trailers and do so with the longest possible sight preview of the lamps. Clearance lamps show the overall width of the vehicle to alert drivers of its large size. NHTSA has already concluded that, if rear identification lamps were lowered, the purpose of uniquely identifying large vehicles with the longest possible sight preview of the lamps would be compromised. As the mounting height of identification lamps is lowered, the time that nearby drivers have to identify the vehicle as a large truck, including drivers not located immediately behind the truck, is reduced and is contrary to the safety objective of the mounting height requirement.

NHTSA's conclusions regarding the safety implications of unnecessarily lowering the mounting height for rear identification lamps and rear clearance lamps are supported by a recent FMCSA sponsored study which observed that, with respect to large vehicles, ''[p]assive crash avoidance can be accomplished by the conspicuity of the vehicle, that is, the extent to which the vehicle is readily perceived by other road users. In terms of the physical and mechanical systems of the vehicle, conspicuity is primarily accomplished through the light system on the vehicle. The light system includes tail and top lamps, marker and identification lamps, as well as the reflective tape systems on trailers.

TSEI noted that if the exemption is granted, vehicle and trailer manufacturers would still be required to comply with the requirements of FMVSS No. 108 (install the identification and clearance lamps as high as practicable), and repair businesses would not be permitted to move the lamps to a lower position because Title 49, U.S. Code 30122(b) of the Motor Vehicle Safety Act ''prohibits a manufacturer, distributor, dealer, or motor vehicle repair business from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable motor vehicle safety standard.'' Because of the above, TSEI expressed concerns that some fleets and small-scale operators my not have the technical expertise to change the positioning of the identification and clearance lamps to a lower position.

TSEI also noted that S6.2.2 of FMVSS No. 108 states ''If any required lamp or reflective device is obstructed by motor vehicle equipment (*e.g.,* mirrors, snow plows, wrecker booms, backhoes, winches, etc.) including dealer installed equipment, and cannot meet the applicable photometry and visibility requirements, the vehicle must be equipped with an additional lamp or device of the same type which meet all applicable requirements of this standard, including photometry and visibility.'' TSEI stated ''STEMCO could equip vehicles with additional lamps or devices that meet FMVSS 108 to accommodate for the lamps that would be obstructed by the aerodynamic device. Such an approach would not require an exemption.''

Wabash stated that it is possible—and practicable—to attach an aerodynamic tail device to the rear top sill of a trailer without blocking rear identification lamps and rear clearance lamps while still meeting the new GHG regulations. Wabash stated:

Wabash's innovative aerodynamic tail devices—which are known as the AeroFin™ and AeroFin™ XL—can be attached to the rear top sill of the trailer without blocking the rear identification lamps and rear clearance lamps. Further, STEMCO's argument that the exemption is needed to meet the current requirements of the California Air Resource Board (CARB) Tractor-trailer Greenhouse Gas regulations and proposed Greenhouse Gas Phase 2 regulations is unpersuasive. By using the AeroFin™ in combination with certain of its trailer aerodynamic technologies, Wabash has achieved improvement of 9% or greater in fuel economy. In addition, the AeroFin™ XL is CARB compliant. Again, technological advancements have made it possible for manufacturers to meet the safety objectives of FMVSS 108 without compromising other performance related considerations.

**FMCSA Analysis**

FMCSA agrees that it is important for motorists to be able to readily distinguish large trucks and trailers from other passenger vehicles. FMVSS No. 108 and section 393.11 of the FMCSRs ensure this by requiring large vehicles to be equipped with a combination of lights, reflectors, and conspicuity treatments that help indicate the overall height, width, and length of these vehicles. Specifically, all CMVs manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of FMVSS No. 108 in effect at the time of manufacture of the vehicle. The purpose of FMVSS No. 108 is to reduce crashes and deaths and injuries from crashes, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. FMVSS No. 108 specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles.

Specifically with respect to clearance lamps and identification lamps, all (1) trucks and buses 80 inches or more in width, (2) semitrailers and full trailers 80 inches or more in width (except converter dollies), and (3) pole trailers must be equipped with:

- Two red clearance lamps, one on each side of the vertical centerline of the vehicle, mounted as high as practicable to indicate the overall width of the vehicle; and
- A group of three red identification lights on the rear of the vehicle, mounted as close as practicable to the top of the vehicle. One lamp is required to be mounted as close as practicable to the vertical centerline of the vehicle, and one on each side with lamp centers spaced not less than 6 inches or more than 12 inches apart.

The grouping of three identification lamps on the top rear of large vehicles is intended to uniquely identify large vehicles with the longest sight preview possible. On February 5, 2003, NHTSA denied a petition for rulemaking from Sierra Products, Inc. (Sierra), which—among other things—requested that NHTSA amend FMVSS No. 108 to require the identification lights to be mounted at eye height on heavy trucks (68 FR 5863). In denying Sierra's petition, NHTSA stated ''As the mounting height of identification lamps is lowered, the time that nearby drivers will have to identify the vehicle, as a heavy truck will lessen. This is contrary to the intent of the requirement. On the other hand, the mounting height of identification lamps has been long established to be 'as high as practicable.' This is to make nearby drivers aware of the vehicle's size. If these lamps were lowered to eye level, approaching drivers *may not be able to distinguish large commercial vehicles from passenger vehicles.*'' [Emphasis added.]

Notwithstanding the above, FMCSA notes that the three identification lamps are not the only means by which drivers

are ''able to distinguish large commercial vehicles from passenger vehicles,'' as stated in NHTSA's denial of the petition from Sierra. While FMCSA agrees that mounting identification lamps ''as high as practicable'' provides approaching motorists maximum time to identify a CMV, and that lowering the mounting location of the identification lamps reduces that time, FMVSS No. 108 (and, by incorporation, section 393.11 of the FMCSRs) also requires the rear of all trailers and semitrailers to be equipped with conspicuity materials (a strip of alternating red and white retroreflective sheeting or reflex reflectors) installed across both:

(1) The full width of the trailer, as close to the extreme edges as practicable, and as close to practicable to not less than 375 mm (14.77 in) and not more than 1525 mm (60.05 in) above the road surface at the centerline with the trailer at curb weight, and

(2) The full width of the horizontal member of the rear underride protection device required by FMVSS No. 224, ''Rear impact protection.'' The horizontal member is required to extend to within 100 mm (4 in) of the side extremity of the vehicle, and be located not more than 560 mm (20.05 in) above the ground at any point.

The presence of these two separate conspicuity treatments on the rear of all trailers and semitrailers, consisting of alternating red and white retroreflective material or reflex reflectors, serves as a clear indication to the motoring public that the vehicle is a large commercial vehicle as opposed to a passenger car. While these conspicuity treatments are not located at or near the very top of the trailer or semitrailer, FMCSA believes that they provide a very distinctive visual pattern on the rear of trailers and semitrailers that easily enables motorists to be aware that they are approaching a large vehicle.[3]

It is important to note that STEMCO is proposing that the required clearance and identification lights be *relocated* lower on vehicles using the aerodynamic devices, and is not simply requesting an exception to the regulation because the required lights are obscured by the device. FMCSA believes that relocating the lamps to a lower position is an acceptable approach and ensures an equivalent level of safety for two separate reasons. First, and as STEMCO notes in its application, FMVSS No. 108 and section 393.11 of the FMCSRs permit the clearance and identification lamps to be mounted lower on flatbed trailers and intermodal chassis simply because there is no other position to mount the lamps due to the vehicle designs. FMCSA does not believe that locating the clearance and identification lamps in the same manner on trailers and semitrailers using STEMCO's aerodynamic devices will pose an unreasonable risk, especially given the conspicuity requirements discussed above. Second, and as noted by TSEI in its comments, S6.2.2 of FMVSS No. 108 directly addresses vehicle designs whereby required lamps or reflective devices are obscured by motor vehicle equipment such as ''mirrors, snow plows, wrecker booms, backhoes, winches,'' which would also include STEMCO's aerodynamic devices. In these instances, S6.2.2 of FMVSS No. 108 requires the vehicle to ''be equipped with an additional lamp or device of the same type which meet all applicable requirements of this standard, including photometry and visibility.'' This is exactly what STEMCO is proposing to do—to install the same clearance and identification lamps, but in a lower position on the vehicle.

Regarding TSEI's concern that some fleets and small-scale operators may not have the technical expertise to change the positioning of the identification and clearance lamps to a lower position, FMCSA notes that it is the responsibility of each motor carrier to ensure that its vehicles fully comply with the FMCSRs at all times (see 49 CFR 393.1(c)), which includes the terms and conditions of this temporary exemption. As such, if a motor carrier chooses to use STEMCO's device, it must ensure that the required lights are properly moved and are fully operational at all times.

FMCSA acknowledges Wabash's comment that it has developed a solution whereby its aerodynamic device can be fitted to a trailer without obscuring the required clearance and identification lights located at the top of the trailer. While Wabash has designed a solution that does not require relief from the current standards, STEMCO has applied for a temporary exemption in order to test an alternative design based on its contention that use of that design will provide an equivalent or greater level of safety than without the exemption. Because of reasons discussed above, FMCSA believes that an equivalent level of safety will be maintained.

While FMVSS No. 108 and section 393.11 of the FMCSRs require the two conspicuity treatments to be installed on the rear of trailers and semitrailers, FMCSA notes that neither of the conspicuity treatments is required to be installed on single unit trucks (box trucks). For this reason, FMCSA believes that it is appropriate to limit the use of STEMCO's aerodynamic device, when mounted at the top of the vehicle and obscuring the clearance and identification lights, to trailers and semitrailers only at this time.

**FMCSA Decision**

FMCSA has evaluated the STEMCO exemption application. For the reasons discussed above, the Agency believes that granting the temporary exemption to allow rear identification lamps and rear clearance lamps to be located lower on trailers and semitrailers, mounted at the same level as the stop lamps, tail lamps, and turn signals, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

**Terms and Conditions for the Exemption**

The Agency hereby grants the exemption for a 5-year period, beginning February 14, 2018 and ending February 14, 2023. During the temporary exemption period, motor carriers will be allowed to mount STEMCO's TrailerTail® aerodynamic device at the top of trailers and semitrailers, provided that the rear clearance and identification lights are mounted at the same level as the stop lamps, tail lamps, and turn signals. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 CFR part 381.

Interested parties possessing information that would demonstrate that motor carriers using trailers or semitrailers with STEMCO's TrailerTail® aerodynamic device are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 CFR part 381, will take immediate steps to revoke the exemption.

**Preemption**

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this

[3] FMCSA also notes that, per STEMCO's product literature, each side component of its aerodynamic device has red and white conspicuity tape applied to the outward face of the device, further enhancing the visibility of the vehicle.

exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: February 8, 2018.

**Cathy F. Gautreaux,**

*Deputy Administrator.*

[FR Doc. 2018–03033 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2009–0294; FMCSA–2011–0326; FMCSA–2011–0327; FMCSA–2011–0367; FMCSA–2013–0192; FMCSA–2015–0340; FMCSA–2015–0341]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 53 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2009–0294; FMCSA–2011–0326; FMCSA–2011–0327; FMCSA–2011–0367; FMCSA–2013–0192; FMCSA–2015–0340; FMCSA–2015–0341 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., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

#### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding 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 53 individuals listed in this notice have requested renewal of their exemptions from the diabetes standard in 49 CFR 391.41(b)(3), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

#### II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

#### III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 53 applicants has satisfied the renewal conditions for obtaining an exemption from the diabetes requirement (74 FR 68092; 75 FR 8182; 76 FR 78720; 76 FR 79756; 77 FR 533; 77 FR 5873; 77 FR 7232; 77 FR 10607; 78 FR 78479; 79 FR 13086; 80 FR 81415; 81 FR 1281; 81 FR 1987; 81 FR 36378; 81 FR 45213). They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in

the month of February and are discussed below:

As of February 1, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 81415; 81 FR 45213): Douglas E. Hensley, (MO); John K. Moorhead, (KY); Hugh S. Wacker, (IL).

The drivers were included in docket number FMCSA–2015–0340. Their exemptions are applicable as of February 1, 2018, and will expire on February 1, 2020.

As of February 6, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 79756; 77 FR 5873; 81 FR 1281):

Howard A. Betz (OH)
Kevin J. Coppens (ME)
Frank H. Ford, Jr. (PA)
Daniel R. Harris (TX)
Joseph L. Owings (AL)
Jerry H. Small (NC)

The drivers were included in docket number FMCSA–2011–0326. Their exemptions are applicable as of February 6, 2018, and will expire on February 6, 2020.

As of February 10, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 78720; 77 FR 7232; 81 FR 1281): Kenneth J. Hill, (OH); Frank E. Ray, (KS).

The drivers were included in docket number FMCSA–2011–0327. Their exemptions are applicable as of February 10, 2018, and will expire on February 10, 2020.

As of February 12, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Guy B. Mayes (WA) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (78 FR 78479; 79 FR 13086; 81 FR 1281).

This driver was included in docket number FMCSA–2013–0192. The exemption is applicable as of February 12, 2018, and will expire on February 12, 2020.

As of February 17, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 26 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (81 FR 1987; 81 FR 36378):

Kevin D. Aaron (PA)
Juan Acevedo (FL)
Eugene O. Carr, Jr. (DE)
Tracy R. Clark (KY)
Jerry L. Coward (NC)
Wesley N. Cubby (NJ)
Michael G. Deschenes (MN)
James C. Detwiler (PA)
Jay E. Diller (PA)
Jose N. Escobar (MD)
Frank J. Gogno (PA)
Michael D. Hashem (MA)
George W. Hauck (LA)
Aseneka K. Igambi (TX)
Hayward G. Jinright (AL)
James S. Kauffman (PA)
Kevin M. Kemp (NJ)
Carlos A. Montano (NY)
Michael J. Payne (MD)
Christopher M. Seals (MS)
Robert Sienkiewicz (MI)
Craig A. Sines (OR)
Joel K. Spencer (AL)
Kendall W. Unruh (MO)
Daniel R. Vilart (WA)
Logan D. Yoder (IN)

The drivers were included in docket number FMCSA–2015–0341. Their exemptions are applicable as of February 17, 2018, and will expire on February 17, 2020.

As of February 22, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 533; 77 FR 10607; 81 FR 1281):

Garry L. Camden (IN)
Loren A. Cox (NY)
Daryl F. Gilbertson (WI)
Alfred Gutierrez, II (OK)
Matthew D. Hulse (KS)
Neil Karvonen (WA)
Earl T. Morton, Jr. (VA)
Richard A. Norstebon (ND)
Donald J. Olbinski (IL)
Kevin E. Risley (IN)

The drivers were included in docket number FMCSA–2011–0367. Their exemptions are applicable as of February 22, 2018, and will expire on February 22, 2020.

As of February 24, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (74 FR 68092; 75 FR 8182; 81 FR 1281):

Daniel C. Druffel (WA)
Gregory J. Godley (WA)
Justin R. Henneinke (CA)
Richard L. Sulzberger (IL)
Dirk Vanstralen (CA)

The drivers were included in docket number FMCSA–2009–0294. Their exemptions are applicable as of February 24, 2018, and will expire on February 24, 2020.

## IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must submit an annual ophthalmologist's or optometrist's report; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VI. Conclusion

Based upon its evaluation of the 53 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03032 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0005]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny applications from 136 individuals who requested an exemption from the vision standard in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a CMV in interstate commerce.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

#### II. Background

FMCSA received applications from 136 individuals who requested an exemption from the vision standard in the FMCSRs.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10).

#### III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater then, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

#### IV. Conclusion

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10). Therefore, the 136 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(10).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 45 had no experience operating a CMV:

Rodney B. Allen (RI)
Cipriano P. Andrada (NJ)
Brandon F. Beck (IL)
Charles Berry (CA)
Tomas C. Bowen (TX)
Jakob T. Boyd (NY)
Kurt T. Buckler (MD)
Devin A. Cooper (MD)
Camden J. Crevier (SD)
Adam J. Crull (WA)
Robert L. Cruz (TX)
Gill Dailey (GA)
Jirrell D. Dawson (IL)
William A. Dickinson (WA)
Rick L. Evans (TX)
Cristofer C. Ford (GA)
Yonas N. Gevrestadic (WA)
Angelo X. Guerrero (IN)
Robert L. Irvin (NM)
Saul E. Juarez (AZ)
Eric S. Kelley (NM)
Steven P. Kemper (NY)
Mark A. Kuhn (ND)
Damian T. Leak (SC)
Billy C. Mosley (NC)
Lance C. Pepper (AL)
James L. Pugh (AL)
Chad Quandelacy (NM)
Michael L. Randazzo (NJ)
Bill D. Redington (MD)
Jabrey M. Scott (MO)
Rachael Shoriwa (MO)
Justice C. Small (IL)
Noah M. Taylor (IL)
Derrick B. Thompson (AR)
Antonio D. Turner (MS)
Curt D. Vernon (MO)
Kristina M. Walters (PA)
Briana R. Wells (MS)
Bryon C. Westrup (SD)
Daniel J. Wilcox (WA)
Tony Wilkerson (NC)
Billy J. Williams (SC)
John P. Young (VA)
John J. Zalusky (TX)

The following 18 applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

Donald F. Arteaga, III (CA)
Melton L. Brackens (TX)
Brian Escobedo (IL)
Walter L. Hill (OK)
Chelsie L. Knight (MI)
Robert A. Lacavich (MO)
Anthony A. Medina (NM)
Russell R. Michel (TX)
Scott R. Mogged (IL)
Sidney N. Nyberg (MN)
Ronald J. Schmidt (MN)
Harry M. Shaw (PA)
Willis D. Smith (AR)
Randy L. Statler (MO)
Shane C. Stine (WA)
Tristen M. Trujillo (WY)
James A. Walker (AR)
Gregory L. Wishmeyer (IA)

The following 13 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Kevin D. Archibald (IL)
Leroy Bennett (GA)
Michael A. Cassella (NJ)
Steven Edwards (NM)
Issac L. Flowers (AL)
James J. Fourcher (UT)
Patricia J. Martin (OR)
Kim A. Pitts (IN)
Philip L. Segrave (NC)
Sherwood W. Swick (ID)
Delano H. Welch (NJ)

Richard W. Winters (CA)
Steven G. Wiskes (WI)

The following five applicants did not have sufficient driving experience during the past three years under normal highway operating conditions (gaps in driving record):

Hope A. Bennett (PA)
Jeffrey T. Molosz (IL)
Charles J. Pukis (IN)
Gustavo Quintero (NJ)
Pedro T. Tellez Alvarez (CA)

The following 16 applicants were denied for multiple reasons:

Rickey J. Adams (GA)
James W. Boyde (AL)
David S. Brown (PA)
Gary R. Cowie (MI)
Juliana M. Davis (CA)
Luis Duval (NJ)
Joel E. Fevold (IA)
Kevin E. Hickerson (CA)
Johnny M. Kruprzak (OH)
Walter H. Matthews (VA)
Rory S. Milam (WV)
Gregory T. Rappe (IN)
Robert E. Schmidt (CO)
Oscar A. Sosa (CA)
Al D. Swiney (LA)
Daniel A. Wilson (IN)

The following three applicants have not had stable vision for the preceding three-year period: Ronald S. Berneking, (MN); Alexander Vaughn, (FL); Brandon L. Younkin, (WY).

The following 14 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Teodula Alba (TX)
Dexter M. Byrd (AL)
Richard H. Harnden (NH)
Yahan C. Hernandez-Ramirez (NM)
Robert E. Hill (WA)
Tami J. Jackson (WA)
Charles W. Kelly (AR)
Lee A. Litton (IN)
Terence E. Michel (CO)
Peter A. Novak (ND)
Raimer A. Paredes-Escano (NJ)
Daniel J. Wallace (NM)
Alex J. Wittman (PA)
Timothy K. Wood (CA)

The following applicant drove interstate while restricted to intrastate driving: William Perez, (TX).

The following 16 applicants will not be driving interstate, interstate commerce, or are not required to carry a DOT medical card:

Marco A. Alvarez (CA)
Herbert G. Banham, III (MD)
Athanasios D. Brotsis (GA)
Amanda J. Darling (IL)
William E. Dennison, V (IN)
David E. Dickinson (CA)
Rick English (OH)
Floyd T. Hall (AK)
Jeffery H. Hopper (IN)
James M. Lewis (GA)
Christopher J. Neville (ME)
Michael R. O'Connor (NC)
Azusa Okajima (HI)
Michael L. Parsons (NY)
Gerardp Reyes Hernandez (CA)
Edwin J. Rojas (FL)

The following five applicants perform transportation for the Federal government, state, or any political sub-division of the state:

Fabio E. Cordero (GA)
Dennis S. Morgan (AZ)
Norberto Santiago (CT)
Gerald L. Wheeler (FL)
Michael Wideman (IL)

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03054 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0289]**

### 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 26 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 March 16, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0289 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.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day ET, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**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. 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 26 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. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

## II. Qualifications of Applicants

*David V. Bartel*

Mr. Bartel, 47, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Bartel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bartel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Michael Brady*

Mr. Brady, 67, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Brady understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brady meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

*Junior K. Brewer*

Mr. Brewer, 67, has had ITDM since 2011. His endocrinologist examined him in 2017 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. Brewer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brewer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

*Marvin D. Buitt*

Mr. Buitt, 45, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Buitt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Buitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

*Larry E. Burchett*

Mr. Burchett, 69, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Burchett understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burchett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

*Pasquale Cala*

Mr. Cala, 41, has had ITDM since 2000. His endocrinologist examined him in 2017 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. Cala understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cala meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Byron D. Christian*

Mr. Christian, 61, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Christian understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Christian meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Louisiana.

*Bryon D. Cowell*

Mr. Cowell, 50, has had ITDM since 2011. His endocrinologist examined him in 2017 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. Cowell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cowell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

*Walter B. Cromwell, 3rd*

Mr. Cromwell, 49, has had ITDM since 2000. His endocrinologist examined him in 2017 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. Cromwell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cromwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Eric C. Delio*

Mr. Delio, 46, has had ITDM since 2005. His endocrinologist examined him in 2017 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. Delio understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Delio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Wade A. Demarais*

Mr. Demarais, 42, has had ITDM since 2000. His endocrinologist examined him in 2017 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. Demarais understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Demarais meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

*Gary D. Detwiler*

Mr. Detwiler, 28, has had ITDM since 2014. His endocrinologist examined him in 2017 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. Detwiler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Detwiler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Willis L. Drake, Jr.*

Mr. Drake, 57, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Drake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Drake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maryland.

*Doyle J. Dreisow*

Mr. Dreisow, 53, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Dreisow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dreisow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Anthony Episcopo*

Mr. Episcopo, 46, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Episcopo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Episcopo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

*Herve H. Estime*

Mr. Estime, 43, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Estime understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Estime meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

*Gregory A. Gruber*

Mr. Gruber, 64, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Gruber understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gruber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

*Clifford J. Hughes*

Mr. Hughes, 64, has had ITDM since 2012. His endocrinologist examined him in 2017 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. Hughes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hughes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Brian J. Lanzim*

Mr. Lanzim, 28, has had ITDM since 2015. His endocrinologist examined him in 2017 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. Lanzim understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lanzim meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Michael E. Luttrell*

Mr. Luttrell, 53, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Luttrell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Luttrell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

*William R. Mizell*

Mr. Mizell, 62, has had ITDM since 2008. His endocrinologist examined him in 2017 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. Mizell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mizell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Arkansas.

*Frank E. Myers, Jr.*

Mr. Myers, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 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. Myers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Myers meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Oklahoma.

*John W. Olenczak*

Mr. Olenczak, 75, has had ITDM since 2016. His endocrinologist examined him in 2017 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. Olenczak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olenczak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Michael A. Randazzo*

Mr. Randazzo, 28, has had ITDM since 2013. His endocrinologist examined him in 2017 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. Randazzo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Randazzo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Jonathan M. Trussell*

Mr. Trussell, 30, has had ITDM since 2010. His endocrinologist examined him in 2017 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. Trussell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trussell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Raymond L. Underwood, Jr.*

Mr. Underwood, 64, has had ITDM since 2006. His endocrinologist examined him in 2017 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. Underwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Underwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Connecticut.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0289 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

## V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0289 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–03068 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2013–0107; FMCSA–2014–0381; FMCSA–2015–0116]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on November 6, 2017. The exemptions expire on November 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA,

Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**II. Background**

On December 13, 2017, FMCSA published a notice announcing its decision to renew exemptions for six individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (82 FR 58681). The public comment period ended on January 12, 2018 and one comment was received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

**III. Discussion of Comments**

FMCSA received one comment in this proceeding. The author wrote that exemptions to driving qualification tests should not be granted and that drivers should prove their ability to drive despite medical conditions. FMCSA interprets this comment as referring to necessity of drivers being required to demonstrate their ability to safely operate a commercial motor vehicle despite not meeting the physical qualification standards. The Agency only issues exemptions if the driver is likely to achieve a level of highway safety that is equivalent to, or granter than, the level if none were granted. Additionally, interstate commercial motor vehicle drivers who are granted medical exemptions must undergo the same driver qualification process as other interstate commercial motor vehicle operators.

**IV. Conclusion**

Based upon its evaluation of the six renewal exemption applications and the comment received, FMCSA announces its' decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41 (b)(8):

As of November 6, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers. (82 FR 58681):
Christopher Bird, (OH)
Ronald Bohr, (IA)
Michael Breitbach, (IA)
William H. Brown, (NC)
Joseph D'Angelo, (NY)
Stephen Stawinsky, (PA)

The drivers were included in docket number FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2013–0107; FMCSA–2014–0381; FMCSA–2015–0116. Their exemptions are applicable as of November 6, 2017, and will expire on November 6, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 7, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy .*

[FR Doc. 2018–03058 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2017–2014]**

### Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 20, 2017 (82 FR 48891). Two comments were received. The content of neither comment related to the proposed data collection.

**DATES:** Comments must be submitted on or before March 16, 2018.

**ADDRESSES:** Send comments, within 30 days, regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie Flaherty, Coordinator, National 911 Program, Office of Emergency Medical Services (NPD–400), National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W44–322, Washington, DC 20590. Ms. Flaherty's phone number is 202–366–2705 and her email address is *Laurie.Flaherty@dot.gov.* Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:**

*Title:* National 911 Profile Database.

*OMB Control Number:* 2127–0679.

*Type of Request:* Renewal/New of an information collection.

*Abstract:* The National 911 Profile Database is funded by the National 911 Program, which is housed within the Office of Emergency Medical Services at the National Highway Traffic Safety Administration, part of the U.S. Department of Transportation. The National 911 Program is proposing to continue to collect and aggregate information from State level reporting entities that can be used to measure the progress of 911 authorities across the country in upgrading their existing operations—and migrating to—digital, internet-Protocol-based emergency communication networks. The data will be maintained in a ''National 911 Profile Database.''

One of the objectives of the National 911 Program is to develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of 911 services and to support 911 Public Safety Answering Points (PSAPs) and related State and local agencies for 911 deployment and operations. The National 911 Profile Database can be used to follow the progress of 911 authorities in enhancing their existing systems and implementing next-generation networks for more advanced systems. The information can also be used to identify ways in which the National 911 Program can support State and local 911 authorities in the transition process.

*Affected Public:* Under this proposed effort, the National 911 Program would specifically request reporting entities to voluntarily collect and annually report the data described above utilizing a Web-based data collection tool. Reporting entities are State-level 911 program officials, and the data reported will reflect State-level aggregated data.

*Estimated Number of Respondents:* The total maximum number of respondents is identified as 56, including the 50 States and the six U.S. Territories of Guam, U.S. Minor Outlying Islands, American Samoa, Mariana Islands, U.S. Virgin Islands, and Puerto Rico.

*Frequency:* The reporting entities will be requested to submit data annually relating to their State or territory, using the Web-based tool described above.

*Estimated Total Annual Burden Hours:* NHTSA estimates that submitting responses to the questions included in the proposed survey instrument utilizing the Web-based tool would require an average of 98 hours per state to collect, aggregate and submit. Estimating the maximum number of respondents to be 56, this would result in a total burden of 5,488 hours. The respondents would not incur any reporting costs from the information collection beyond the time it takes to gather the information, prepare it for reporting, and then populate the Web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection. The total estimated costs to respondents or record-keepers are based on the following: The total hour burden of the collection of information equaling 5,488 hours. Respondents will be State, territory, and tribal government management personnel. To estimate reasonable staff expenses to respond to this information collection, the Agencies reviewed the Bureau of Labor Statistics (BLS) Occupational Outlook Handbook and determined that the Administrative Services Manager description closely aligns with the positions of recipient staff responsible for completing this request. BLS lists a median salary of $86,100 annually, amounting to $41.40 per hour. There are no capital, start-up, or annual operation and maintenance costs involved in the collection of information. Total cost based on hour's burden equals $227,203.20.

*Public Comments Invited:* You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department and whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on February 9, 2018.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2018–03028 Filed 2–13–18; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Terrorism Risk Insurance Program

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before March 16, 2018 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Departmental Offices (DO)**

*Title:* Terrorism Risk Insurance Program.

*OMB Control Number:* 1505–0257.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* This information collection is made necessary by the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Public Law 114–1, 129 Stat. 3). The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 38,750.

**Authority:** 44 U.S.C. 3501 et seq.

Dated: February 9, 2018.

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2018–03086 Filed 2–13–18; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before March 16, 2018 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Internal Revenue Service (IRS)**

*Title:* Form 1099–C—Cancellation of Debt.

*OMB Control Number:* 1545–1424.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Form 1099–C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.

*Form:* 1099–C.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 1,438,998.

*Title:* TD 8746—Amortizable Bond Premium.

*OMB Control Number:* 1545–1491.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* This regulation addresses the tax treatment of bond premium. The regulation provides that a holder may make an election to amortize bond premium by offsetting interest income with bond premium, and the holder must attach a statement to their tax return providing certain information. The regulation also provides that a taxpayer may receive automatic consent to change its method of accounting for premium provided the taxpayer attaches a statement to its tax return. The information requested is necessary for the IRS to determine whether an issuer or a holder has changed its method of accounting for premium.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 2,500.

*Title:* T.D. 8802—Certain Asset Transfers to a Tax-Exempt Entity.

*OMB Control Number:* 1545–1633.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This document contains previously approved final regulations that implement provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity in a transaction other than a liquidation, and generally require the taxable corporation to recognize gain or loss as if it had sold the assets transferred at fair market value.

*Form:* None.

*Affected Public:* Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 125.

*Title:* REG–209484–87 (TD 8814 final) Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.

*OMB Control Number:* 1545–1643.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This previously approved regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 12,500.

*Title:* T.D. 8861, Private Foundation Disclosure Rules.

*OMB Control Number:* 1545–1655.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This document contains final regulations that amend the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information returns available for public inspection and to comply with requests for copies of those documents.

*Form:* None.

*Affected Public:* Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 32,596.

*Title:* Purchase Price Allocations in Deemed Actual Asset Acquisitions.

*OMB Control Number:* 1545–1658.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* TD 8940 contains previously approved final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. The final regulations affect sellers and buyers of corporate stock that are eligible to elect to treat the transaction as a deemed asset acquisition. The final regulations also affect sellers and buyers of assets that constitute a trade or business.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 25.

*Title:* AJCA Modifications to the Section 6112 Regulations.

*OMB Control Number:* 1545–1686.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Previously Approved, Section 6112, as amended by the American Jobs Creation Act of 2004, Public Law 108–357, 188 Stat. 1418, requires that each material advisor with respect to any reportable transaction shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction and containing other information as the Secretary may, by regulations, require. Under § 301.6112–1(a), material advisors are required to prepare and maintain a list as described in the regulations and are required to furnish the list to the IRS upon written request by the IRS. Revenue Procedure 2008–20 provides guidance relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This revenue procedure allows material advisors to use a form (Form 13976), available on the Internal Revenue Service website for maintaining the itemized statement component of the list under § 6112. See section 301.6112–1(b)(3)(i) of the Procedure and Administration Regulations. The form is not required to be used by a material advisor for that material advisor to comply with the requirements of § 301.6112–1, but is offered as an option for maintaining the list.

*Form:* 13976.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 50,000.

*Title:* Revenue Procedure 2003–84, Optional Election to Make Monthly Sec. 706 Allocations.

*OMB Control Number:* 1545–1768.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This previously approved revenue procedure allows certain partnerships with money market fund partners to make an optional election to close the partnership's books on a monthly basis with respect to the money market fund partners.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 500.

*Title:* Revenue Procedure 2014–55, Election Procedures and Information Reporting with Respect to Interests in Certain Canadian Retirement Plans.

*OMB Control Number:* 1545–1773.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Revenue Procedure 2002–23 provides guidance for the application by U.S. citizens and residents of the U.S.—Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. income taxes on income accrued in certain Canadian retirement plans. This revenue procedure was superseded by Revenue Procedure 2014–55, published in the Internal Revenue Bulletin dated October 27, 2014.

*Form:* None.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 10,000.

*Title:* Notice 2002–27—IRA Required Minimum Distribution Reporting.

*OMB Control Number:* 1545–1779.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This notice provides guidance with respect to the reporting requirements, that is, data that custodians and trustees of IRAs must furnish IRA owners in those instances where there must be a minimum distribution from an individual retirement arrangement.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 1,170,000.

*Title:* Rev Proc 2002–32 as Modified by Rev Proc 2006–21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.

*OMB Control Number:* 1545–1784.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This previously approved Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006–21 modifies Rev. Proc. 89–56, 1989–2 C.B. 643, Rev. Proc. 90–39, 1990–2 C.B. 365, and Rev. Proc. 2002–32, 2002–20 IRB p. 959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 100.

*Title:* Split-Dollar Life Insurance Arrangements.

*OMB Control Number:* 1545–1792.

*Type of Review:* Extension without change of a previously approved collection.

*Abstract:* The previously approved final regulations provide guidance for loans made pursuant to a split-dollar life insurance arrangement. To obtain a particular treatment under the regulations for certain split-dollar loans, the parties to the loan must make a written representation, which must be kept as part of their books and records and a copy filed with their federal income tax returns. In addition, if a split-dollar loan provides for contingent payments, the lender must produce a projected payment schedule for the loan and give the borrower a copy of the schedule. This schedule is used by parties to compute their interest accruals and any imputed transfers for tax purposes.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 32,500.

*Title:* T.D. 9088, Compensatory Stock Options Under Section 482.

*OMB Control Number:* 1545–1794.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* T.D. 9088 contains previously approved final regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements (QCSAs). These regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 2,000.

*Title:* T.D. 9079—Ten or More Employer Plan Compliance Information.

*OMB Control Number:* 1545–1795.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This document contains previously approved final regulations that provide rules regarding the requirements for a welfare benefit fund that is part of a 10 or more employer plan. The regulations affect certain

employers that provide welfare benefits to employees through a plan to which more than one employer contributes.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 2,500.

*Title:* (TD9082) (Final), Revision of Income Tax Regulations under Sections 897, 1445, and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445.

*OMB Control Number:* 1545–1797.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* The previously approved collection of information relates to applications for withholding certificates under Treas. Reg. 1.1445–1 to be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principle residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 600.

*Title:* IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

*OMB Control Number:* 1545–1927.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

*Form:* 8878–A.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 505,400.

*Title:* T.D. 9248—Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes (Final and Temporary).

*OMB Control Number:* 1545–1930.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* T.D. 9248 contains previously approved final regulations that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code (Code).

*Form:* None.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 300,000.

*Title:* TD 9394—Section 1446 Regulations; Form 8804–C—Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

*OMB Control Number:* 1545–1934.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* These previously approved regulations implement withholding regime on partnerships conducting business in the United States that have foreign partners. Such partners are required to pay withholding tax in installments on each foreign partner's allocable share of the partnership's U.S. Business taxable income. Special rules for publicly traded partnerships such that these partnerships pay withholding tax on distributions to foreign partners. Form 8804–C is used by a foreign partner who chooses to provide to a partnership a certification under Regulations section 1.1446–6 to reduce or eliminate the partnership's withholding tax obligation under section 1446 (1446 tax) on the partner's allocable share of effectively connected taxable income (ECTI) from the partnership.

*Form:* 8804–C.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 18,701.

*Title:* Notice 2005–41, Guidance Regarding Qualified Intellectual Property Contributions.

*OMB Control Number:* 1545–1937.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This previously approved notice explains section 170(e)(1)(B)(iii) and 170(m) as added by section 882 of the American Jobs Creation Act of 2004. Under section 170(e)(1)(B)(iii), a donor's initial charitable contribution deduction for a gift of qualified intellectual property is limited to the lesser of the donor's adjusted basis is the property or its fair market value. Under section 170(m), the donor may claim additional deduction in subsequent years if the property produces income.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 30.

*Title:* Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).

*OMB Control Number:* 1545–1939.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (the Act), was enacted on October 22, 2004. The Treasury Department and the Internal Revenue Service intend to issue regulations implementing §§ 833 and 834 of the Act, which amended §§ 704, 734, 743, and 6031 of the Internal Revenue Code. This previously approved notice provides interim procedures for partnerships and their partners to comply with the mandatory basis provisions of §§ 734 and 743, as amended by the Act. This notice also provides interim procedures for electing investment partnerships (EIPs) and their partners to comply with §§ 743(e) and 6031(f), as provided in § 833(b) of the Act.

*Form:* None.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 552,100.

*Title:* T.D. 9315 (Final) Dual Consolidated Loss Regulations.

*OMB Control Number:* 1545–1946.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* This document contains previously approved final regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 2,765.

*Title:* Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests.

*OMB Control Number:* 1545–2099.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests, is required by Section 403 of the Tax Relief and Health Care Act of 2006 which imposes an excise tax on certain transfers of qualifying mineral or geothermal interests.

*Form:* 8924.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 111.

*Title:* Form 3921—Exercise of an Incentive Stock Option Under . . . ; Form 3922—Transfer of Stock Acquired Through an . . . ; TD 9470—Information Reporting Requirements Under Code Sec. 6039.

*OMB Control Number:* 1545–2129.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Form 3921 is a copy of the information return filed with the IRS which transferred shares of stock to a recipient through exercise of an incentive stock option under section 422(b). Form 3922 is used to record a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). Previously approved REG–103146–08 reflects the changes to section 6039 of the Internal Revenue Code made by section 403 of the Tax Relief and Health Care Act of 2006.

*Forms:* 3921, 3922.

*Affected Public:* Businesses or other-for-profits.

*Estimated Total Annual Burden Hours:* 25,205.

*Title:* Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).

*OMB Control Number:* 1545–2183.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* The previously approved income tax regulations under section 367(a) reflect changes by the Technical and Miscellaneous Corrections Act of 1988. Section 367(a)(5) provides that a transfer of assets to a foreign corporation in an exchange described in section 361 is subject to section 367(a)(1), unless certain ownership requirements and other conditions are met. TD 9760 contains final regulations under sections 367, 1248, and 6038B of the Internal Revenue Code (Code). These regulations finalize the elimination of one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. The regulations also finalize modifications to the exception to the coordination rule for section 351 exchanges so that it is consistent with the remaining asset reorganization exception. In addition, the regulations finalize modifications to the procedures for obtaining relief for failures to satisfy certain reporting requirements. Finally, the regulations finalize certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 3,260.

*Title:* Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans.

*OMB Control Number:* 1545–2251.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* This document contains previously approved regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code, enacted by the Patient Protection and Affordable Care Act (Pub. L. 111–148 (124 Stat.119 (2010)). Section 6056 requires those employers to report to the IRS information about their compliance with the employer shared responsibility provisions of section 4980H of the Code and about the health care coverage, if any, they have offered employees. Section 6056 also requires those employers to furnish related statements to employees in order that employees may use the statements to help determine whether, for each month of the calendar year, they can claim on their tax returns a premium tax credit under section 36B of the Code (premium tax credit).

*Forms:* 1094–C, 1095–C, 4424.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 22,600,002.

*Title:* Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes.

*OMB Control Number:* 1545–2254.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Third parties who directly pay another's payrolls can be held liable for the full amount of taxes required to be withheld but not paid to the Government (subject to the 25% limitation). IRC 3505 deals with persons who supply funds to an employer for the purpose of paying wages. The notification that a third party is paying or supplying wages will usually be made by filing of the Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes. The Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes, is to be submitted and associated with each employer and for every calendar quarter for which a liability under section 3505 is incurred.

*Form:* 4291.

*Affected Public:* Businesses or other for-profits, Farms, Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 12,833.

*Title:* Safe Harbor for Inadvertent Normalization Violations.

*OMB Control Number:* 1545–2276.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Revenue Procedure 2017–47 provides a safe harbor that allows a utility taxpayer that inadvertently uses a practice or procedure that is inconsistent with the normalization rules (such as failure to use the proration methodology) to correct that practice or procedure at the next available opportunity and be considered not to have violated the normalization rules by their inadvertent error without requiring the taxpayer to obtain a private letter ruling from the Service regarding the inadvertent error.

*Form:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 1,800.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: February 9, 2018.

**Jennifer P. Quintana,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2018–03052 Filed 2–13–18; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Proposed Collections; Comment Requests

**AGENCY:** Departmental Offices; Department of the Treasury.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an

information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning the revisions of the Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3 (called the ''TIC B forms'').

**DATES:** Written comments should be received on or before April 16, 2018 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue NW, Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), fax (202–622–2009) or telephone (202–622–1276).

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed forms and instructions are available on the Treasury's TIC Forms web page, *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.* Requests for additional information should be directed to Mr. Wolkow.

**SUPPLEMENTARY INFORMATION:**

*&* Treasury International Capital (TIC) Form BC ''Monthly Report of U.S. Dollar Claims of Financial Institutions on Foreign Residents;'' TIC BL–1 ''Monthly Report of U.S. Dollar Liabilities of Financial Institutions to Foreign Residents;'' TIC BL–2 ''Monthly Report of Customers' U.S. Dollar Liabilities to Foreign Residents;'' TIC BQ–1 ''Quarterly Report of Customers' U.S. Dollar Claims on Foreign Residents;'' TIC BQ–2 ''Part 1: Quarterly Report of Foreign Currency Liabilities and Claims of Financial Institutions and of their Domestic Customers' Foreign Currency Claims with Foreign Residents'' and ''Part 2: the Report of Customers' Foreign Currency Liabilities to Foreign Residents;'' and TIC BQ–3 ''Quarterly Report of Maturities of Selected Liabilities and Claims of Financial Institutions with Foreign Residents.''

*OMB Numbers:* 1505–0017 (TIC BC), 1505–0019 (TIC BL–1), 1505–0018 (TIC BL–2), 1505–0016 (TIC BQ–1), 1505–0020 (TIC BQ–2), and 1505–0189 (TIC BQ–3).

*Abstract:* Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and are designed to collect timely information on international portfolio capital movements. These forms are filed by all U.S.-resident financial institutions. On the monthly forms, these organizations report their own claims on (BC), their own liabilities to (BL–1), and their U.S. customers' liabilities to (BL–2) foreign residents, denominated in U.S. dollars. On the quarterly forms, these organizations report their U.S.-resident customers' U.S. dollar claims on foreign residents (BQ–1), and their own and their domestic customers' claims and liabilities with foreign residents, where all claims and liabilities are denominated in foreign currencies (BQ–2). On the quarterly BQ–3 form, these organizations report the remaining maturities of all their own U.S. dollar and foreign currency liabilities and claims (excluding securities) with foreign residents. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

*Current Actions:* (a) No changes to the Forms are proposed. The following are all changes in the instructions. (b) Electronic filing of all TIC B reports (BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3) will be mandatory. More specifically in the instructions, Section I.F.1, ''Submission of Reports'', now indicates that the TIC B reports must be submitted electronically by using the Federal Reserve System's ''Reporting Central'' electronic submission system. It is easy to use, secure, provides confirmation of the receipt of the data, and performs a number of validity checks of your file format. The TIC B reports can no longer be filed by mail or Fax and can no longer be reported on computer or other paper. In order to ensure access to Reporting Central is established prior to submission of TIC B reports as of June 30, 2018, respondents are strongly encouraged to contact the Federal Reserve Bank of New York at 212–720–6300 as soon as possible for more information on how to establish a Reporting Central account. (c) The ''Who Must Report'' section of the instructions is updated to list out separately Trustees of Collateralized Loan Obligations (CLOs). (d) Sections IV.A and VII.A, ''What to Report'', have been updated to indicate that liabilities of U.S. residents to foreign residents from loan syndications or from loans and loan participations that are pooled into foreign Collateralized Loan Obligations (CLOs) should be reported by the U.S. Trustee of the foreign CLOs on the TIC BL–2 and TIC BQ–2 reports. (e) Sections IV.B and VII.B, ''Column Definitions'', have been updated to indicate that liabilities of U.S. residents to foreign residents from loan syndications or from loans and loan participations that are pooled into foreign Collateralized Loan Obligations (CLOs) should be reported by the U.S. Trustee of the foreign CLOs as ''Other Custody Liabilities'' on the BL–2 and BQ–2 reports. (f) The glossaries for all Treasury International Capital (''TIC'') reports are consolidated into a single document which will provide more consistency across the TIC system. As a result, the TIC B reporting instructions will not include a glossary but will point to the separate consolidated TIC Glossary document on the Treasury website. (g) A new glossary entry provides a definition for ''U.S. CLO Trustee''. In addition, the glossary entries for ''Administrative Agent'' and ''Loan Servicing Arrangements, Loan Servicer'' now include information on the reporting requirements of U.S. CLO Trustees. (h) A new flowchart in Section IX ''Appendix'' clarifies the reporting treatment for loans to U.S. residents when the loans are pooled into foreign CLOs. (i) These changes will be effective beginning with the TIC B reports as of June 30, 2018, and afterwards.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Forms:* BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3.

*Estimated Number of Respondents:* BC, 385; BL–1, 378; BL–2, 103; BQ–1, 100; BQ–2, 199 and BQ–3, 154.

*Estimated average Time per Respondent per Filing:* BC, 9.9 hours; BL–1, 7.1 hours; BL–2, 8.25 hours; BQ–1, 3.1 hours; BQ–2, 6.6 hours; and BQ–3, 4.0 hours. The average time varies, and is estimated to be generally twice as many hours for major data reporters as for other reporters.

*Estimated Total Annual Burden Hours:* BC, 45,738 hours for 12 reports per year; BL–1, 32,206 hours for 12 reports per year; BL–2, 10,197 hours for 12 reports per year; BQ–1, 240 hours for 4 reports per year, BQ–2, 5,254 hours for 4 reports per year; and BQ–3, 2,464 hours for 4 reports per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Forms BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the

burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Systems.*

[FR Doc. 2018–02954 Filed 2–13–18; 8:45 am]

**BILLING CODE 4810–25–P**

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 31 February 14, 2018

Part II

# Corporation for National and Community Service

45 CFR Parts 2551, 2552, and 2553
Senior Corps: Senior Companion Program, Foster Grandparent Program, Retired and Senior Volunteer Program; Proposed Rule

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Parts 2551, 2552, and 2553

**RIN 3045–AA63**

## Senior Corps: Senior Companion Program, Foster Grandparent Program, Retired and Senior Volunteer Program

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Corporation for National and Community Service (CNCS) proposes changes to existing regulations under the Domestic Volunteer Service Act of 1973, as amended, for the following Senior Corps programs: Foster Grandparent Program (FGP), Senior Companion Program (SCP), and the Retired Senior Volunteer Program (RSVP). These amendments will increase flexibility in program administration while maintaining accountability at the local level, correct grammatical errors, update language that is currently used by CNCS, and streamline requirements for more effective administration of projects in local communities.

**DATES:** To be sure your comments are considered, they must reach CNCS on or before April 16, 2018.

**ADDRESSES:** You may send your comments electronically through the Federal government's one-stop rulemaking website at *www.regulations.gov.* You may also send your comments electronically to *SeniorCorpsRegs@cns.gov.* Also, you may mail or deliver your comments to Jill Sears, Senior Corps, at the Corporation for National and Community Service, 250 E Street SW, Washington DC 20525. Due to continued delays in CNCS's receipt of mail, we strongly encourage comments to be submitted online electronically. You may request this notice in an alternative format for the visually impaired. Members of the public may review copies of all communications received on this rulemaking at CNCS's Washington, DC office.

**FOR FURTHER INFORMATION CONTACT:** Jill Sears, Senior Corps, at the Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525, phone 202–606–7577. The TDD/TTY number is 800–833–3722.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Senior Service Corps known today as Senior Corps is comprised of three separate programs; the Senior Companion Program (SCP), the Foster Grandparent Program (FGP) and the Retired and Senior Volunteer Program (RSVP).

The SCP engages low-income older adults to help their more frail peers remain independent in their homes. Senior Companions provide companionship and support to older adults in need of extra assistance to remain at home or in the community for as long as possible as well as provide respite for caregivers. Senior Companions receive a small stipend enabling them to participate without cost to themselves.

The FGP engages low-income older adults in opportunities to provide one-to-one mentoring, nurturing, and support to children with special or exceptional needs, or who are in academic, social, or financial disadvantage. Foster Grandparents receive a small stipend enabling them to participate without cost to themselves.

RSVP promotes the engagement of older persons as community resources in planning for community improvement and in delivery of volunteer services. RSVP matches the skills of older adults, who are willing to help with local organizations, with the identified needs of the community.

The Older Americans Act of 1965 initiated the pilot demonstration programs for the Foster Grandparent and Senior Companion programs, and in 1969 an amendment to the Older Americans Act created the RSVP.

In 1971, all three of the Senior Corps programs were transferred from the Administration on Aging to the former Federal agency, ACTION (the Federal Domestic Volunteer Agency). In 1973, Congress enacted the Domestic Volunteer Service Act of 1973 (DVSA), Senior Corps' enabling legislation. Senior Corps continues to retain its purpose, as stated in the DVSA, ''to provide opportunities for senior service to meet unmet local, State, and national needs in the areas of education, public safety, emergency and disaster preparedness, relief, and recovery, health and human needs, and the environment.''

In 1994, the Corporation for National and Community Service (CNCS) was established pursuant to the National and Community Service Trust Act of 1993; at this time, the operations of all service programs previously administered by ACTION, including Senior Corps, began to be administered by CNCS. Since 1994, Senior Corps continues to be primarily operated and administered under the DVSA.

In 2009, Congress enacted the Edward M. Kennedy Serve America Act of 2009 (Serve America Act), which contained certain amendments to both the DVSA and the NCSA. With regard to Senior Corps, the Serve America Act amendments largely related to initiating competition for the RSVP, decreasing the age limit for volunteers from 60 to 55 and modifying the income eligibility requirements for SCP and FGP volunteers.

### II. Scope of Proposed Rule

The proposed amendments include modifications to current program requirements and technical updates in the three Senior Corps programs, SCP, FGP and RSVP. For the SCP, changes are applicable to: Subpart A, General, which includes technical updates to definitions and the addition or subtraction of certain definitions, subpart B, Eligibility and Responsibility of a Sponsor, which includes modifications to specific administrative responsibilities and technical updates, subpart C, Suspension Termination and Denial of Refunding, which includes technical updates and clarifying language, subpart D, Senior Companion Eligibility, Status and Cost Reimbursements, which include technical updates, updating the income exclusion list to specify public benefits and disability benefits, removing the requirement for annual physicals and clarification of language to demonstrate which cost reimbursements are optional and which are required, subpart E, Senior Companion Terms of Service, which includes reducing the minimum hour requirement and establishing annual minimum and maximum hour requirements, and making technical updates, subpart F, Responsibilities of a Volunteer Station, which includes technical updates, subpart G, Senior Companion Placement and Assignments, which includes the addition of a new section that consolidates all regulations regarding Senior Companion Leaders, and technical updates, subpart I, Application and Fiscal Requirements, which includes technical updates, clarification of how applications are made to CNCS, and the removal of regulations for the direct benefit ration, or ''80/20 rule,'' subpart J, Non-Stipended Senior Companions, which includes consolidation of regulations and technical updates, subpart K, Non-Corporation Funded SCP Projects, which includes technical updates, and subpart L, Restrictions and Legal Representation, which includes technical updates.

For the FGP, changes are applicable to: Subpart A, General, which include technical updates to definitions and the

addition or modification of certain definitions, subpart B, Eligibility and Responsibility of a Sponsor, which include modifications to specific administrative responsibilities and technical updates, subpart C, Suspension Termination and Denial of Refunding, which include technical updates, subpart D, Foster Grandparent Eligibility, Status and Cost Reimbursements, which include technical updates, updating the income exclusion list to specify public benefits and disability benefits, removing the requirement for annual physicals and clarification of language to demonstrate what cost reimbursements are optional and what are required, subpart E, Foster Grandparent Terms of Service, which include reducing the minimum hour requirement and establishing annual minimum and maximum hour requirements, and technical updates, subpart F, Responsibilities of a Volunteer Station, which include technical updates, subpart G, Foster Grandparent Placement and Assignments, which include technical updates, subpart H, Children Served, which include language updates, subpart I, Application and Fiscal Requirements, which include technical updates, clarification of how applications are made to CNCS, and the removal of regulations for the direct benefit ration, or ''80/20 rule,'' subpart J, Non-Stipended Foster Grandparents, which include consolidation of regulations and technical updates, subpart K, Non-Corporation Funded Foster Grandparent Program Projects, which include technical updates, and subpart L, Restrictions and Legal Representation, which include technical updates.

For the RSVP, changes are applicable to: Subpart A, General, which include technical updates to definitions and the addition or modification of certain definitions, subpart B, Eligibility and Responsibility of a Sponsor, which include modifications to specific administrative responsibilities and technical updates, subpart C, Suspension Termination and Denial of Refunding, which include technical updates, subpart D, Eligibility, Cost Reimbursements and Volunteer Assignments, which include technical updates and clarification of language to demonstrate what cost reimbursements are optional and what are required, subpart E, Volunteer Terms of Service, which include technical updates, subpart F, Responsibilities of a Volunteer Station, which include the removal of a cap on volunteers used to assist with project administration and support as well as technical updates, subpart G, Application and Fiscal Requirements, which include technical updates, and the removal of regulations that were specific to the enactment of competition for RSVP in 2013, subpart H, Non-Corporation Funded Projects, which include technical updates, subpart I, Restrictions and Legal Representation, which include technical updates, subpart J, Performance Measurement, which include consolidation of this part as well as clarification of grantee responsibilities.

## III. Effective Date

CNCS intends to make any final rule based on this proposal effective no sooner than 90 days after the final rule is published in the **Federal Register**.

## IV. Regulatory Procedures

*Executive Order 12866*

CNCS has determined that the proposed rule is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

*Regulatory Flexibility Act*

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

*Unfunded Mandates*

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

*Paperwork Reduction Act*

This proposed rule addresses the requirement that entities that wish to apply to be Senior Corps SCP, FGP, or RSVP sponsors complete an application. Consistent with this requirement are two documents: The FGP/SCP Grant Application and the RSVP Grant Application (*http://www.nationalservice.gov/documents/senior-corps/2015/2016-fgpscp-grant-application-instructions; http://www.nationalservice.gov/documents/senior-corps/2015/rsvp-grant-application-instructions*).

This requirement constitutes one set of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved these information collections for use. The OMB Control Number for both the FGP/SCP Grant Application and the RSVP Grant Application is 3045–0035.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information displays valid control numbers. This proposed rule's collections of information are contained in 45 CFR part 2551, subparts B, D, F, G, and I, part 2552, subpart B, D, F, G, and I, and part 2553, subparts B, D, F, G, and I for the FGP/SCP Grant Application and the RSVP Grant Application, respectively.

This information is necessary to ensure that only eligible and qualified entities serve as Senior Corps sponsors. This information is also necessary to ensure that only eligible and suitable individuals are approved by the Senior Corps SCP, FGP, or RSVP programs to serve as volunteers in the SCP, FGP, or RSVP programs.

The likely respondents to these collections of information are entities interested in or seeking to become Senior Corps SCP, FGP or RSVP sponsors and current sponsors.

*Executive Order 13132, Federalism*

Executive Order 13132, *Federalism,* prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The proposed rule does not have any Federalism implications, as described above.

**List of Subjects**

*45 CFR Part 2551*

Aged, Grant programs—social programs, Volunteers.

*45 CFR Part 2552*

Aged, Grant programs—social programs, Volunteers.

*45 CFR Part 2553*

Aged, Grant programs—social programs, Volunteers.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

## PART 2551—SENIOR COMPANION PROGRAM

■ 1. The authority citation for part 2551 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 2. Amend § 2551.12 as follows:
■ a. Remove paragraphs (f), (l), (m), (o), (t), and (u).
■ b. Remove all alphabetical paragraph designations.
■ c. Revise the definitions of ''Adequate staffing level'' and ''Chief Executive Officer''.
■ d. Add the definition of ''CNCS''.
■ e. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.
■ f. Add the definitions of ''Non-CNCS support (excess)'', ''Non-CNCS support (match)'', and ''Performance measures'' in alphabetical order.
■ g. Revise the definition of ''Project''.
■ h. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.
■ i. Revise the definitions of ''Service area'', ''Sponsor'', and ''Stipend''.
■ j. Add the definition of ''United States and Territories'' in alphabetical order.
■ k. Revise the definitions of ''Volunteer assignment plan'' and ''Volunteer station''.

The revisions and additions read as follows:

### § 2551.12 Definitions.

* * * * *

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

* * * * *

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

*CNCS.* The Corporation for National and Community Service established under the NCSA.

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance and other expenses as negotiated in the Memorandum of Understanding.

* * * * *

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an SCP volunteer in the home of a client, defines SCP volunteer activities, and specifies supervision arrangements.

* * * * *

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and, and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

*Non-CNCS support (excess).* The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

*Performance measures.* Indicators that help determine the impact of an SCP project on the community and clients served, including the volunteers.

*Project.* The locally planned SCP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) in which Senior Companions are enrolled and placed on assignments.

* * * * *

*Sponsor.* A public agency, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

*Stipend.* A payment to Senior Companions to enable them to serve without cost to themselves. The minimum amount of the stipend is set by CNCS in accordance with federal law.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

*Volunteer assignment plan.* A written description of a Senior Companion's assignment with a client. The plan identifies specific outcomes for the client served and the activities of the Senior Companion.

*Volunteer station.* A public agency; a private non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Senior Companions in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 3. Revise § 2551.21 to read as follows:

### § 2551.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

■ 4. Revise § 2551.22 to read as follows:

**§ 2551.22 What are the responsibilities of a sponsor?**

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Senior Companion Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 5. Amend § 2551.23 as follows:

■ a. Revise the section heading and paragraphs (a), (b), and (c) introductory text.

■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).

■ c. Revise paragraphs (c)(2)(iv), (f), and (g).

■ d. Remove paragraphs (i) and (j);

■ e. Redesignate paragraphs (k) and (l) as (i) and (j), respectively, and revise newly redesignated paragraphs (i) and (j).

■ f. Add new paragraphs (k) and (l).

The revisions and additions read as follows:

**§ 2551.23 What are a sponsor's project responsibilities?**

* * * * *

(a) Focus Senior Companion resources within the project's service area, on critical problems affecting the frail elderly and other adults with special needs.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Senior Companions.

(c) Develop and manage one or more volunteer stations by:

* * * * *

(2) * * *

(iv) That states the station will not discriminate against SCP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

* * * * *

(f) Provide Senior Companions with assignments that show direct and demonstrable benefits to the adults and the community served, the Senior Companions, and the volunteer station; with required cost reimbursements specified in § 2551.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Senior Companions by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(i) Establish written service policies for Senior Companions that include but are not limited to:

(1) Annual and sick leave.

(2) Holidays.

(3) Service schedules.

(4) Termination and appeal procedures.

(5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Senior Companion volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

■ 6. Revise § 2551.24(a)(2), (3), and (4) to read as follows;

**§ 2551.24 What are a sponsor's responsibilities for securing community participation?**

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity, and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 7. Amend § 2551.25 as follows:

■ a. Revise paragraph (c).

■ b. Remove paragraph (e).

■ c. Redesignate paragraphs (f) through (h) as (e) through (g) and revise newly redesignated paragraphs (e) through (g).

The revisions read as follows.

**§ 2551.25 What are a sponsor's administrative responsibilities?**

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope, or quality of project operations.

* * * * *

(e) Establish risk management policies and procedures covering Senior Companion project activities. This includes provision of appropriate insurance coverage for Senior Companions, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(f) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(g) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

**§ 2551.33 [Removed and Reserved]**

■ 8. Remove and reserve § 2551.33.

■ 9. Revise § 2551.34(a)(3) and (b) to read as follows:

**§ 2551.34 What are the rules on suspension, termination, and denial of refunding of grants?**

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the recipient agency.

* * * * *

■ 10. Amend § 2551.41 as follows:

■ a. Add the word ''and'' at the end of paragraph (a)(1).

■ b. Remove paragraphs (a)(2) and (3).

■ c. Redesignate paragraph (a)(4) as (a)(2).

■ d. Revise paragraph (b).

The revision reads as follows:

**§ 2551.41 Who is eligible to be a Senior Companion?**

* * * * *

(b) Eligibility to serve as a Senior Companion shall not be restricted on the basis of formal education, experience, race, color, national origin

including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 11. Revise § 2551.43(b) to read as follows:

**§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?**

* * * * *

(b) For applicants to become stipended Senior Companions, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Senior Companions, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

* * * * *

■ 12. Amend § 2551.44 as follows:

■ a. Revise paragraphs (a)(1) and (3).

■ b. Remove the period at the end of paragraph (b)(2) and add a semicolon in its place.

■ c. Add paragraphs (b)(3) through (5).

The revisions and additions read as follows:

**§ 2551.44 What is considered income for determining volunteer eligibility?**

(a) * * *

(1) Money, wages, and salaries before any deduction;

* * * * *

(3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family member or someone not living in the household;

* * * * *

(b) * * *

(3) Regular payments for public assistance, including Supplemental Nutrition Assistance Program (SNAP);

(4) Social Security Disability or any type of disability payment; and

(5) Food or rent received in lieu of wages.

■ 13. Revise § 2551.45 to read as follows:

**§ 2551.45 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?**

Senior Companions are volunteers, and are not employees of the sponsor, the volunteer station, CNCS, or the Federal Government.

■ 14. Amend § 2551.46 as follows:

■ a. Revise the section heading, introductory text, and paragraphs (a), (b) introductory text, (b)(1) and (2), (b)(3)(i)(A) and (B), (b)(3)(ii), (c), (d), and (e).

■ b. Remove paragraph (f).

■ c. Redesignate (g) as (f) and revise newly redesignated paragraph (f).

The revisions read as follows:

**§ 2551.46 What cost reimbursements and benefits are provided to Senior Companions?**

Cost reimbursements and benefits include:

(a) *Stipend.* The stipend is paid for the time Senior Companions spend with their assigned client, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Senior Companion is provided with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Senior Companions for personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Senior Companion, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Senior Companion from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) * * *

(i) * * *

(A) Liability insurance Senior Companions carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(ii) Senior Companions who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation.* Senior Companions shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals.* Senior Companions may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition.* Senior Companion volunteers shall be provided recognition for their service.

(f) *Other volunteer expenses.* Senior Companions may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

■ 15. Revise § 2551.47 to read as follows:

**§ 2551.47 May the cost reimbursements and benefits of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. Senior Companion's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Senior Companion may be receiving under any governmental program.

■ 16. Revise § 2551.51 to read as follows:

**§ 2551.51 What are the terms of service of a Senior Companion?**

A Senior Companion shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Senior Companion may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week.

■ 17. Revise § 2551.52(c) to read as follows:

**§ 2551.52 What factors are considered in determining a Senior Companion's service schedule?**

* * * * *

(c) Meal time may be part of the service schedule and is stipended.

■ 18. Revise § 2551.53 to read as follows:

**§ 2551.53 Under what circumstances may a Senior Companion be removed from service?**

(a) A sponsor may remove a Senior Companion from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Senior Companion may also be removed from stipended service for having income in excess of the eligibility level. A Senior Companion shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

■ 19. Revise § 2551.61 to read as follows:

**§ 2551.61 May a sponsor serve as a volunteer station?**

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

■ 20. Amend § 2551.62 as follows:
■ a. Revise paragraphs (c) and (d).
■ b. Add the word ''and'' at the end of paragraph (e)(1).
■ c. Revise paragraph (e)(2).
■ d. Remove paragraph (e)(3).
■ e. Revise paragraphs (i) and (j).

The revisions read as follows:

**§ 2551.62 What are the responsibilities of a volunteer station?**

* * * * *

(c) Develop a written volunteer assignment plan for each Senior Companion that identifies their roles and activities, each client served, and expected outcomes.

(d) Keep a Letter of Agreement for each client who receives in-home service.

(e) * * *

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Senior Companions with disabilities to perform the essential functions of their service.

* * * * *

(i) Comply with all applicable civil rights laws and regulations, including providing Senior Companions with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Senior Companions in their assignments or as agreed to in the Memorandum of Understanding.

**§ 2551.71 [Amended]**

■ 21. Amend § 2551.71 by removing paragraph (b) and redesignating paragraph (c) as (b).

■ 22. Amend § 2551.72 as follows:
■ a. Revise the section heading and paragraph (a)(5).
■ b. Remove and reserve paragraph (b).
■ c. Remove paragraph (c).

The revisions read as follows:

**§ 2551.72 Is a written volunteer assignment plan required for each Senior Companion?**

(a) * * *

(5) Is used to review the impact of the assignment on the client(s).

* * * * *

■ 23. Add § 2551.73 to read as follows:

**§ 2551.73 May a Senior Companion serve as a volunteer leader?**

Yes. Senior Companions—who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities—may spend time, in addition to their regular assignment, to assist newer Senior Companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(a) All Senior Companions serving as volunteer leaders shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the role and activities of the Senior Companion and expected outcomes;

(3) Addresses the period of time of service; and

(4) Is used to review the status of the Senior Companion's services identified in the assignment plan, as well as the impact of those services.

(b) While serving in the capacity of a volunteer leader, a Senior Companion may be paid a stipend (at the same rate as the established Senior Companion stipend) for his or her additional hours served as a volunteer leader.

(c) Senior Companion leaders, through recognition, may receive an additional monetary incentive.

■ 24. Revise § 2551.91 to read as follows:

**§ 2551.91 What is the process for application and award of a grant?**

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will return an application that is not approved for funding to the applicant with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Senior Companion grant for a specified period that is usually 12 months in duration.

■ 25. Amend § 2551.92 as follows:
■ a. Revise paragraphs (a), (b) introductory text, (c), and (d).
■ b. Remove paragraph (e).
■ c. Redesignate paragraph (f) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

**§ 2551.92 What are project funding requirements?**

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Senior Companion projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant, are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

■ 26. Amend § 2551.93 as follows:
■ a. Revise the section heading.
■ b. Remove the word ''and'' from the end of paragraph (a)(3).
■ c. Revise paragraph (a)(4).

■ d. Add paragraph (a)(5).
■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

**§ 2551.93 What are a sponsor's legal requirements in managing grants?**

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

■ 27. Revise § 2551.101 to read as follows:

**§ 2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions?**

Over-income persons as described in § 2551.43, age 55 or over, may be enrolled in SCP project as non-stipended volunteers.

■ 28. Amend § 2551.102 as follows:
■ a. Revise paragraphs (b) and (d).
■ b. Remove paragraphs (e) and (f).
■ c. Redesignate paragraph (g) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

**§ 2551.102 What are the conditions of service of non-stipended Senior Companions?**

* * * * *

(b) No special privilege or status is granted or created among Senior Companions, whether stipended or non-stipended, and equal treatment is required.

* * * * *

(d) All regulations and requirements applicable to the program apply to Senior Companions.

* * * * *

(e) Non-stipended Senior Companions may contribute the costs they incur in connection with their participation in the program. An SCP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

■ 29. Revise § 2551.103 to read as follows:

**§ 2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?**

No. Enrollment of non-stipended Senior Companions is not a condition for a sponsor to receive a new or continuation grant.

**§ 2551.104 [Removed and Reserved]**

■ 30. Remove and reserve § 2551.104.
■ 31. Revise the heading for subpart K to read as follows:

## Subpart K—Non-CNCS Funded Senior Companion Projects

■ 32. Revise § 2551.111 to read as follows:

**§ 2551.111 Under what conditions may an agency or organization sponsor a Senior Companion project without CNCS funding?**

An eligible agency or organization who wishes to sponsor a Senior Companion project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 33. Amend § 2551.112 by revising the section heading, introductory text, and paragraph (a) to read as follows:

**§ 2551.112 What benefits are a non-CNCS funded project entitled to?**

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

(a) All technical assistance and materials provided to CNCS funded Senior Companion projects; and

* * * * *

■ 34. Revise § 2551.113 to read as follows:

**§ 2551.113 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 35. Revise § 2551.114 to read as follows:

**§ 2551.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2551.112.

■ 36. Revise § 2551.121(c)(2), (g), and (h) to read as follows:

**§ 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?**

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) A Senior Companion or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

■ 37. Revise § 2551.122 to read as follows:

**§ 2551.122 What legal coverage does CNCS make available to Senior Companions?**

It is within CNCS's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a SCP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

## PART 2552—FOSTER GRANDPARENT PROGRAM

■ 38. The authority citation for part 2552 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 39. Revise § 2552.11 to read as follows:

**§ 2552.11 What is the Foster Grandparent Program?**

The Foster Grandparent Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Foster Grandparents in providing supportive, person to person service to children with special and or exceptional needs, or in circumstances that limit their academic, social or emotional development.

■ 40. Amend § 2552.12 as follows:

■ a. Remove paragraphs (h), (n), (o), (r), (w), and (x).

■ b. Remove all alphabetical paragraph designations.

■ c. Revise the definitions of ''Adequate staffing level'', ''Chief Executive Officer'', and ''Children having exceptional needs''.

■ d. Add the definition of ''CNCS''.

■ e. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.

■ f. Add the definitions of ''Non-CNCS support (excess)'', ''Non-CNCS support (match)'', and ''Performance measures'' in alphabetical order.

■ g. Revise the definition of ''Project''.

■ h. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.

■ i. Revise the definitions of ''Service area'', ''Sponsor'', and ''Stipend''.

■ j. Add the definition of ''United States and Territories'' in alphabetical order.

■ k. Revise the definitions of ''Volunteer assignment plan'' and ''Volunteer station''.

The revisions and additions read as follows:

**§ 2552.12 Definitions.**

* * * * *

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: number of budgeted Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

* * * * *

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

* * * * *

*Children having exceptional needs.* Children who have a developmental disability, such as those who have autism, intellectual disability, cerebral palsy or epilepsy, a visual impairment, speech impairment, hearing impairment, or orthopedic impairment, an emotional or behavioral disorder, a language disorder, a specific learning disability, multiple disabilities, other significant health impairments, or have literacy, math or other educational assistance needs. Before a Foster Grandparent is assigned to the child, existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, including school psychologists, registered nurse or licensed practical nurse, speech therapist, licensed clinical social worker, or educator.

* * * * *

*CNCS.* The Corporation for National and Community Service established under the NCSA.

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

* * * * *

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an FGP volunteer in the home of a client, defines FGP volunteer activities, and specifies supervision arrangements.

* * * * *

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

*Non-CNCS support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

* * * * *

*Performance measures.* Indicators that help determine the impact of an FGP project on the community and clients served, including the volunteers.

*Project.* The locally planned FGP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) in which Foster Grandparents are enrolled and placed on assignments.

* * * * *

*Sponsor.* A public agency, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

*Stipend.* A payment to Foster Grandparents to enable them to serve without cost to themselves. The minimum amount of the stipend is set by CNCS in accordance with federal law.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

*Volunteer assignment plan.* A written description of a Foster Grandparent's assignment with a child. The plan identifies specific outcomes for the child served and the activities of the Foster Grandparent.

*Volunteer station.* A public agency; a private non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Foster Grandparents in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 41. Revise § 2552.21 to read as follows:

**§ 2552.21 Who is eligible to serve as a sponsor?**

CNCS awards grants to public agencies, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

■ 42. Revise § 2552.22 to read as follows:

**§ 2552.22 What are the responsibilities of a sponsor?**

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Foster Grandparent Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 43. Amend § 2552.23 as follows:

■ a. Revise the section heading and paragraphs (a), (b), and (c) introductory text.

■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).

■ c. Revise paragraphs (c)(2)(iv), (f), and (g).

■ d. Remove paragraphs (i) and (j).

■ e. Redesignate paragraphs (k) and (l) as (i) and (j), respectively, and revise newly redesignated paragraphs (i) and (j).

■ f. Add new paragraphs (k) through (l).

The revisions and additions read as follows:

**§ 2552.23 What are a sponsor's project responsibilities?**

* * * * *

(a) Focus Foster Grandparent resources, within the project's service area, on providing supportive services and companionship to children with special and exceptional needs, or in circumstances that limit their academic, social or emotional development.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Foster Grandparents.

(c) Develop and manage one or more volunteer stations by:

* * * * *

(2) * * *

(iv) That states the station will not discriminate against FGP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

* * * * *

(f) Provide Foster Grandparents with assignments that show direct and demonstrable benefits to the children and the community served, the Foster Grandparents, and the volunteer station; with required cost reimbursements specified in § 2552.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Foster Grandparents by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(i) Establish written service policies for Foster Grandparents that include but are not limited to:

(1) Annual and sick leave.

(2) Holidays.

(3) Service schedules.

(4) Termination and appeal procedures.

(5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Foster Grandparent volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

■ 44. Revise § 2552.24(a)(2), (3), and (4) to read as follows:

**§ 2552.24 What are a sponsor's responsibilities for securing community participation?**

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 45. Amend § 2552.25 as follows:

■ a. Revise paragraph (c).

■ b. Remove paragraph (e).

■ c. Redesignate paragraphs (f) through (h) as (e) through (g) and revise newly redesignated paragraphs (e) through (g).

The revisions read as follows:

**§ 2552.25 What are a sponsor's administrative responsibilities?**

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

* * * * *

(e) Establish risk management policies and procedures covering Foster Grandparent project activities. This includes provision of appropriate insurance coverage for Foster Grandparents, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(f) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(g) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

**§ 2552.33 [Removed and Reserved]**

■ 46. Remove and reserve § 2552.33.

■ 47. Revise § 2552.34(a)(3) and (b) to read as follows:

**§ 2552.34 What are the rules on suspension, termination, and denial of refunding of grants?**

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the recipient agency.

* * * * *

■ 48. Revise the heading for subpart D to read as follows:

## Subpart D—Foster Grandparent Eligibility, Status, Cost Reimbursements and Benefits

■ 49. Amend § 2552.41 as follows:

■ a. Add the word ''and'' at the end of paragraph (a)(1).

■ b. Remove paragraphs (a)(2) and (3).

■ c. Redesignate paragraph (a)(4) as (a)(2) and revise newly redesignated paragraph (a)(2).
■ d. Revise paragraph (b).
The revision reads as follows:

**§ 2552.41 Who is eligible to be a Foster Grandparent?**

(a) * * *

(2) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart.

(b) Eligibility to serve as a Foster Grandparent shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 50. Revise § 2552.43(b) to read as follows:

**§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?**

* * * * *

(b) For applicants to become stipended Foster Grandparents, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Foster Grandparents, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

* * * * *

■ 51. Amend § 2552.44 by revising paragraphs (a)(1) and (3) and adding paragraphs (b)(3) through (5) to read as follows:

**§ 2552.44 What is considered income for determining volunteer eligibility?**

(a) * * *

(1) Money, wages, and salaries before any deduction;

* * * * *

(3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family member or someone not living in the household;

* * * * *

(b) * * *

(3) Regular payments for public assistance including the Supplemental Nutrition Assistance Program (SNAP);

(4) Social Security Disability or any type of disability payment; and

(5) Food or rent received in lieu of wages.

■ 52. Revise § 2552.45 to read as follows:

**§ 2552.45 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?**

Foster Grandparents are volunteers, and are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

■ 53. Amend § 2552.46 by revising the section heading, introductory text, and paragraphs (a), (b) introductory text, (b)(1) and (2), (b)(3)(i)(A) and (B), (b)(3)(ii), (c), (d), (e), and (f) to read as follows:

**§ 2552.46 What cost reimbursements and benefits are provided to Foster Grandparents?**

Cost reimbursements and benefits include:

(a) *Stipend.* The stipend is paid for the time Foster Grandparents spend with their assigned children, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Foster Grandparent is provided with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Foster Grandparents for personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Foster Grandparent, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Foster Grandparent from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) * * *

(i) * * *

(A) Liability insurance Foster Grandparents carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(ii) Foster Grandparents who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation.* Foster Grandparents shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals.* Foster Grandparents may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition.* Foster Grandparent volunteers shall be provided recognition for their service.

(f) *Other volunteer expenses.* Foster Grandparents may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments

■ 54. Revise § 2552.47 to read as follows:

**§ 2552.47 May the cost reimbursements and benefits received by a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. Foster Grandparent's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Foster Grandparent may be receiving under any governmental program.

■ 55. Revise § 2552.51 to read as follows:

**§ 2552.51 What are the terms of service of a Foster Grandparent?**

A Foster Grandparent shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Senior Companion may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week.

■ 56. Revise § 2552.52(c) to read as follows:

**§ 2552.52 What factors are considered in determining a Foster Grandparent's service schedule?**

* * * * *

(c) Meal time may be part of the service schedule and is stipended.

■ 57. Revise § 2552.53 to read as follows:

**§ 2552.53 Under what circumstances may a Foster Grandparent be removed from service?**

(a) A sponsor may remove a Foster Grandparent from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Foster Grandparent may also be removed from stipended service for having income in

excess of the eligibility level. A Foster Grandparent shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

■ 58. Revise § 2552.61 to read as follows:

**§ 2552.61 May a sponsor serve as a volunteer station?**

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

■ 59. Amend § 2552.62 as follows:

■ a. Revise paragraphs (c) and (d).

■ b. Add the word ''and'' to the end of paragraph (e)(1).

■ c. Revise paragraph (e)(2).

■ d. Remove paragraph (e)(3).

■ e. Revise paragraphs (i) and (j).

The revisions read as follows:

**§ 2552.62 What are the responsibilities of a volunteer station?**

* * * * *

(c) Develop a written volunteer assignment plan for each Foster Grandparent that identifies their roles and activities, each child served, and expected outcomes.

(d) Keep a Letter of Agreement for each child who receives in-home service.

(e) * * *

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Foster Grandparents with disabilities to perform the essential functions of their service; and

* * * * *

(i) Comply with all applicable civil rights laws and regulations, including providing Foster Grandparents with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Foster Grandparents in their assignments or as agreed to in the Memorandum of Understanding.

■ 60. Revise § 2552.71(a) and (b) to read as follows:

**§ 2552.71 What requirements govern the assignment of Foster Grandparents?**

* * * * *

(a) Provide for Foster Grandparents to give direct services to one or more eligible children.

(b) Result in person-to-person supportive relationships with each child served. Foster Grandparent volunteers cannot be assigned to roles such as teacher's aides, group leaders or other similar positions that would detract from the person-to-person relationship.

* * * * *

■ 61. Amend § 2552.72 as follows:

■ a. Revise the section heading and paragraph (a)(5).

■ b. Remove and reserve paragraph (b).

**§ 2552.72 Is a written volunteer assignment plan required for each Foster Grandparent?**

(a) * * *

(5) Is used to review the impact of the assignment on the child(ren).

* * * * *

■ 62. Revise the heading for subpart H to read as follows:

## Subpart H—Children and Youth Served

■ 63. Revise the heading for § 2552.81 to read as follows:

**§ 2552.81 Who is eligible to be served?**

* * * * *

■ 64. Revise § 2552.82(a) introductory text to read as follows:

**§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?**

(a) Only when a Foster Grandparent has been assigned to, and has developed a relationship with an individual with a disability, may that assignment continue beyond the individual's 21st birthday, provided that:

* * * * *

■ 65. Revise § 2552.91 to read as follows:

**§ 2552.91 What is the process for application and award of a grant?**

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will return an application that is not approved for funding to the applicant with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Foster Grandparent grant for a specified period that is usually 12 months in duration.

■ 66. Amend § 2552.92 as follows;

■ a. Revise paragraphs (a), (b) introductory text, (c), and (d).

■ b. Remove paragraph (e).

■ c. Redesignate paragraph (f) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

**§ 2552.92 What are project funding requirements?**

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Foster Grandparent projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit*? All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

■ 67. Amend § 2552.93 as follows:

■ a. Revise the section heading.

■ b. Remove the word ''and'' from the end of paragraph (a)(3).

■ c. Revise paragraph (a)(4).

■ d. Add paragraph (a)(5).

■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

**§ 2552.93 What are a sponsor's legal requirements in managing grants?**

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

■ 68. Revise § 2552.101 to read as follows:

**§ 2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents?**

Over-income persons as described in § 2552.43, age 55 or over, may be enrolled in FGP project as non-stipended volunteers.

■ 69. Amend § 2552.102 as follows:

■ a. Revise paragraphs (b) and (d).

■ b. Remove paragraphs (e) and (f).

■ c. Redesignate paragraph (g) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

**2552.102 What are the conditions of service of non-stipended Foster Grandparents?**

* * * * *

(b) No special privilege or status is granted or created among Foster Grandparents, whether stipended or non-stipended, and equal treatment is required.

* * * * *

(d) All regulations and requirements applicable to the program apply to all Foster Grandparents.

* * * * *

(e) Non-stipended Foster Grandparents may contribute the costs they incur in connection with their participation in the program. An FGP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

■ 70. Revise § 2552.103 to read as follows:

**§ 2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?**

No. Enrollment of non-stipended Foster Grandparents is not a condition for a sponsor to receive a new or continuation grant.

**§ 2552.104 [Removed and Reserved]**

■ 71. Remove and reserve § 2552.104.

■ 72. Revise the heading for subpart K to read as follows:

## Subpart K—Non-CNCS Funded Foster Grandparent Projects

■ 73. Revise § 2552.111 to read as follows:

**§ 2552.111 Under what conditions may an agency or organization sponsor a Foster Grandparent project without CNCS funding?**

An eligible agency or organization who wishes to sponsor a Foster Grandparent project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 74. Amend § 2552.112 by revising the section heading, introductory text, and paragraph (a) to read as follows:

**§ 2552.112 What benefits are a non-CNCS funded project entitled to?**

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

(a) All technical assistance and materials provided to CNCS funded Foster Grandparent projects; and

* * * * *

■ 75. Revise § 2552.113 to read as follows:

**§ 2552.113 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 76. Revise § 2552.114 to read as follows:

**§ 2552.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2552.112.

■ 77. Revise § 2552.121(c)(2), (g), and (h) to read as follows:

**§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?**

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) A Foster Grandparent or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

■ 78. Revise § 2552.122 to read as follows:

**§ 2552.122 What legal coverage does CNCS make available to Foster Grandparents?**

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a FGP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

## PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 79. The authority citation for part 2553 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.*

■ 80. Amend § 2553.12 as follows:
■ a. Remove paragraphs (e), (j), (k), (n), (q), and (r).
■ b. Remove all alphabetical paragraph designations.
■ c. Revise the definition of ''Adequate staffing level''.
■ d. Add the definition of ''Assignment description'' in alphabetical order.
■ e. Revise the definition of ''Chief Executive Officer''.
■ f. Add the definition of ''CNCS''.
■ g. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.
■ h. Add the definitions of ''Non-CNCS support (excess)'' and ''Non-CNCS support (match)'' in alphabetical order.
■ i. Revise the definitions of ''Performance measures'' and ''Project''.
■ j. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.
■ k. Revise the definitions of ''Service area'' and ''Sponsor''.
■ l. Add the definition of ''United States and Territories'' in alphabetical order.
■ m. Revise the definition of ''Volunteer station''.

The revisions and additions read as follows:

### § 2553.12 Definitions.

* * * * *

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted volunteers, number of volunteer stations, and the size of the service area.

* * * * *

*Assignment description.* The written description of the activities, functions or responsibilities to be performed by RSVP volunteers.

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

*CNCS.* The Corporation for National and Community Service established under the NCSA.

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an RSVP volunteer in the home of a client, defines RSVP volunteer activities, and specifies supervision arrangements.

* * * * *

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), Foster Grandparent Program (FGP), and the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps.''

*Non-CNCS support (excess).* The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

*Performance measures.* Indicators intended to that help determine the impact of an RSVP project on the community, including the volunteers.

*Project.* The locally planned RSVP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) approved in the grant application, in which RSVP volunteers are enrolled and placed on assignments.

*Sponsor.* A public agency, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

*Volunteer station.* A public agency; a private non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of RSVP volunteers in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 81. Revise § 2553.21 to read as follows:

### § 2553.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as defined in section 421 (5) of the Act, and non-profit private organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer an RSVP project.

■ 82. Revise § 2553.22 to read as follows:

### § 2553.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the RSVP project as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 83. Amend § 2553.23 as follows:
■ a. Revise the section heading and paragraphs (b) and (c) introductory text.
■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).
■ c. Revise paragraph (c)(2)(iv).
■ d. Add paragraph (c)(2)(v).
■ e. Remove paragraph (c)(3).
■ f. Revise paragraph (e).
■ g. Remove paragraphs (f), (g), and (i).
■ h. Redesignate paragraphs (h) and (j) as (f) and (g), respectively, and revise newly redesignated paragraph (g).

The revisions and addition read as follows:

### § 2553.23 What are a sponsor's project responsibilities?

* * * * *

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using RSVP volunteers.

(c) Develop and manage one or more volunteer stations to provide a wide range of placement opportunities that appeal to persons age 55 and over by:

* * * * *

(2) * * *

(iv) That states the station will not discriminate against RSVP volunteers,

service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

(v) That states the station will provide for the safety of the RSVP volunteers assigned to the station.

* * * * *

(e) Encourage the most efficient and effective use of RSVP volunteers by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(g) Make every effort to meet such performance measures as established in the approved grant application.

■ 84. Revise § 2553.24(a)(2) through (4) to read as follows:

**§ 2553.24 What are a sponsor's responsibilities for securing community participation?**

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 85. Amend § 2553.25 as follows:

■ a. Revise paragraph (c).

■ b. Remove paragraph (e).

■ c. Redesignate paragraphs (f) through (i) as (e) through (h) and revise newly redesignated paragraphs (e) through (h).

The revisions read as follows:

**§ 2553.25 What are a sponsor's administrative responsibilities?**

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

* * * * *

(e) Establish risk management policies and procedures covering RSVP project activities. This includes provision of appropriate insurance coverage for RSVP volunteers, which includes: Accident insurance, personal liability insurance, and excess automobile liability insurance.

(f) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(g) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

(h) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

**§ 2553.26 [Removed and Reserved]**

■ 86. Remove and reserve § 2553.26.

■ 87. Revise § 2553.31(a)(3), (b), and (c) to read as follows:

**§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?**

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the RSVP program are specified in 45 CFR part 1206.

■ 88. Amend § 2553.41 as follows:

■ a. Revise the section heading.

■ b. Add the word ''and'' at the end of paragraph (a)(2).

■ c. Remove the semicolon at the end of paragraph (a)(3) and add a period in its place.

■ d. Remove paragraph (a)(4).

■ e. Revise paragraph (b).

The revisions read as follows:

**§ 2553.41 Who is eligible to be an RSVP volunteer?**

* * * * *

(b) Eligibility to serve as an RSVP volunteer shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 89. Revise § 2553.42 to read as follows:

**§ 2553.42 Is an RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?**

RSVP volunteers are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

■ 90. Revise § 2553.43 to read as follows:

**§ 2553.43 What cost reimbursements are provided to RSVP volunteers?**

(a) RSVP volunteers may be provided the following cost reimbursements within the limits of the project's available resources:

(1) *Transportation.* RSVP volunteers may receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(2) *Meals.* RSVP volunteers may receive assistance with the cost of meals taken while on assignment.

(3) *Other volunteer expenses.* RSVP volunteers may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

(b) RSVP volunteers must be provided the following cost reimbursements:

(1) *Recognition.* RSVP volunteers shall be provided recognition for their service.

(2) *Insurance.* An RSVP volunteer is provided with the CNCS-specified minimum levels of insurance as follows:

(i) *Accident insurance.* Accident insurance covers RSVP volunteers for personal injury during travel between their homes and places of assignment, during volunteer service, during meal periods while serving as a volunteer, and while attending project sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(ii) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(iii) *Excess automobile insurance.* (A) RSVP drivers who drive in connection with their service shall be provided

protection against claims in excess of the greater of either:

(*1*) Liability insurance the volunteers carry on their own automobiles; or

(*2*) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(B) RSVP volunteers who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

■ 91. Revise § 2553.44 to read as follows:

**§ 2553.44 May cost reimbursements received by RSVP volunteers be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. An RSVP volunteer's cost reimbursements are not subject to any tax or charge, and are not treated as wages or compensation for the purposes of unemployment insurance, workers' compensation, temporary disability, retirement, public assistance or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, and do not reduce or eliminate the level of, or eligibility for, assistance or services that a volunteer may be receiving under any governmental program.

■ 92. Revise § 2553.51 to read as follows:

**§ 2553.51 What are the terms of service of an RSVP volunteer?**

An RSVP volunteer shall serve on a regular basis, or intensively on short-term assignments, consistent with the assignment description.

■ 93. Revise § 2553.52 to read as follows:

**§ 2553.52 Under what circumstances may a sponsor remove an RSVP volunteer from service?**

(a) A sponsor may remove an RSVP volunteer from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments and or failure to accept supervision.

(b) The sponsor shall establish appropriate policies on removal from service as well as procedures for appeal.

■ 94. Revise § 2553.61 to read as follows:

**§ 2553.61 When may a sponsor serve as a volunteer station?**

The sponsor and RSVP project itself may function as a volunteer station or may initiate special volunteer activities provided that CNCS agrees these activities are in accord with program objectives and will not hinder overall project operations.

■ 95. Amend § 2553.62 as follows:

■ a. Revise paragraphs (b), (c), (e), and (f)(2) and (3).

■ b. Remove paragraphs (f)(4) and (5).

The revisions read as follows:

**§ 2553.62 What are the responsibilities of a volunteer station?**

* * * * *

(b) Assign staff member responsible for day to day oversight of RSVP volunteers within the volunteer station and for assessing the impact of volunteers in addressing community needs;

(c) Keep a Letter of Agreement for each client who receives in-home service;

* * * * *

(e) Comply with all applicable civil rights requirements including providing RSVP volunteers with disabilities reasonable accommodation to perform the essential functions of their service;

(f) * * *

(2) Resources required for performance of assignments including reasonable accommodation to RSVP volunteers with disabilities to perform the essential functions of their service; and

(3) Supervision.

* * * * *

■ 96. Amend § 2553.71 as follows:

■ a. Revise the introductory text and paragraphs (a)(1), (b)(1), (b)(2)(iv), (c)(2), (d), and (e).

■ b. Remove paragraph (f).

**§ 2553.71 What is the process for application and award of a grant?**

As funds become available, CNCS solicits application for RSVP grants from eligible organizations through a competitive process.

(a) * * *

(1) Submit required information determined by CNCS.

* * * * *

(b) *What process does CNCS use to select new RSVP grantees?* (1) CNCS reviews and determines the merits of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. In conducting its review during the competitive process, CNCS considers the input and opinions of those serving on a peer review panel, including members with expertise in senior service and aging, and may conduct site inspections, as appropriate.

(2) * * *

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across CNCS RSVP grantee portfolio; and

* * * * *

(c) * * *

(2) CNCS and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide assistance to the sponsor.

(d) *What happens if CNCS rejects an application?* CNCS will inform an applicant when an application is not approved for funding.

(e) *For what period of time does CNCS award a grant?* CNCS awards an RSVP grant for a specified period that is 3 years in duration with an option for a grant renewal of 3 years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. CNCS will terminate funding to a grantee when CNCS determines that the grant should not be renewed for an additional 3 years.

■ 97. Revise § 2553.72(a), (b) introductory text, (c), and (d) to read as follows:

**§ 2553.72 What are project funding requirements?**

(a) *Is non-CNCS support required?* (1) A CNCS grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years.

(2) A sponsor is responsible for identifying non-CNCS funds which may include in-kind contributions.

(b) *Under what circumstances does CNCS allow less than the percentage identified in paragraph (a) of this section?* CNCS may allow exceptions to the local support requirement identified in paragraph (a) of this section in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the non-CNCS support required?* Whenever locally generated contributions to RSVP projects are in excess of the non-CNCS funds required (10 percent of the total cost in the first year, 20 percent in the second year and 30 percent in the third and succeeding years), CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and Non-Federal funds, including expenditures from excess locally generated contributions,

are subject to audit by CNCS, its Inspector General or their authorized agents.

■ 98. Amend § 2553.73 as follows:

■ a. Revise the section heading.

■ b. Remove the word ''and'' from the end of paragraph (a)(3).

■ c. Revise paragraph (a)(4).

■ d. Add paragraph (a)(5).

■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

**§ 2553.73 What are a sponsor's legal requirements in managing grants?**

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval/concurrence is required for a change in the approved service area.

■ 99. Revise the heading for subpart H to read as follows:

## Subpart H—Non-CNCS Funded Projects

■ 100. Revise § 2553.81 to read as follows:

**§ 2553.81 Under what conditions may an agency or organization sponsor an RSVP project without CNCS funding?**

An eligible agency or organization who wishes to sponsor an RSVP project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 101. Amend § 2553.82 by revising the section heading and paragraph (a) to read as follows:

**§ 2553.82 What benefits are a non-CNCS funded project entitled to?**

(a) All technical assistance and materials provided to CNCS funded RSVP volunteer projects; and

* * * * *

■ 102. Revise § 2553.83 to read as follows:

**§ 2553.83 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 103. Revise § 2553.84 to read as follows:

**§ 2553.84 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2553.82.

■ 104. Revise § 2553.91(c)(2), (g), and (h) to read as follows:

**§ 2553.91 What legal limitations apply to the operation of the RSVP volunteer Program and to the expenditure of grant funds?**

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) An RSVP volunteer or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

■ 105. Revise § 2553.92 to read as follows:

**§ 2553.92 What legal coverage does CNCS make available to RSVP volunteers?**

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of an RSVP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

**§ 2553.100 [Removed]**

■ 106. Remove § 2553.100.

■ 107. Revise § 2553.101 to read as follows:

**§ 2553.101 What is the purpose of performance measurement?**

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and how those activities impact community needs.

■ 108. Revise § 2553.102 to read as follows:

**§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?**

An application to CNCS for funding under RSVP must contain:

(a) In a year one renewal application:

(1) Performance measures.

(2) Estimated performance data for the project years covered by the application.

(b) In a year two or three continuation application:

(1) Performance measures.

(2) Estimated performance data for the project years covered by the application.

(3) Actual performance data, where available, for the preceding completed project year.

■ 109. Revise § 2553.103 to read as follows:

**§ 2553.103 Who develops the performance measures?**

(a) CNCS may establish performance measures that will apply to RSVP projects, which sponsors will be responsible for meeting.

(b) An applicant is responsible for choosing its own project specific performance measures.

■ 110. Revise § 2553.104 to read as follows:

**§ 2553.104 What performance measures must be submitted to CNCS and how are these submitted?**

(a) An applicant for CNCS funds is required to submit any uniform performance measure CNCS may establish for all applicants. Requirements, including types of performance measures, will be communicated in the notice of funding and other related materials.

(b) CNCS may specify additional requirements related to performance measures on an annual basis in program guidance and related materials.

(c) Applicants for CNCS funds will submit performance measures through the grant application. CNCS will provide standard forms.

■ 111. Revise § 2553.105 to read as follows:

**§ 2553.105 How are performance measures approved and documented?**

(a) CNCS reviews and approves performance measures for all applicants that apply for funding.

(b) An applicant must follow CNCS provided guidance and formats when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and CNCS, will be documented in the approved grant application.

■ 112. Revise § 2553.106 to read as follows:

**§ 2553.106 How does a sponsor report performance measures to CNCS?**

CNCS will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

■ 113. Amend § 2553.107 by revising the introductory text to read as follows:

**§ 2553.107 What must a sponsor do if it cannot meet its performance measures?**

When a sponsor finds it is not on track to meet its performance measures, the sponsor must develop a plan to get back on track or submit a request to CNCS to amend its performance measures. CNCS may limit when amendments to performance measure can be submitted as well as limit the types of changes a sponsor can make to performance measures. The request must include all of the following:

* * * * *

**§ 2553.108 [Removed]**

■ 114. Remove § 2553.108.

**§ 2553.109 [Redesignated as § 2553.108 and Amended]**

■ 115. Redesignate § 2553.109 as § 2553.108 and revise newly redesignated § 2553.108 to read as follows:

**§ 2553.108 What happens if a sponsor fails to meet the target performance measures included in the approved grant application?**

If a sponsor fails to meet a target performance measure established in the approved grant application, CNCS may take one or more of the following actions:

(a) Reduce the amount, suspend, or deny refunding of the grant, in accordance with the provisions of § 2553.31;

(b) Terminate the grant, in accordance with 45 CFR part 1206.

Dated: January 18, 2018.

**Tim Noelker,**

*General Counsel.*

[FR Doc. 2018–01462 Filed 2–13–18; 8:45 am]

**BILLING CODE 6050–28–P**


# FEDERAL REGISTER

Vol. 83 Wednesday,
No. 31 February 14, 2018

Part III

## Postal Regulatory Commission

39 CFR Part 3015
Competitive Postal Products; Proposed Rule

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3015

**[Docket No. RM2017–1; Order No. 4402]**

### Competitive Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is proposing to amend its existing rule related to the minimum amount that competitive products as a whole are required to contribute to institutional costs annually. The proposed rule changes were developed during the Commission's second review of whether the appropriate share level should be retained, eliminated, or modified. The Commission invites public comment on the proposed rule.

**DATES:** *Comments are due:* April 16, 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:**

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## I. Introduction

In this proceeding, the Commission conducts its second 39 U.S.C. 3633(b) review of the appropriate share that competitive products contribute to institutional costs. *See* 39 U.S.C. 3633(b). The purpose of the Commission's review is to determine whether the existing 5.5-percent appropriate share should be retained, modified, or eliminated after considering all relevant circumstances. *See id.; see also* 39 CFR 3015.7(c).

Postal Service products are characterized as either market dominant or competitive. 39 U.S.C. 3642(b)(1). Market dominant products are those products over which the Postal Service exercises sufficient market power to effectively set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.[1] Competitive products consist of all other Postal Service products.[2] All Postal Service costs are classified as either attributable or institutional. Attributable costs are costs that are assigned to specific products on the basis of reliably identified causal relationships.[3] Institutional costs are residual costs that cannot be specifically attributed to either market dominant or competitive products through reliably identified causal relationships.[4]

In this Notice of Proposed Rulemaking, the Commission proposes that a formula be used to calculate the minimum amount that competitive products as a whole are required to contribute to institutional costs annually (*i.e.,* the appropriate share). As discussed in the sections that follow, the Commission proposes to modify the appropriate share based on its analysis of all relevant circumstances in accordance with 39 U.S.C. 3633(b).

## II. Procedural History

On November 22, 2016, the Commission issued an Advance Notice of Proposed Rulemaking establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment on the Commission's examination of the appropriate share.[5]

### *A. Summary of Filings*

The Postal Service, the Public Representative, Amazon Fulfillment Services, Inc. (Amazon), the American Catalog Mailers Association (ACMA), Former Utility Regulators (FUR), the Greeting Card Association (GCA), the National Association of Letter Carriers, AFL–CIO (NALC), the Association for Postal Commerce (PostCom), Stamps.com, United Parcel Service, Inc. (UPS), and a collective group of market dominant mailers and competitive shippers filed initial comments.[6] In addition, representatives[7] for Amazon and UPS filed declarations supporting the initial comments.

Business Optimization Services (BOS), eBay, Inc. (eBay), the National Postal Policy Council (NPPC), National Association of Presort Mailers (NAPM), GCA, MDMCS, the Postal Service, the Public Representative, Amazon, and UPS filed reply comments. In addition, representatives for Amazon and UPS filed declarations supporting the reply comments.[8] Appendix A contains the full list of comments, reply comments, related citations, and related filings.[9]

Several motions were filed by Amazon and UPS between January 4, 2017, and February 9, 2017, relating to access to non-public materials.[10] In addition, on January 26, 2018, UPS filed a motion to supplement the record in this docket.[11] Appendix B provides a

[1] *Id.* Examples of market dominant products include products in the First-Class Mail, USPS Marketing Mail, and Periodicals classes.

[2] *Id.* Examples of competitive products include Priority Mail, Priority Mail Express, and First-Class Package Service.

[3] Attributable costing was most recently considered in Docket No. RM2016–2, wherein the Commission examined the concept of reliably identifiable causally related costs and expanded the scope of Postal Service cost attribution. *See generally* Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506). This case is currently pending before the United States Court of Appeals for the District of Columbia Circuit.

[4] Examples of institutional costs include the Postmaster General's salary, building project expenses, and area administration expenses.

[5] Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, November 22, 2016 (Order No. 3624). The Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products was published in the **Federal Register** on November 29, 2016. *See* 81 FR 85906.

[6] The collective group of mailers includes the Parcel Shippers Association (PSA), Alliance of Nonprofit Mailers, American Catalog Mailers Association, Continuity Shippers Association, Data & Marketing Association, Envelope Manufacturers Association, National Association of Presort Mailers, National Newspaper Association, PSI Systems, and Stamps.com (collectively ''Market Dominant Mailers and Competitive Shippers'' (MDMCS)). Parties that make up MDMCS are organizations that represent market dominant mailers, competitive product shippers, or users of both market dominant and competitive products. MDMCS Comments at 1.

[7] The Amazon representative was John C. Panzar (Panzar), and the UPS representative was J. Gregory Sidak (Sidak).

[8] The Amazon representative was Panzar, and the UPS representatives were Sidak and Dennis W. Carlton (Carlton).

[9] Federal Express Corporation (FedEx) filed comments on January 23, 2017. Comments of Federal Express Corporation, January 23, 2017. On January 26, 2017, FedEx filed a motion to withdraw its initial comments. *See* Motion to Withdraw Comments, January 26, 2017. This motion is granted. FedEx's comments, filed January 23, 2017, were not considered by the Commission as part of its review in this docket.

[10] Although some of these motions were filed in a separate docket, the movants specifically asserted that they intended to use the requested materials for purposes of the instant docket as well.

[11] United Parcel Service, Inc.'s Motion to Supplement Record, January 26, 2018 (Motion to Supplement Record). In its Motion to Supplement Record, UPS requests that the record in this docket be supplemented to include a portion of an informal transcript from a DC Circuit appellate case (No. 16–1354) in which UPS sought appellate review of Commission Order No. 3506 related to attributable costing. Motion to Supplement Record at 1–2. Both Amazon and PSA filed oppositions to UPS's Motion to Supplement Record. *See* Answer of Amazon.com Services, Inc., to Motion of United

list of motions and Commission orders on motions relating to access to non-public information filed in this proceeding.

*B. Organization of Discussion*

Section III of this Notice of Proposed Rulemaking provides an overview of 39 U.S.C. 3633 and a discussion of the Commission's two previous decisions concerning the appropriate share that competitive products are required to contribute to institutional costs.

Section IV discusses the proposed change to the appropriate share requirement. The Commission explains its proposed formula-based approach and analyzes its proposed formula pursuant to the requirements of 39 U.S.C. 3633(b).

In section V, the Commission provides an analysis of the relevant Federal Trade Commission (FTC) report pursuant to section 703(d) of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006).[12]

Section VI discusses comments received in this docket that have not been addressed elsewhere in this Notice of Proposed Rulemaking, organized by whether the commenter proposed that the current 5.5-percent appropriate share be increased, maintained, or eliminated.

Sections VII and VIII explain the proposed changes to the rules and take administrative steps in order to allow for comments on the proposed changes by interested persons.

## III. Background

*A. Relevant Statutory Requirements*

The PAEA requires that competitive products collectively cover what the Commission determines to be an appropriate share of the Postal Service's institutional costs. 39 U.S.C. 3633(a)(3). The Commission is required to revisit the appropriate share regulation at least every 5 years to determine if the contribution requirement should be ''retained in its current form, modified, or eliminated.'' 39 U.S.C. 3633.

In making such a determination, the Commission is required to consider ''all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' *Id.* Thus, by its terms, section 3633(b) provides three separate elements that the Commission must consider during each review: (1) The prevailing competitive conditions in the market; (2) the degree to which any costs are uniquely or disproportionately associated with competitive products; and (3) all other relevant circumstances.

*B. Previous Commission Decisions*

1. Docket No. RM2007–1

In promulgating its initial competitive product rules following the enactment of the PAEA, the Commission set the minimum competitive product contribution level at 5.5 percent.[13] In doing so, the Commission considered various proposals for how best to quantify the appropriate share, including ''equal unit contribution,'' ''equal percentage markup,'' ''markup of competitive products' attributable costs,'' and ''percentage of revenues.'' [14] The Commission ultimately determined that basing competitive products' contribution on a percentage of total institutional costs was more easily understood and mirrored the directive of section 3633(a)(3). *Id.* The Commission also determined that the appropriate share is a floor, or minimum amount, with ''the hope (and expectation) . . . that competitive products will generate contributions in excess of the floor.'' *Id.* at 72.

Although the Commission projected, based on the recommended rates at the time, that competitive products would contribute 6.9 percent to institutional costs in test year 2008,[15] the Commission set the minimum contribution level lower due to the differences between the old ratemaking system and the new one being implemented pursuant to the PAEA. Order No. 26 at 70–72. In addition, the Commission considered the risks inherent in a mandatory contribution level. At the time, the Commission considered that setting it too high could hinder the Postal Service's flexibility to compete, while setting it too low could give the Postal Service an artificial competitive advantage. *Id.* at 73.

Ultimately, the Commission considered the amount that competitive products had historically contributed to the Postal Service's institutional costs as a reasonable means of quantifying the appropriate share at that time. *Id.* at 74. The Commission estimated that competitive products' contribution to total institutional costs had been 5.4 percent and 5.7 percent in the two previous fiscal years, and it set the appropriate share at 5.5 percent. *Id.* at 73; Order No. 43 at 91.

2. Docket No. RM2012–3

The Commission completed its first review of the appropriate share, required by section 3633(b), in Docket No. RM2012–3.[16] The Commission first addressed the factors enumerated by section 3633(b), including the prevailing competitive conditions in the market and the degree to which any costs were uniquely or disproportionally associated with competitive products, followed by a discussion of other relevant circumstances. *See* 39 U.S.C. 3633(b). The Commission ultimately determined that the minimum appropriate share should be maintained at 5.5 percent. Order No. 1449 at 1–2.

a. Prevailing Competitive Conditions

The Commission found three ''prevailing competitive conditions in the market'' relevant to its analysis: (1) Whether any evidence existed suggesting that the Postal Service had benefitted from a competitive advantage with respect to competitive products; (2) changes to the Postal Service's market share with respect to competitive products between 2007 and 2011; and (3) changes to the market and to the Postal Service's competitors between 2007 and 2011. *Id.* at 14.

With regard to competitive advantage, the Commission first noted the FTC

Parcel Service, Inc. to Supplement Record, February 2, 2018; Response of Parcel Shippers Association to United Parcel Service, Inc.'s Motion to Supplement Record, February 2, 2018. The Commission denies the Motion to Supplement Record at this time. UPS or any other interested party may raise the informal transcript, as well as any related arguments concerning it, in timely filed comments in response to this Notice of Proposed Rulemaking.

[12] As discussed in greater detail below, uncodified section 703 of the PAEA directs the Commission, when revising regulations under 39 U.S.C. 3633, to consider subsequent events that affect the continuing validity of an FTC report that analyzed the Postal Service's economic advantages and disadvantages in the competitive product market when compared to private competitors. *See* PAEA, 120 Stat. 3244; *see also* Federal Trade Commission, Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors, December 2007 (FTC Report), available at: *https://www.ftc.gov/sites/default/files/documents/reports/accounting-laws-apply-differently-united-states-postal-service-and-its-private-competitors-report/080116postal.pdf.*

[13] *See* Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 91, 138 (Order No. 43).

[14] *See* Docket No. RM2007–1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 70 (Order No. 26).

[15] Under the system of ratemaking in place prior to the PAEA, rates were set to allow the Postal Service to break even over a series of years. As part of those pre-PAEA rate cases, the revenue necessary for the Postal Service to break even in a single year was calculated and rates were designed to meet that revenue requirement. Those break-even years were called ''test years.'' *See* Docket No. RM2017–3, Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017, at 24 (Order No. 4257).

[16] *See* Docket No. RM2012–3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 (Order No. 1449).

Report which had concluded that, with regard to competitive products, the Postal Service operated at a net competitive disadvantage relative to its competitors.[17] Next, the Commission concluded that there was not any evidence of predatory pricing by the Postal Service.[18] Finally, the Commission noted that one of the PAEA's reforms had been to make federal antitrust law generally applicable to the Postal Service, but no antitrust-related action had been taken against the Postal Service. *Id.* at 16.

The second market condition considered by the Commission was the Postal Service's share of the market. *Id.* The Commission determined that there had not been a significant increase in the Postal Service's market share between Fiscal Year (FY) 2007 and FY 2011, which minimized concerns about any artificial advantage the Postal Service might have over its competitors. *Id.* at 18.

The third and final market condition considered by the Commission was changes to the market and the Postal Service's competitors since the initial appropriate share level was set in 2007. *Id.* The Commission noted that the package delivery market was expected to expand in the coming years, and that a significant competitor (DHL) had exited the market. *Id.* Nevertheless, the Commission ultimately determined that, although these market changes had provided the Postal Service with an opportunity to expand its competitive services, the Postal Service had continued to price its competitive products in such a way that they contributed more than the required 5.5 percent towards institutional costs. *Id.* at 19. As a result, the Commission found that there was no evidence that changed circumstances had provided the Postal Service with an unfair advantage. *Id.*

b. Unique or Disproportionate Costs

In considering the second element of section 3633(b) related to unique or disproportionate costs, the Commission found that there were no unique or disproportionate costs associated with competitive products that would affect the appropriate share. *Id.* at 14 n.14.

c. Other Relevant Circumstances

The Commission also discussed multiple factors that it considered relevant to its review of the appropriate share.

First, the Commission addressed the contribution level of competitive products to institutional costs over the preceding 5 years. *Id.* at 19–21. The Commission determined that between 2007 and 2011 the contribution level had generally increased, ranging from 5.54 percent to 7.82 percent of total institutional costs, which in dollar terms represented a 29-percent increase since FY 2007. *Id.* at 20–21. Therefore, the Commission found that the 5.5-percent appropriate share requirement had not ''hampered'' the Postal Service in pricing its competitive products. *Id.* at 21.

The Commission then considered changes to competitive product offerings and the mail mix that occurred over the preceding 5 years. The two major changes that the Commission identified were the transfer of both commercial First-Class Mail Parcels and Commercial Standard Mail Parcels to the competitive product list.[19] Despite changes to competitive product offerings, the Commission determined that the 5.5-percent appropriate share continued to accurately reflect the proportion of institutional costs that should be borne by competitive products. *Id.* at 23.

The final factor addressed by the Commission was the level of uncertainty regarding the Postal Service's business and financial condition in FY 2012. *Id.* Specifically, two proposals by the Postal Service were pending at that time which proposed to alter certain service standards and restructure aspects of the Postal Service's retail network. *Id.* This, combined with the Postal Service's ''unsustainable'' financial performance in the most recently available quarterly data, led the Commission to conclude that the resolution of these uncertainties had the potential to affect the relationship of attributable costs to institutional costs, thus affecting the appropriate share contribution requirement in the future. *Id.*

In concluding its first 5-year review, the Commission determined that ''[t]aken together, the totality of these relevant considerations support[ed] a conclusion that retaining the . . . appropriate share contribution level [at 5.5 percent] [was] appropriate at [that] time.'' *Id.* at 24.

## IV. Commission Analysis

### *A. Change in Approach to Setting Competitive Products' Appropriate Share*

In Docket No. RM2007–1, the Commission used the historical contribution of competitive products to set the initial appropriate share percentage. In Docket No. RM2012–3, the Commission examined the requirements of 39 U.S.C. 3633(b) in an analysis that blended qualitative and quantitative factors, the result of which led the Commission to maintain the minimum appropriate share at 5.5 percent. In this review of the appropriate share, the Commission analyzes the requirements of 39 U.S.C. 3633(b) and proposes to change its approach to setting the minimum appropriate share by using a formula that would annually update the required amount based on market conditions.

When an agency action represents a change in policy or approach, three criteria must be met in order to justify the change: (1) The agency must acknowledge that it is changing its policy; (2) the agency must provide a reasoned explanation for the new policy; and (3) the policy must be permissible under the controlling statute.[20] As the Commission has already acknowledged that a formula-based approach represents a change in the approach to setting the appropriate share, the Commission now turns to its explanation for the changed approach.

At the time the appropriate share was initially set in Docket No. RM2007–1, the postal regulatory system was undergoing substantial changes as a result of the enactment of the PAEA. In setting the appropriate share at 5.5 percent, the Commission selected an ''easily understood'' percentage based on competitive products' historical contribution to institutional costs

[17] *Id.* at 14–15; *see* FTC Report at 64. The FTC Report is discussed in more detail in section V, *infra.*

[18] Order No. 1449 at 16. The Postal Service would be engaging in predatory pricing if it set its competitive services' prices below their marginal costs. *See id.* at 15. However, the Commission found that the Postal Service's ability to engage in such behavior is effectively mitigated by 39 U.S.C. 3633(a)(2), which requires each competitive product to cover its attributable costs. *Id.* Moreover, the Commission observed that because the appropriate share requirement assigns a portion of the Postal Service's fixed costs to competitive products collectively, it effectively works to impose an additional level of protection against anti-competitive pricing by forcing the Postal Service to set prices at levels capable of generating sufficient revenue to cover those costs. *Id.*

[19] *Id.* at 21–22. The Commission determined that as a result of these transfers, total competitive revenue and volume had increased by 55.8 percent and 21.4 percent, respectively. *Id.* at 22. As a share of total volume, these transfers increased competitive products' share from 0.8 percent to 1.6 percent. *Id.* The Commission recognized the possibility that should competitive product volumes increase substantially in relation to market dominant volumes, the Commission could consider modifying the appropriate share ''under the right circumstances.'' *Id.* at 22–23.

[20] *Fed. Commc'n Comm'n* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). The Court reviewed this issue after the FCC expanded what could be considered actionably indecent language under 18 U.S.C. 1464 and then enforced the expanded policy, which was later challenged by broadcasters.

during the previous 2 fiscal years. Order No. 26 at 70, 73. The Commission was also ''mindful of the risks of setting [the appropriate share] too high, particularly at the outset of the new system of regulation.'' *Id.* at 73.

Five years later, in Docket No. RM2012–3, the Commission maintained the appropriate share at a static 5.5 percent. At that time, the Postal Service had only offered competitive products for 5 years. Without any evidence that the Postal Service was benefiting from a competitive advantage or that the market was not competitive, the Commission determined maintaining the appropriate share at 5.5 percent was the correct course. Order No. 1449 at 16–19.

Relevant circumstances have changed since the Commission's last review and over the 11 years since the enactment of the PAEA. The economy has recovered since the global financial crisis of the late 2000s, and no major dockets regarding the nature of postal services (*i.e.,* N cases) are currently pending before the Commission, as they were in Docket No. RM2012–3. As discussed in section IV.C, *infra,* the Postal Service's market share, competitive volumes, and competitive contribution as a percentage of institutional costs have increased steadily since 2007. As a result, the Commission determines that the static 5.5-percent appropriate share should be modified to better reflect the modern competitive market. Given that the Commission now has over 11 years of data related to competitive products, a formula-based approach that more directly, accurately, and frequently incorporates prevailing competitive conditions in the market and other relevant circumstances can be constructed and applied.

The proposed change in approach is also permissible under title 39. As noted above, 39 U.S.C. 3633(a)(3) provides that the Commission shall promulgate and periodically revise the regulations that ''ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.'' 39 U.S.C. 3633(a)(3). In addition, the Commission must review the appropriate share at least every 5 years, taking into consideration the three elements set forth in 39 U.S.C. 3633(b).[21] Section 3633(a)(3) establishes the Commission's authority related to setting the appropriate share, while subsection (b) outlines the frequency of the Commission's review of the appropriate share, as well as the elements the Commission must consider as part of its review.

The plain language of section 3633 reflects an express delegation of authority to the Commission, by Congress, to determine what share of institutional costs is appropriate for competitive products to cover. Furthermore, Congress intended for the Commission to have flexibility with regard to the use of a specific approach.[22] The statute does not require the Commission to use any specific approach. The only limitation that is placed on the Commission's determination is that it must consider the three distinct elements described in section 3633(b). Section 3633(b) also plainly contemplates that the appropriate share could change because it specifies that the Commission should determine if the appropriate share should be retained, modified, or eliminated in each review pursuant to section 3633(b).

Although there is no committee or conference report issued for the bill that was enacted into law, the legislative history underlying the PAEA confirms the plain meaning interpretation of section 3633. The PAEA was the product of blending different versions of postal reform legislation authored by the House of Representatives and the Senate. Drafts between 2000 and 2005 all included the same conflicting language: House versions of the bill would have required competitive products to make ''a reasonable contribution'' to institutional costs, while Senate versions of the bill would have required competitive products to cover ''their share'' of institutional costs.[23]

The committee report accompanying H.R. 22, the House of Representatives' 2005 postal reform bill, noted that ''the requirement that competitive products collectively make a reasonable contribution to overhead'' was a ''broad standard'' which contained ''inherent flexibility,'' and that the standard was ''not intended to dictate a particular approach that the [Commission] should follow.'' [24] Although S. 2468, the Senate's 2004 postal reform bill, used the phrase ''their share,'' the accompanying committee report explained that for the attribution of competitive product costs, including institutional costs, ''the technical decision of what cost analysis methodologies are sufficiently reliable at any given time to form the basis for attribution should be left to the [Commission].'' [25] Both committee reports imply that the House and the Senate intended to provide the Commission with some decision-making flexibility with regard to the chosen approach. The blended result of these versions reflected the common view of substantial Commission discretion, with the PAEA's requirement that ''all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.'' *See* 39 U.S.C. 3633(a)(3).

Below, the Commission discusses the two major components of its proposed formula-based approach, explains all other terms in the formula, and describes how the formula would function in order to calculate the appropriate share. Following that, the Commission addresses how its formula-based approach satisfies the elements of section 3633(b).

*B. Formula-Based Approach*

As indicated above, due to changes in the market and an increase in the availability and accessibility of information over the last 11 years, the Commission is proposing the regular application of a formula-based approach to setting the appropriate share. This approach uses two components to annually capture changes in the market and the Postal Service's position in that market: the Postal Service Lerner Index and the Competitive Market Output.

1. Postal Service Lerner Index

Section 3633(b) requires the Commission to consider ''the prevailing competitive conditions in the market''

[21] *See* 39 U.S.C. 3633(b). The frequency of Commission review was first addressed in Docket No. RM2012–3, where the Commission stated that its ability to review the appropriate share more frequently than every 5 years allows the Commission to modify the appropriate share when there is a relevant change in circumstances. Docket No. RM2012–3, Order Granting, in Part, Motion of the Parcel Shippers Association to Extend the Period for Comments, March 7, 2012, at 4 (Order No. 1276).

[22] The Commission's view with regard to the level of flexibility intended by Congress is echoed by the Public Representative. In comparing various versions of the legislation that ultimately became the PAEA, the Public Representative states that ''although the earlier standard was revised from 'reasonable contribution' to 'appropriate share,' it is fair to conclude the drafters did not intend for the Commission to follow a particular approach when establishing the contribution standard.'' PR Comments at 5. Several other commenters use their views of Congress's intent and the legislative history to support their positions. *See, e.g.,* Postal Service Comments at 2–4; Panzar Decl. at 3–5; UPS Reply Comments at 6–8, 12–13; Sidak Reply Decl. at 7–10.

[23] *See, e.g.,* H.R. 4341, 108th Cong. at 15 (2004); S. 2468, 108th Cong. at 121 (2004); S. 662, 109th Cong. at 145 (2005).

[24] H.R. Rep. No. 109–66, pt. 1, at 49 (2005); *see* H.R. 22, 109th Cong. (2005).

[25] S. Rep. No. 108–318 at 9 (2004); S. 2468, 108th Cong. at 121 (2004).

as part of its review of the appropriate share. 39 U.S.C. 3633(b). The prior Commission decision relating to this requirement focused on a number of considerations, including: existence (or nonexistence) of evidence suggesting the Postal Service has benefitted from a competitive advantage with respect to its competitive products, changes to the Postal Service's market share since the previous review, and changes to the competitive market and Postal Service's competitors since the previous review. *See* section III.B.2, *supra.* Each consideration is directed at ascertaining the Postal Service's market power in the competitive market.[26]

Market power arises when a competitor in the market: (1) Can profitably set prices well above its costs and (2) enjoys some protection against entry or expansion by other competitors that would normally erode such prices and profits.[27] With the enactment of the PAEA, Congress sought to ensure a ''level playing field'' between the Postal Service and its competitors as a means of preserving competition.[28] Evaluating market power allows the Commission to assess whether competition is being preserved and whether the Postal Service possesses a competitive advantage.

In previous reviews, the Commission analyzed prevailing competitive conditions in the market and ascertained the Postal Service's market power using a qualitative approach. However, an alternative method of gauging the Postal Service's market power is quantitatively through a Lerner index.

A Lerner index measures market power for a given firm by measuring how far that firm's price is from its marginal cost, which is the cost of producing one additional good at a given level of volume.[29] Effectively, a Lerner index measures the profitability of an individual firm. As a firm's marginal cost increases relative to its price, the Lerner index will decrease, indicating that the firm's price is closer to marginal cost, and the firm possesses less market power. As a firm increases its price relative to its marginal cost, the Lerner index will increase, indicating that the firm is pricing further from marginal cost and possesses more market power. Thus, a Lerner index is a useful tool for measuring market power because it reflects the extent to which a firm is pricing above marginal costs.

The equation below represents the formula for a general Lerner index: [30]

$$Lerner\ Index\ = \frac{Price - Marginal\ Cost}{Price}$$

Because the Postal Service is a multi-product firm, it does not have a single marginal cost and price; rather, it consists of many products, each with its own marginal cost and set of prices. Therefore, to create a Lerner index specific to the Postal Service's competitive products, the general formula must be adapted to capture all competitive products. To do so, the Commission develops a Lerner index for the Postal Service's competitive products as a whole using the average unit volume-variable cost and revenue-per-piece for all competitive mail, as described below.

For the marginal cost variable, marginal cost data for the Postal Service are available through the Postal Service's Cost and Revenue Analysis (CRA) report.[31] The Postal Service submits the CRA report each year as part of its Annual Compliance Report (ACR), and the Commission uses the CRA as an input to its Postal Service Product Finances analysis (PFA), which the Commission produces every year as part of its Annual Compliance Determination (ACD).[32] The CRA calculates marginal costs using volume-variable costs. The volume-variable costs of the Postal Service are the costs of specific Postal Service operations (*e.g.,* mail processing, delivery), which vary with respect to the operation's cost driver (*e.g.,* volume, weight).[33] These volume-variable costs are then distributed to Postal Service products. *Id.* at 11–13. Dividing the total volume-variable cost of a product by the product's volume results in unit volume-variable costs, which are equivalent to marginal costs.[34] Applying this methodology, the Commission divides the sum of all competitive product volume-variable costs in the PFA by the sum of all competitive product volume to calculate competitive product unit volume-variable cost.

[26] It is important to note that the role of market power under section 3633(b) is similar to, but distinct from, the market power analysis that the Commission conducts under section 3642 of the PAEA. Under section 3642, the Commission is required to determine if an individual product should be classified as market dominant by considering whether ''the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.'' 39 U.S.C. 3642(b)(1). The analysis that the Commission conducts in such cases involves identifying a relevant market for the product in question and then identifying reasonably interchangeable substitutes for that product. *See, e.g.,* Docket No. MC2013–57 and CP2013–75, Order Denying Request, December 23, 2014 (Order No. 2306); Docket No. MC2015–7, Order Denying Transfer of First-Class Mail Parcels to the Competitive Product Category, August 26, 2015 (Order No. 2686), *remanded,* 842 F.3d 1271 (D.C. Cir. 2016); Docket No. MC2015–7, Order Conditionally Approving Transfer, July 20, 2017 (Order No. 4009).

The role of market power under section 3633(b) is focused not on whether the Postal Service would face effective competition in the offering of a single product, but on the Postal Service's level of market power in offering competitive products generally. As such, it requires a broader view of market power than the inquiry under section 3642.

[27] Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law, Vol. IIB, at 109 (4th ed. 2014) (Areeda & Hovenkamp).

[28] *See, e.g.,* H.R. Rep. No. 109–66 at 44 (''Under the [PAEA], the Postal Service will compete on a level playing field, under many of the same terms and conditions as faced by its private sector competitors . . . .''); S. Rep. No. 108–318 at 27 (2004) (''[S]teps need to be taken to level the playing field between the Postal Service and its competitors in the competitive product market.'').

[29] *See* Jeffrey Church & Roger Ware, Industrial Organization: A Strategic Approach 29 (2000) (Church & Ware), available at: *https://works.bepress.com/jeffrey_church/23/.*

[30] The mathematical development of this index may be found in Church & Ware. *See* Church & Ware at 31–36.

[31] *See, e.g.,* Docket No. ACR2016, Library Reference USPS–FY16–1, December 29, 2016. For most firms, marginal cost data are not ordinarily available, limiting the ability to calculate a Lerner index to estimate a given firm's market power. Dennis W. Carlton & Jeffrey M. Perloff, Modern Industrial Organization 278 (4th ed. 2005) (Carlton & Perloff).

[32] *See* 39 U.S.C. 3652 and 3653; *see also, e.g.,* USPS–FY16–1; Docket No. ACR2016, Library Reference PRC–LR–ACR2016/1, March 28, 2017. The PFA is also frequently referred to in ACR dockets as PRC Library Reference 1.

[33] John C. Panzar, The Role of Costs for Postal Regulation, September 30, 2014, at 9–10, available at: *https://www.prc.gov/sites/default/files/reports/J%20Panzar%20Final%20093014.pdf.* The cost driver reflects the unit of a particular operational activity that causes change in the activity's cost. *Id.* at 11–12. For example, the cost driver for highway transportation is cubic-foot-miles, because the relevant variable that would change costs for this activity is the amount of space taken up by mail on trucks, and hence how many trucks are required to transport it. *Id.*

[34] *Id.* at 14–15; *see also* United States Postal Service, Rule 39 CFR Section 3050.60(f) Report for Fiscal Year 2016, July 3, 2017, Appendix H.

For the price variable, the Commission uses average revenue-per-piece, which incorporates all of the prices for all competitive products. The PFA presents revenue data by product. The Commission divides the sum of all competitive product revenue by the sum of all competitive product volume to calculate competitive product revenue-per-piece.

The formula for calculating a Lerner index specific to the Postal Service's competitive products is:

$$Postal\ Service\ Lerner\ Index = \frac{Revenue\text{-}per\text{-}Piece - Unit\ Volume\text{-}Variable\ Cost}{Revenue\text{-}per\text{-}Piece}$$

The Postal Service Lerner Index, as well as the year-over-year percentage change in the Index, is reported for FY 2007 through FY 2017 in Table IV–1 below.[35]

TABLE IV–1—POSTAL SERVICE LERNER INDEX, FY 2007–FY 2017[36]

| Fiscal year | Lerner index | Percentage change in lerner index |
|---|---|---|
| FY 2007 | 0.228 | N/A |
| FY 2008 | 0.217 | −5.1 |
| FY 2009 | 0.251 | 15.9 |
| FY 2010 | 0.298 | 18.6 |
| FY 2011 | 0.276 | −7.3 |
| FY 2012 | 0.275 | −0.3 |
| FY 2013 | 0.290 | 5.4 |
| FY 2014 | 0.292 | 0.8 |
| FY 2015 | 0.284 | −2.7 |
| FY 2016 | 0.332 | 16.6 |
| FY 2017 | 0.356 | 7.5 |

A typical Lerner index ranges from 0 to 1.[37] At 0, revenue-per-piece equals unit volume-variable cost, which represents a perfectly competitive environment in which a firm makes no profit. Thus, Lerner index numbers close to 0 are evidence of highly competitive environments. The further a firm's Lerner index shifts away from 0 and towards 1, the more market power that firm possesses.[38] Network industries, including the delivery industry in which the Postal Service competes, contain significant barriers to entering the market.[39] These barriers prevent perfect competition, and firms within a network industry naturally possess some degree of market power. As a result, Lerner index values in excess of 0 should be expected for the Postal Service.

As shown in Table IV–1, the Postal Service Lerner Index has increased from 0.228 in FY 2007 to 0.356 in FY 2017. Within this time period, there have been some relatively large year-over-year shifts, particularly in FY 2009, FY 2010, and FY 2016. These likely reflect the effects of the global financial crisis of the late 2000's and changes in market demand.

The global financial crisis of the late 2000's constituted a severe economic shock and reduced consumer demand. Reductions in consumer demand for Postal Service competitive products in FY 2009 were a significant factor in decreasing the Postal Service's competitive volume, and therefore its revenue and costs. These volume losses were disproportionately concentrated in categories with unit contributions below the average for competitive products. As a result, the average unit contribution of competitive mail increased, which resulted in the increase in the Postal Service Lerner Index.

As the economy recovered from the global financial crisis of the late 2000's, demand increased and as a result the Postal Service's competitive volume, revenue, and costs increased in FY 2010. The Postal Service also exercised its pricing flexibility under PAEA, and its use of pricing innovations such as competitive negotiated service agreements and flat-rate pricing contributed to a large increase in the average unit contribution of competitive mail. The increase in unit contribution outpaced the increase in average unit revenue, leading to an increase in the Postal Service Lerner Index in FY 2010.

In FY 2016, the volume of USPS Ground[40] products increased. These products have a relatively low unit volume-variable cost, so the increase in their volume was a primary cause for decreased unit volume-variable costs for competitive products as a whole. This decrease in unit volume-variable costs, combined with a much smaller decrease in average unit revenue, resulted in an increase in the Postal Service Lerner Index.

The Postal Service Lerner Index suggests that the Postal Service's market power has grown over the last 10 years. This growth, however, did not necessarily occur at the expense of the Postal Service's competitors. It is possible that the Postal Service's competitors have experienced similar growth in market power, due to the fact that overall demand for competitive delivery has increased dramatically over the last 10 years. In order to put the Postal Service's market power in context relative to the market as a whole, the Commission uses the Competitive Market Output in the formula, which captures the overall size of the competitive market in which the Postal Service operates.

2. Competitive Market Output

While the Postal Service Lerner Index measures the Postal Service's market power in the competitive market, the second component of the Commission's formula, the Competitive Market Output, measures the overall size of the competitive market.

Evaluating the overall size of the market provides context for assessing prevailing competitive conditions. Capturing the overall size of the competitive market is also important because the Postal Service's ability to increase contribution for competitive products should increase when the competitive market grows and decrease when the competitive market shrinks. The appropriate share should balance

[35] The FY 2007 PFA did not report volume-variable costs for all competitive products due to the market dominant and competitive product classifications not being finalized. For FY 2007, the Commission uses attributable cost less product-specific costs for Priority Mail, Express Mail, and Competitive International Mail to approximate volume-variable costs.

[36] Source: Library Reference PRC–LR–RM2017–1/1. Postal Service Lerner Index values are rounded to the thousandths place. The ''Percentage Change in Lerner Index'' column is based on unrounded figures, reported in PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017. *See* 39 U.S.C. 3653.

[37] As discussed in section IV.C.1.a, *infra,* index values less than 0 may indicate a firm is engaging in predatory pricing.

[38] F.M. Scherer & David Ross, Industrial Market Structure and Economic Performance 70–71 (3d ed. 1990).

[39] Network industries are industries with cost advantages arising from handling products together, whether large amounts of the same product (economies of scale), or several different products (economies of scope). *See* United States Postal Service Office of Inspector General, Risk Analysis Research Center, Report No. RARC–WP12–008, A Primer on Postal Costing Issues, March 20, 2012, at 2–3, available at: *https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-12-008_0.pdf.*

[40] USPS Ground is a CRA classification that is used to identify Retail Ground, Parcel Select, and Parcel Return Service.

the Postal Service's ability to increase contribution in a growing market with the need to adjust for the realities of a declining market. Therefore, capturing the overall size of the competitive market is an important part of the appropriate share formula.

In order to measure the size of the competitive market, it is first necessary to define what the competitive market encompasses. For this appropriate share analysis, the competitive market encompasses two groups. The first group is the Postal Service's competitive products. As noted above, under the PAEA, Postal Service competitive products are any products that do not fall within the market dominant product definition. *See* section I, *supra; see also* 39 U.S.C. 3642(b)(1).

The second group is ''similar products'' offered by the Postal Service's competitors. This group excludes any competitors' products that the Postal Service does not actually compete with. For example, the Postal Service does not accept parcels weighing more than 70 pounds, so competitors' parcels over 70 pounds are excluded from the competitive market definition.[41]

Each of these groups has its own corresponding data source, and the two are combined to calculate the overall size of the competitive market.[42] The Commission determines that revenue, rather than volume, is the better measure of the overall size of the competitive market. Therefore, the data sources for both groups are revenue-based. Revenue data for both the Postal Service's competitive products and competitors offering similar products are directly comparable, as they constitute the value of all transactions. In contrast, volume data would have to be adjusted for intra-industry transactions. The revenue data are also available for all firms in the relevant market, whereas volume data for the Postal Service's competitors is unavailable.

For the revenue of Postal Service's competitive products, the Commission uses the PFA. For the revenue of Postal Service's competitors offering similar products, the Commission uses data obtained from two surveys conducted by the United States Census Bureau: The Quarterly Services Survey (QSS) and the Services Annual Survey (SAS).

a. PFA Data

To measure the Postal Service's competitive product revenue, the Commission uses the total competitive revenue reported in the PFA. These data are shown in Table IV–2 below.

TABLE IV–2—POSTAL SERVICE COMPETITIVE PRODUCT REVENUE, FY 2007–FY 2017[43]

| Fiscal year | Revenue (in millions) |
|---|---|
| FY 2007 | $7,909 |
| FY 2008 | 8,382 |
| FY 2009 | 8,132 |
| FY 2010 | 8,677 |
| FY 2011 | 8,990 |
| FY 2012 | 11,426 |
| FY 2013 | 13,741 |
| FY 2014 | 15,280 |
| FY 2015 | 16,428 |
| FY 2016 | 18,495 |
| FY 2017 | 20,690 |

b. QSS/SAS Data

Revenue data for competitors offering similar products is obtained from the QSS and SAS. The QSS is a survey conducted by the United States Census Bureau to estimate operating revenues for each service sector of the economy. Revenue data are classified by subsector, with the relevant subsector in this case being North American Industry Classification System (NAICS) Code 492—''Couriers and Messengers.''[44] The QSS provides data on a quarterly basis, which can be combined to correspond with the Postal Service's fiscal years. However, quarterly data are not available for FY 2007, FY 2008, or part of FY 2009.[45] As these data are necessary to incorporate all of the changes in the market's size since FY 2007, the Commission uses calendar year data from the SAS as a proxy for those fiscal years. The SAS is a survey conducted by the United States Census Bureau to calculate revenues, expenses, and other economic indicators for industries on a calendar year basis. For years where both QSS and SAS data are available, the sum of four quarters of QSS data are consistently 5 or 6 percent lower than the SAS data, as shown in Table IV–3 below.

[41] Domestic Mail Manual (DMM) section 3.2, available at: *https://pe.usps.com/text/dmm300/101.htm#ep1034246* (last accessed Feb. 1, 2018).

[42] This market definition effectively covers both last-mile and end-to-end deliveries of mail outside the market dominant system. ''Last-mile'' delivery is delivery from a firm's processing facility to the end recipient. The Postal Service routinely contracts with its competitors to provide such service, delivering competitive pieces that were entered with other firms to their end recipients. This contrasts with ''end-to-end'' service, in which one firm handles a mailpiece from acceptance to delivery, including ''last-mile'' delivery. Firms other than the Postal Service also provide last-mile delivery services.

[43] Source: PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[44] NAICS is a classification system developed by the Office of Management and Budget within the Executive Office of the President of the United States. It is designed to classify business establishments by type of activity performed for purposes of collecting, analyzing, and publishing statistical data related to the United States business economy. NAICS Code 492 encompasses all parcel delivery by firms without a universal service obligation (USO).

[45] Quarterly data are only available beginning Calendar Year (CY) 2009, which excludes the first quarter of FY 2009. Data for Quarter 1 of FY 2009 is unavailable because this quarter took place in CY 2008 when the QSS did not survey this sector.

**Table IV-3**
**Comparison of QSS and SAS Revenue Data for NAICS Code 492[46]**

| Calendar Year | SAS Data | Sum of QSS Data | Proportionate Difference $(\frac{QSS}{SAS})$ |
|---|---|---|---|
| 2009 | $68,166 | $64,429 | 0.95 |
| 2010 | $67,620 | $63,855 | 0.94 |
| 2011 | $71,692 | $67,947 | 0.95 |
| 2012 | $73,136 | $69,362 | 0.95 |
| 2013 | $75,406 | $71,570 | 0.95 |
| 2014 | $79,158 | $75,118 | 0.95 |
| 2015 | $82,698 | $78,424 | 0.95 |
| 2016 | $87,596 | $81,919 | 0.94 |
| Total | $605,472 | $572,624 | 0.95 |

These differences are primarily due to sampling differences between the QSS and SAS and seasonality adjustments made in the SAS.[47] Absent any adjustment, the Competitive Market Output for FY 2007, FY 2008, and FY 2009 would not be comparable to subsequent years. This would result in an apparent decline in Competitive Market Output from FY 2009 to FY 2010 that is primarily due to differences between the SAS and QSS data methodologies, rather than a real change in the market. As a result, an adjustment to account for these differences is needed for FY 2007, FY 2008, and FY 2009. The Commission reduces the SAS data for CY 2007, CY 2008, and CY 2009 by 5 percent in order to align the SAS data with the QSS data. The Commission uses the adjusted SAS data from those calendar years for the corresponding fiscal years of the Postal Service, and it sums the quarterly QSS data from FY 2010 to FY 2016 by Postal Service fiscal year to align the QSS data with the PFA data. These revenue data are displayed in Table IV–4 below.

TABLE IV–4—COMPETITOR REVENUE FROM SIMILAR PRODUCTS, FY 2007—FY 2017[48]

| Fiscal year | Revenue (in millions) |
|---|---|
| FY 2007 | $77,710 |
| FY 2008 | 75,956 |
| FY 2009 | 64,468 |
| FY 2010 | 63,359 |
| FY 2011 | 66,871 |
| FY 2012 | 69,270 |
| FY 2013 | 70,958 |
| FY 2014 | 73,359 |
| FY 2015 | 78,001 |
| FY 2016 | 80,746 |
| FY 2017 | 84,825 |

c. Combined Competitive Market Output Data

The PFA data and QSS/SAS data are combined to produce the Competitive Market Output. This information, along with the year-over-year percentage change in the Competitive Market Output, is reported in Table IV–5 below.

TABLE IV–5—COMPETITIVE MARKET OUTPUT, FY 2007—FY 2017[49]

| Fiscal year | Postal Service competitive product revenue (in millions) | Competitor revenue from similar products (in millions) | Competitive market output (in millions) | Percentage change in competitive market output |
|---|---|---|---|---|
| FY 2007 | $7,909 | $77,710 | $85,619 | N/A |
| FY 2008 | 8,382 | 75,956 | 84,338 | −1.5 |
| FY 2009 | 8,132 | 64,468 | 72,600 | −13.9 |
| FY 2010 | 8,677 | 63,359 | 72,036 | −0.8 |
| FY 2011 | 8,990 | 66,871 | 75,861 | 5.3 |
| FY 2012 | 11,426 | 69,270 | 80,696 | 6.4 |
| FY 2013 | 13,741 | 70,958 | 84,699 | 5.0 |
| FY 2014 | 15,280 | 73,359 | 88,639 | 4.7 |
| FY 2015 | 16,428 | 78,001 | 94,429 | 6.5 |
| FY 2016 | 18,495 | 80,746 | 99,241 | 5.1 |
| FY 2017 | 20,690 | 84,825 | 105,515 | 6.3 |

Table IV–5 illustrates that the Competitive Market Output data follow broad economic trends, declining from FY 2008 to FY 2010 during the global financial crisis of the late 2000s and increasing thereafter. However, Postal Service's revenue increased by a greater percentage than its competitors' revenue, due, in part, to its use of pricing flexibility, including the introduction of flat-rate pricing and negotiated service agreements between

[46] Source: PRC–LR–RM2017–1/1.

[47] The methodologies of the QSS and SAS surveys can be contrasted at *https://www.census.gov/services/sas/sastechdoc.html* and *https://www.census.gov/services/qss/qsstechdoc.html.*

[48] Source: PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[49] *Source:* PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

FY 2008 and FY 2011. Several transfers of market dominant products to the competitive product category from FY 2010 to FY 2014 also contributed to the increases in the Postal Service's competitive product revenue between FY 2011 and FY 2015.[50]

3. Resulting Formula

With the two components discussed above, the Commission proposes to calculate the appropriate share using the following formula: [51]

$AS_{t+1} = AS_t * (1 + \%\Delta LI_{t-1} + \%\Delta CMO_{t-1})$

*If* $t = 0 = FY$ 2007, $AS = 5.5\%$

Where

AS = Appropriate Share [52]
LI = Postal Service Lerner Index
CMO = Competitive Market Output
t = Fiscal Year

The Postal Service Lerner Index and Competitive Market Output are given equal weight in the calculation because the Commission considers both to carry equal importance in assessing the appropriate share of institutional costs. This is because it is necessary to balance changes in the competitive market with changes in the Postal Service's market power.

The Commission proposes to adjust the appropriate share annually by using the formula to calculate the minimum appropriate share for the upcoming fiscal year. Because the data necessary to calculate the minimum appropriate share for an upcoming fiscal year (which begins each October 1st) are not final until the most recent ACD is issued (typically at the end of March), the Commission proposes to report the new appropriate share level for the upcoming fiscal year as part of its ACD. The adjusted appropriate share would then be applicable for the upcoming fiscal year.[53] In order to calculate an upcoming fiscal year's appropriate share percentage ($AS_{t+1}$, the formula multiplies the sum of the percentage changes in the Postal Service Lerner Index and the Competitive Market Output from the previous fiscal years [54] $(1 + \%\Delta LI_{t-1} + \neq\Delta CMO_{t-1})$ by the current fiscal year's appropriate share ($AS_t$).[55]

This formula is recursive in order to fully incorporate changes in the Postal Service's market power and the overall market size from year to year.[56] By using the current fiscal year's appropriate share in the calculation of the next fiscal year's appropriate share, this formula includes the cumulative effects on the appropriate share from prior fiscal years. Using data from the prior fiscal year improves the predictability of the appropriate share formula and mitigates the effects of outlier years by incorporating them only after the effects of the outlier year have been reflected in the market.[57] The formula simplifies the planning process for the Postal Service and mailers because parties would know months before the start of a fiscal year what the appropriate share for that fiscal year will be.

As an example of how the formula functions, if the current year appropriate share is 5.5 percent, the Postal Service Lerner Index grew by 6 percent in the prior year, and Competitive Market Output declined by 3 percent in the prior year, the appropriate share for the next year is calculated as follows:

*Appropriate Share* = 5.5% * (1 + .06 = .03) = 5.57%

Under this scenario, the next year's appropriate share would be 5.7 percent. As noted above, this result will be the starting point for calculating the appropriate share for the following year.

Using 5.7 percent as the starting point for calculating the appropriate share for the following year, if the Postal Service Lerner Index grew by 2 percent and Competitive Market Output grew by 3 percent, then the calculation would be:

*Appropriate Share* = 5.7% * (1 + .02 = .03) = 6.0%

Under this scenario, the next year's appropriate share would be 6.0 percent and would become the starting point for calculating the appropriate share for the next year.

In order to calculate the appropriate share for future years, the Commission must first establish the beginning appropriate share percentage for the calculation, as well as the beginning fiscal year. In the terminology of the formula, this means defining the starting value of *AS* and *t*.

The Commission sets the beginning appropriate share level for the formula at 5.5 percent because that was the initial appropriate share set in FY 2007. As noted above in section III, the initial appropriate share of 5.5 percent was based on historical contribution levels, as well as the consideration that setting the appropriate share too high would create risks for the Postal Service.

The Commission would begin the formula calculation starting in FY 2007, calculating each subsequent fiscal year's appropriate share. This would ensure that the appropriate share fully reflects changes in the market since the PAEA was enacted. As discussed above, prevailing competitive conditions in the market and market uncertainties, as measured by the Postal Service's market power and the overall size of the market, have changed since FY 2007. Using FY 2007 as a starting point (*i.e.,* the initial *t* value) would allow the appropriate share to reflect the prevailing market conditions as they

[50] *See* Docket No. MC2010–20, Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, June 17, 2010, at 16 (Order No. 473); Docket No. MC2010–36, Order Conditionally Granting Request to Transfer Commercial Standard Mail Parcels to the Competitive Product List, March 2, 2011, at 20 (Order No. 689); Docket No. MC2011–25, Order Approving Request to Transfer Additional Post Office Box Service Locations to the Competitive Product List, July 29, 2011, at 14–15 (Order No. 780); Docket No. CP2012–2, Order Approving Changes in Rates of General Applicability for Competitive Products, December 21, 2011, at 13 (Order No. 1062); Docket No. MC2012–13, Order Conditionally Granting Request to Transfer Parcel Post to the Competitive Product List, July 20, 2012, at 14 (Order No. 1411); Docket No. MC2012–44, Order Approving Request for Product List Transfer, September 10, 2012, at 9 (Order No. 1461); Docket No. MC2014–28, Order Approving Product List Transfer, August 19, 2014, at 8–9 (Order No. 2160).

[51] The mathematical structure of this formula, *i.e.,* multiplying a base percentage by the sum of factors, is common in regulated industries, particularly in developing price caps. *See* James Ming Chen, *Price-Level Regulation and Its Reform,* 99 Marq. L.R. 931, 944 (2016), available at: *http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=5295&context=mulr.*

[52] This figure would be expressed as a percentage and rounded to one decimal place for simplicity and consistency with the Commission's past practice of expressing an appropriate share using only one decimal place.

[53] The Commission notes that, as its completion of the FY 2017 ACD is likely to occur prior to its issuance of a final rule in this docket, the first formula-based adjustment under this proposed rule may be announced in the final rule, as opposed to the Commission's FY 2017 ACD. After that, however, the Commission proposes that all future changes would be announced as part of each ACD.

[54] The ''1 + '' is a necessary mathematical concept for any percentage change formula in order to incorporate the pre-existing value being changed. *See* Jagdish Arya & Robin Lardner, Mathematical Analysis for Business and Economics 202–03 (2d ed. 1985).

[55] UPS advocates for a cost-based appropriate share. *See* UPS Comments at 34–37. The Commission notes that its formula is not directly based on costs, although Postal Service costs are incorporated into the formula through the use of unit volume-variable costs in the Postal Service Lerner Index. The Commission looks at the market as a whole pursuant to 39 U.S.C. 3633(b)'s directive to consider the prevailing competitive conditions in the market, which necessitates looking at factors beyond costs to determine the appropriate share.

[56] A recursive formula is a formula where a previous term is used to calculate the next term in the sequence.

[57] Year-over-year data would not be available for contemporaneous calculation of the appropriate share. For the Competitive Market Output, QSS data are only available in November, after the end of a Postal Service fiscal year. For the Postal Service Lerner Index, data are only available when the Postal Service files the CRA as part of its ACR at the end of each calendar year, and only final when the Commission issues the ACD no later than 90 days afterwards. *See* 39 U.S.C. 3652 and 3653. As an example, the appropriate share for FY 2018 would be calculated using FY 2016 data for the Postal Service Lerner Index and Competitive Market Output.

have developed over time since the PAEA's enactment.

Table IV–6 below illustrates the application of the formula starting with an appropriate share of 5.5 percent in FY 2007.

TABLE IV–6—CALCULATION OF APPROPRIATE SHARE, FY 2007—FY 2019 [58]

| Fiscal year | Appropriate share for the current year $(AS)_t$ (%) | Percentage change in Lerner index for the prior year $(\%\Delta LI_{t-1})$ | Percentage change in Competitive Market Output for the prior year $(\%\Delta CMO_{t-1})$ | Appropriate share for the following Year $(AS_{t+1})$ (%) |
|---|---|---|---|---|
| FY 2007 | 5.5 | N/A | N/A | 5.5 |
| FY 2008 | 5.5 | 0.0 | 0.0 | 5.5 |
| FY 2009 | 5.5 | −5.1 | −1.5 | 5.1 |
| FY 2010 | 5.1 | 15.9 | −13.9 | 5.2 |
| FY 2011 | 5.2 | 18.6 | −0.8 | 6.1 |
| FY 2012 | 6.1 | −7.3 | 5.3 | 6.0 |
| FY 2013 | 6.0 | −0.3 | 6.4 | 6.4 |
| FY 2014 | 6.4 | 5.4 | 5.0 | 7.1 |
| FY 2015 | 7.1 | 0.8 | 4.7 | 7.5 |
| FY 2016 | 7.5 | −2.7 | 6.5 | 7.8 |
| FY 2017 | 7.8 | 16.6 | 5.1 | 9.5 |
| FY 2018 | 9.5 | 7.5 | 6.3 | 10.8 |

As demonstrated in Table IV–6, the formula and each resulting appropriate share percentage follow trends in the market. Additionally, Table IV–6 shows what the FY 2019 appropriate share under the proposed formula would be based on the preliminary numbers currently available. The Commission is reviewing the CRA provided by the Postal Service in pending Docket No. ACR2017.

*C. Analysis Pursuant to 39 U.S.C. 3633(b)*

In this section, the Commission explains how its proposed formula-based approach captures the prevailing competitive conditions in the market and other relevant circumstances as required by 39 U.S.C. 3633(b). In addition, the Commission discusses whether any costs classified as institutional under the Commission's costing methodology are uniquely or disproportionately associated with Postal Service competitive products, as required by 39 U.S.C. 3633(b).

1. Prevailing Competitive Conditions in the Market

In past appropriate share determinations, the Commission has identified specific market conditions that are indicative of the prevailing competitive conditions in the market: (1) The existence (or nonexistence) of evidence suggesting that the Postal Service has benefitted from a competitive advantage with respect to competitive products; (2) changes to the Postal Service's market share with respect to competitive products since the Commission's last review; and (3) changes to the package delivery market and to the Postal Service's competitors since the Commission's last review.[59]

The formula-based approach developed by the Commission captures the three specific market conditions that the Commission has considered in its previous appropriate share determinations.[60]

a. Postal Service Competitive Advantage

In analyzing evidence of competitive advantage on the part of the Postal Service, the Commission has previously looked to the FTC's report regarding whether the Postal Service's competitive products have a net competitive advantage, as well as evidence of predatory pricing by the Postal Service.[61]

The Commission discusses the FTC Report and its assessment of whether subsequent events have affected the FTC's findings in section V, *infra.* Although that analysis is the Commission's primary method for analyzing whether the Postal Service's competitive products have a competitive advantage, the Postal Service Lerner Index also provides insight. The higher the Postal Service Lerner Index, the more market power the Postal Service possesses, and sudden large increases may indicate a competitive advantage under certain circumstances. However, as previously explained, a Lerner index is not a zero-sum index. In growing markets, competitors may experience similar increases in their Lerner indices when the benefits of growth are distributed among competitors.[62]

The Postal Service Lerner Index also indicates whether the Postal Service is engaged in predatory pricing for its competitive products as a whole, because if such were the case then the index value would be negative.[63] By definition, predatory pricing involves a firm setting its prices below marginal cost in order to drive its competitors out of the market. Church & Ware at 659. In

[58] Source: PRC–LR–RM2017–1/1. The FY 2019 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[59] *See* Order No. 26 at 69–74; Order No. 1449 at 13–19.

[60] The proposed formula captures each of these three specific market conditions, as discussed in more detail in the remainder of this section. However, in limited cases (*e.g.,* antitrust actions against the Postal Service), a purely qualitative factor previously considered as a market condition could not be explicitly captured through the Commission's proposed formula. Nevertheless, these qualitative factors are, for the most part, implicitly captured. For example, although antitrust actions against the Postal Service are not explicitly captured, changes in the Postal Service's market power may offer insight into whether the Postal Service is engaging in the kinds of anticompetitive behavior that would underlie an antitrust action. *See* Areeda & Hovenkamp at 107 (''Market structure and market power are often crucial in antitrust analysis.'').

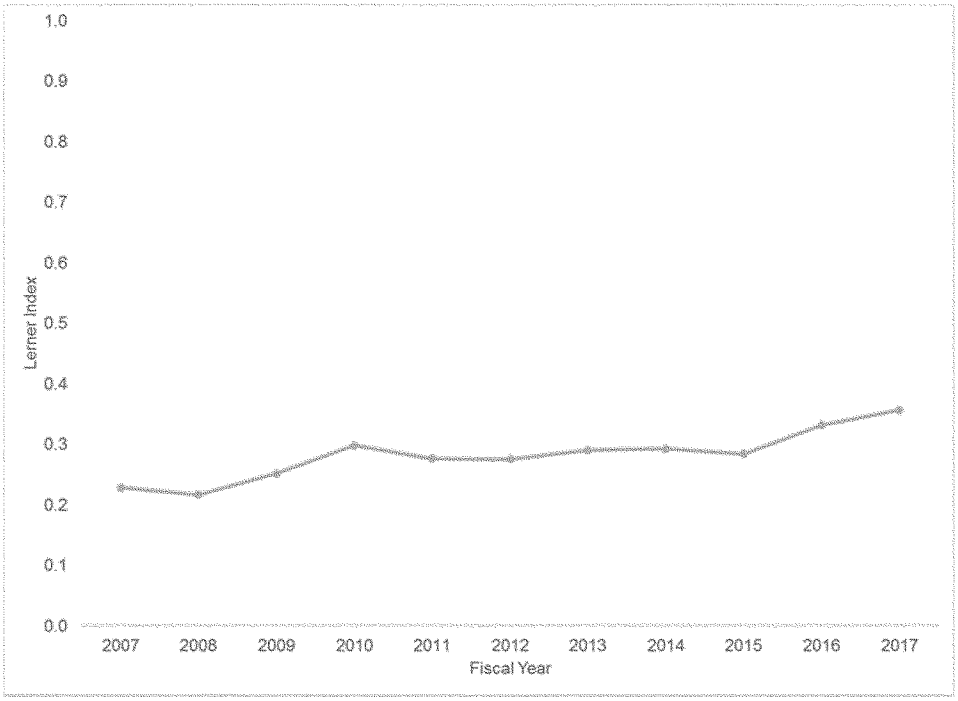
[61] *See* Order No. 1449 at 14–16. The Commission has also considered whether any antitrust actions had been filed against the Postal Service, as such actions may indicate a competitive advantage. The Commission was able to locate one antitrust action filed against the Postal Service, which did not involve competitive products and was dismissed in federal district court for not properly falling under 39 U.S.C. 409(e). *Tog, Inc.* v. *U.S. Postal Serv.,* No. 12–cv–01946–JLK, 2013 WL 3353883 (D. Colo. July 3, 2013). To the Commission's knowledge, no other antitrust actions have been filed against the Postal Service.

[62] The growing profits of the Postal Service's competitors demonstrate this. *See* PR Comments at 15–17; Amazon Comments at 23–28.

[63] While a negative Lerner index is mathematically possible, it is unlikely to be observed economically, because a firm with a negative Lerner index would be pricing below marginal cost and should therefore suspend production in the short run, and if cost or market characteristics do not change, exit the industry in the long run. *See* Steven E. Landsburg, Price Theory & Applications 277–80 (8th ed. 2011).

the Postal Service context, if unit volume-variable cost is greater than revenue-per-piece, then the difference between them will be less than zero; hence, the Postal Service Lerner Index will be negative.[64] Figure IV–1 below displays the Postal Service Lerner Index from FY 2007 to FY 2017.

**Figure IV-1**
**Postal Service Competitive Lerner Index, FY 2007 – FY 2017[65]**




As shown in Figure IV–1, the Postal Service Lerner Index has never been negative. Therefore, the Commission concludes that there is no evidence that the Postal Service has engaged in predatory pricing.[66] Developing the Postal Service's Lerner Index for use in an annual formula will provide an ongoing indication of whether or not the Postal Service is engaging in predatory pricing.

b. Postal Service Market Share

In analyzing changes to the Postal Service's market share, the Commission previously has looked to factors such as the Postal Service's revenue and volume share in the overall market. Order No. 1449 at 16–18. The Postal Service's market share can be directly calculated by dividing the Postal Service's competitive product revenue (shown in section IV.B.2.a, *supra*) by the total Competitive Market Output (shown in section IV.B.2.c, *supra*). The Postal Service's market share between FY 2007 and FY 2017 is reported in Figure IV–2 below.

[64] The Commission notes that the Postal Service's ability to engage in predatory pricing is also constrained by 39 U.S.C. 3633(a)(2), which requires that each of the Postal Service's competitive products ''covers its costs attributable.'' Under the Commission's costing methodology, marginal cost is the starting point for determining which costs are attributable to specific products. *See, e.g.,* Order No. 3506 at 41. The practical effect of this is to bar the Postal Service from pricing its products below marginal cost.

[65] Source: PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[66] In their comments, Amazon, the Postal Service, the Public Representative, and Panzar all concur that there has been no evidence of predatory pricing by the Postal Service. *See* Amazon Comments at 32–33; Postal Service Comments at 10; PR Reply Comments at 3–5; Panzar Decl. at 6. No other commenter alleges that the Postal Service has engaged in predatory pricing.

**Figure IV-2**
**The Postal Service's Revenue-Based Market Share, FY 2007 – FY 2017**[67]

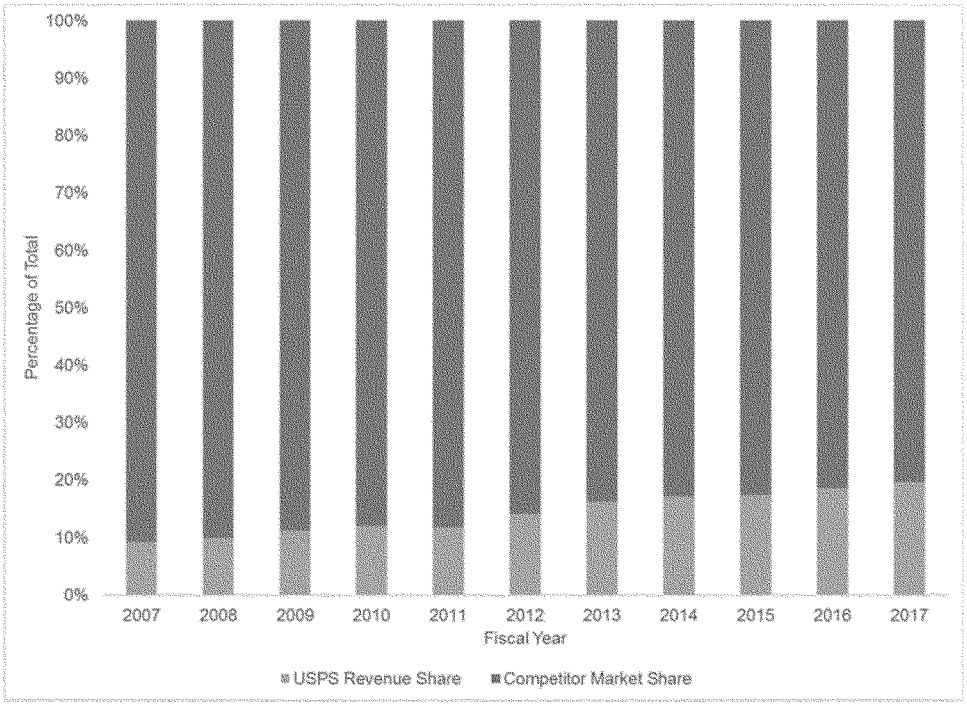



Figure IV–2 demonstrates that the Postal Service's revenue-based market share has grown since FY 2007 and that despite this growth, the Postal Service's overall market share remains relatively low.

The change in the Postal Service's market share by revenue would likely be reflected in both components of the Commission's proposed formula. If there were a large shift in revenue share between the Postal Service and competitors in the market, this would be reflected in the composition of the Competitive Market Output. Although the overall Competitive Market Output may not change dramatically, the numbers in the underlying calculation would reflect shifts between competitors and the Postal Service. If this revenue shift were to benefit the Postal Service, it would likely take the form of increased profitability, as the upward shift in revenue share would indicate increased demand for Postal Service deliveries. If the shift were to decrease the Postal Service's revenue, the Postal Service would likely experience a decrease in profitability. The Postal Service Lerner Index would reflect any increase or decrease in profitability that results from the changed prices due to increased or decreased demand for its products.

c. Changes to the Market and Competitors

In analyzing changes to the market and the competitors in it, the Commission has looked to such factors as growth in the overall market and firms entering or exiting the market. Order No. 1449 at 18–19. Overall growth in the market is directly reflected in the Competitive Market Output.

Both the Postal Service Lerner Index and Competitive Market Output reflect the entry and exit of firms from the market. If a firm enters the market and generates new business, the Competitive Market Output would increase. If a firm enters and takes business from the Postal Service, whether through pricing or innovation, the Postal Service would have to price closer to marginal cost in order to remain competitive, which would reduce the Postal Service Lerner Index. If a firm exits the market, the business it generated may be lost, which would be reflected in a decrease in the Competitive Market Output. Alternatively, the remaining competitors might alter their pricing strategies to gain that business, changing either the Postal Service Lerner Index or, depending on the nature of the pricing, the Competitive Market Output, or both.

2. Unique or Disproportionate Costs

The second element of section 3633(b) requires the Commission to consider ''the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' 39 U.S.C. 3633(b). In this section, the Commission first summarizes the comments and reply comments that relate to the Commission's costing methodology and then provides its analysis of the degree to which any costs are uniquely or disproportionately associated with any competitive products.

a. Relevant Comments

Commenters and reply commenters addressing the degree to which any costs are uniquely or disproportionately associated with competitive products and the Commission's costing methodology generally fall into two groups: (1) Those who allege the costing methodology is flawed and assert that it should result in an increased appropriate share and (2) those who contend the Commission's costing methodology is accurate and that there are no unique or disproportionate costs associated with competitive products that are not already attributed to competitive products.

[67] Source: PRC–LR–RM2017–1/. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

i. Comments Critical of Current Costing Methodology

UPS and Carlton allege a number of errors with the Commission's costing methodology as it relates to cost attribution. UPS asserts that ''[m]any costs currently classified as 'institutional' are 'uniquely or disproportionately associated with' competitive products.'' UPS Comments at 28. UPS takes the position that ''Congress saw the minimum contribution requirement as a means to ensure competitive products are held responsible for all costs with which they are 'disproportionately associated,' even when competitive products are not *exclusively* responsible for such costs.'' UPS Reply Comments at 17 (emphasis in original).

For example, UPS notes that most Postal Service management costs are classified as institutional. UPS Comments at 28–29. UPS asserts that, as competitive product volume increases relative to market dominant product volume, so too must the time and attention of management toward competitive products, and costs should be attributed accordingly. *Id.* UPS and Carlton also identify other cost categories as being attributable to competitive products, such as data processing supplies and services, inspection service field support, and building projects expenses.[68] UPS and Carlton maintain that these cost categories are largely treated as institutional, even though their cost would be reduced if the Postal Service did not deliver any competitive products.[69]

FUR and Sidak contend that the Postal Service has an incentive to attribute too many costs to market dominant products and too few to competitive products.[70] As a result, FUR asserts that ''a high degree of transparency and accuracy'' is needed. FUR Comments at 5. FUR is concerned that the methodology for assigning costs may not be accurate because the Postal Service attributes only about half of its costs, which they state invites inaccuracies and opportunity for cross-subsidization. *Id.* at 6, 13.

UPS and Carlton assert that the Commission's costing methodology incentivizes the Postal Service to operate with an inefficiently high level of fixed costs, which enables the Postal Service to provide competitive products at an artificially low marginal cost by limiting the percentage of overall costs which can be specifically attributed to competitive products.[71]

iI. Comments in Support of Current Costing Methodology

NAPM, MDMCS, and Amazon assert that this proceeding is the incorrect forum to address costing methodologies and that a separate docket should be opened if changes to cost models are needed.[72] Amazon, Panzar, and MDMCS point to the Commission's repeated invitations to stakeholders to file rulemaking proceedings if they believe existing cost attribution methods can be improved, and specifically to Docket No. RM2016–2, which was a UPS-petitioned rulemaking that explored these issues and resulted in a decrease of the share of total costs treated as institutional.[73]

NAPM ''disagree[s] with UPS's contention that the Postal Service's cost models are not transparent or accurate.'' NAPM Reply Comments at 2. Similarly, Amazon maintains that ''[t]he Commission has given the accuracy of its cost attribution methodology thorough scrutiny in costing rulemakings over the last decade.'' Amazon Reply Comments at 14. Panzar also echoes this, stating that the methodology used is the economically appropriate way to attribute costs. Panzar Reply Decl. at 3. The Postal Service denies the claim that its costing methodology fails to account for any costs which are properly attributable to individual products and explains that the costing system has been developed through public, adversarial proceedings. Postal Service Reply Comments at 30–32. Amazon asserts that UPS's contention that some institutional costs are caused by competitive products is supported by neither data nor evidence of a causal relationship. Amazon Reply Comments at 16–17.

b. Commission Analysis

As most recently discussed in Docket No. RM2016–2, the costing methodology employed by the Postal Service and the Commission is directed at determining those costs which are ''attributable to each class or type of mail service through reliably identified causal relationships.'' Order No. 3506 at 14. The requirement that cost attribution must be based on reliably identified causal relationships comes directly from section 3622 of the PAEA. *See* 39 U.S.C. 3622(c)(2). Any cost that cannot be specifically attributed to an individual product is considered a residual or institutional cost. Order No. 3506 at 10.

The Commission finds that there are no costs uniquely or disproportionately associated with competitive products that are not already attributed to competitive products. Under the Commission's methodology, any cost that is uniquely or disproportionately associated with any competitive product is identified as an attributable cost because it exhibits a reliably identifiable causal relationship with a specific competitive product. With regard to costs that are disproportionately associated with competitive products, the Commission's cost attribution methodology identifies relationships between costs and cost drivers, which include mail characteristics such as weight and shape (*e.g.,* letters or parcels). The costs associated with a cost driver are distributed to products in proportion to the prevalence of the driver within each product. For example, heavier products (*e.g.,* parcels) have more weight-driven costs attributed to them than lighter products (*e.g.,* letters). In this way, the costs attributed to products reflect any disproportionate association of those costs with any specific products (including any competitive products).

Under the Commission's methodology, the Commission also classifies any cost that is uniquely associated with any product (including any competitive product) as attributable to that product. These costs are often referred to as product-specific costs. For example, advertisements for a specific product and supplies for money orders are unique costs attributed to specific products under the Commission's methodology.

By definition, costs identified as institutional are those that cannot be causally linked to any specific product. Although UPS asserts that certain institutional costs are disproportionately associated with competitive products, UPS fails to provide any evidence of reliably identified causal relationships between the institutional costs it identifies and specific competitive products. For example, UPS states that the vast majority of management costs are treated as institutional, and it asserts that ''[Postal Service] management is clearly focused today on growing the competitive products business.'' UPS Comments at 28. In support, UPS quotes two news articles and an industry publication, which indicate the Postal

[68] UPS Reply Comments at 15 (citing Carlton Reply Decl. at 21–23); Carlton Reply Decl. at 22–23.

[69] UPS Reply Comments at 15–16; Carlton Reply Decl. at 22–23.

[70] FUR Comments at 5; Sidak Decl. at 12–14.

[71] Carlton Reply Decl. at 12; UPS Reply Comments at 10.

[72] NAPM Reply Comments at 3; MDMCS Reply Comments at 2–3; Amazon Reply Comments at 14–15.

[73] *See id.* at 14–15, 18; Panzar Reply Decl. at 4; MDMCS Reply Comments at 3.

Service is interested in competitive product growth but provide no evidence that management costs are disproportionately associated with competitive products through reliably identified causal relationships. *Id.* at 28–29. To the extent UPS or any other party is able to demonstrate that costs currently classified as institutional can be clearly linked to specific products through reliably identified causal relationships, the Commission invites a petition for rulemaking proposing changes to its methodology in a separate proceeding. In addition to inviting petitions for rulemaking on these issues, the Commission, as it has done in the past, continues to invite public participation and scrutiny in proceedings that propose changes to costing methodologies.

The comments alleging that the Postal Service operates with an inefficiently high level of fixed costs appear to conflate fixed costs with institutional costs and variable costs with attributable costs. Under the Commission's methodology not all attributable costs are variable, and not all institutional costs are fixed. Carlton also understates the extent to which fixed costs are attributed to individual products under the Commission's costing methodology due to the methodology's use of cost drivers. For example, if the Postal Service were to select inefficient processing technologies, the increased costs of those technologies would be attributed to the products using them, through the additional labor costs required to utilize the processing machines. An inefficient mail processing machine would require additional workhours in order to process the same amount of mail as a more efficient machine. Under the Commission's methodology, these workhours would be attributed to the products utilizing these machines, which would increase those products' marginal costs. Additionally, the economic fixed costs of facility space and depreciation would be attributed to the products utilizing the inefficient machine in the same proportion as workhours. This process, known as ''piggybacking,'' is a way of attributing indirect costs to specific products.[74] This reduces any incentive for the Postal Service to choose inefficient technologies with high fixed costs in the way that Carlton suggests, because many of those costs would be attributed to specific products under the Commission's current costing methodology.

For the reasons discussed above, the Commission concludes that its costing methodology already accounts for ''the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' To the extent that any costs can be attributed to specific competitive products, they are already distributed under the Commission's current costing methodology and are not included in the institutional costs of the Postal Service.

3. Other Relevant Circumstances

As noted above, section 3633(b) also requires the Commission to consider ''all relevant circumstances.'' In previous orders regarding the appropriate share, the Commission has analyzed ''other relevant circumstances'' that could affect the appropriate share determination. Such circumstances have included: (1) Transfers to the competitive product list; (2) changes to the mail mix; (3) uncertainties in the marketplace; and (4) risks from setting the appropriate share too high or too low. The proposed formula-based approach incorporates all of these circumstances.

a. Transfers to the Competitive Product List

In its previous review, the Commission considered changes in competitive product offerings due to transfers from the market dominant product list to the competitive product list. Since the last review of the appropriate share, four products have been transferred to the competitive product list: Single-Piece Parcel Post; Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls; Inbound Surface Parcel Post; and First-Class Mail Parcels.[75] When a product is transferred from the market dominant to the competitive product list, the formula incorporates it directly through the Competitive Market Output, and indirectly through the Postal Service Lerner Index. A transferred product's revenue is included in the Postal Service's competitive product revenue and automatically included in the Postal Service's portion of the Competitive Market Output. Indirectly, the transferred product's revenue-per-piece and unit volume-variable cost is incorporated into the Postal Service Lerner Index composition, so that a change in the Postal Service's market power after the product transfer is also reflected.

b. Changes to the Mail Mix

Mail mix changes occur as demand for postal products shifts. Since FY 2007, demand for market dominant products has declined and demand for competitive products has grown, as shown by their respective volumes in Figure IV–3 below.

[74] *See* United States Postal Service, Rule 39 CFR Section 3050.60(f) Report for Fiscal Year 2016, July 3, 2017, Appendix H at 5.

[75] *See* Order No. 1411; Order No. 1461; Order No. 2160; Order No. 4009.

**Figure IV-3**
**Total Market Dominant and Competitive Mail Volume, FY 2007 – FY 2017**[76]

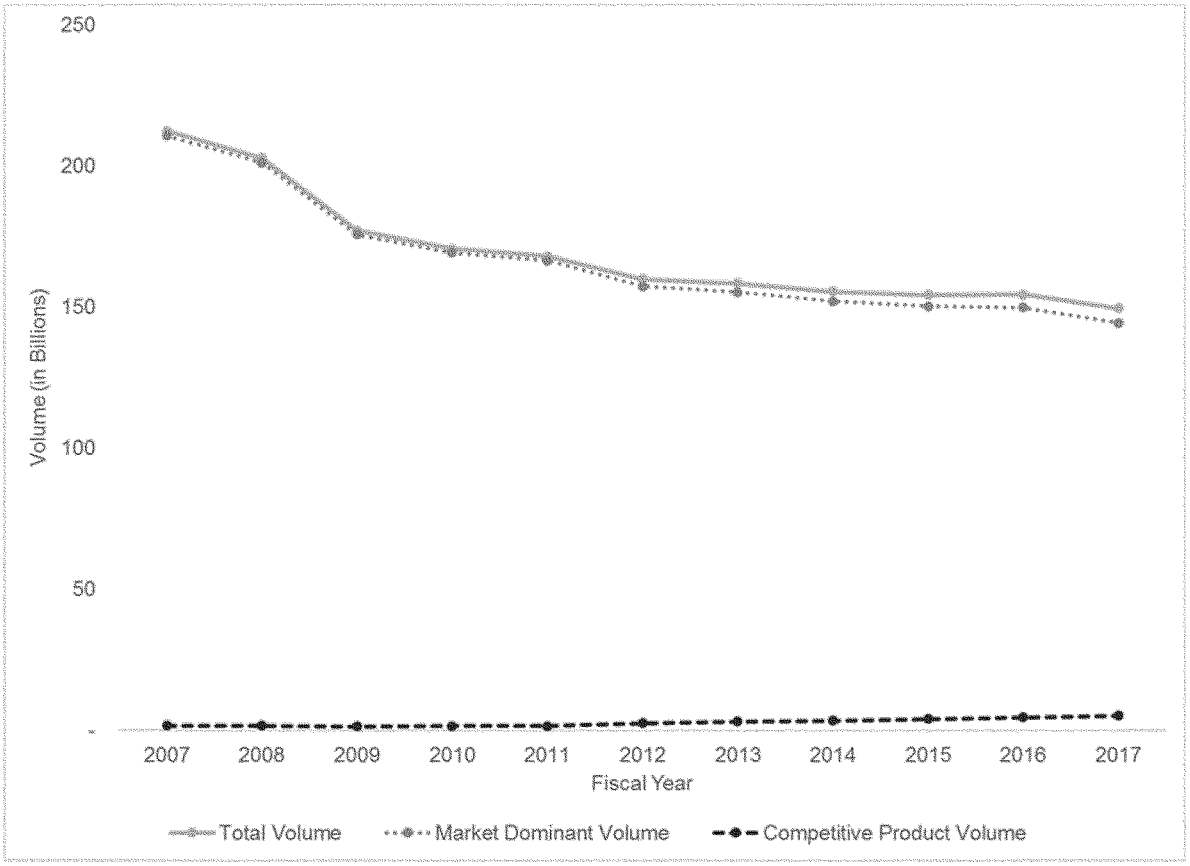
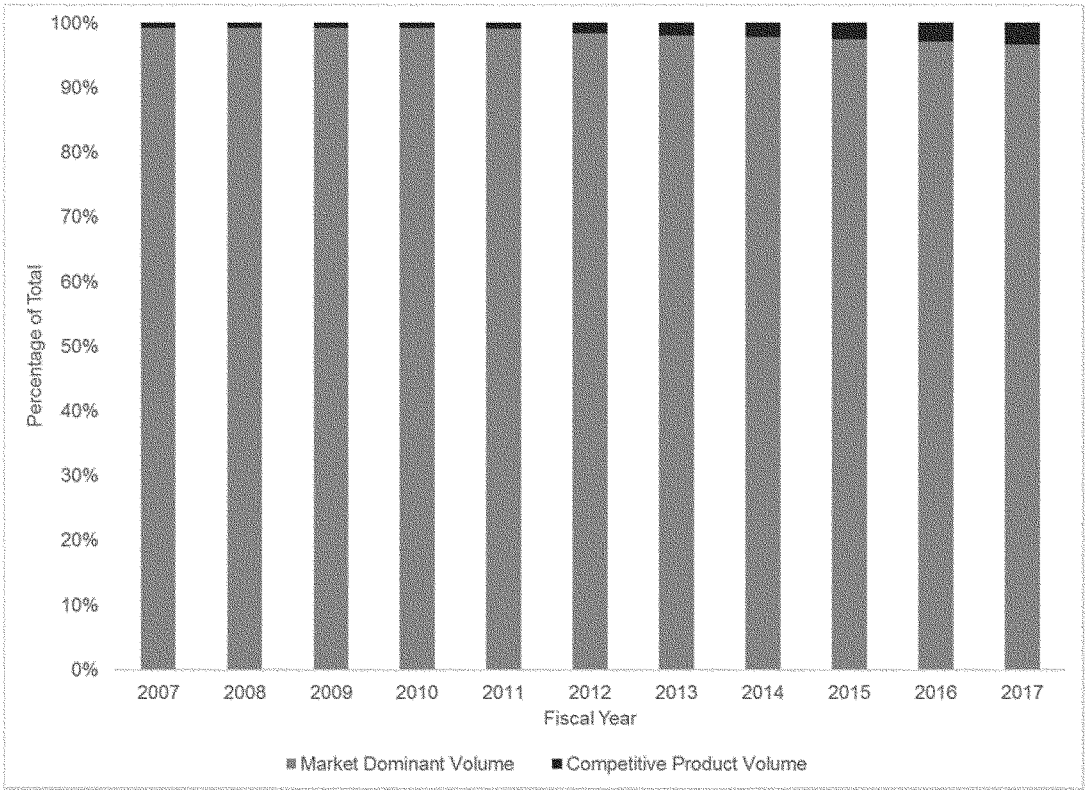



Figure IV–3 shows that since FY 2007, market dominant volume has decreased from 211 billion pieces to 144 billion pieces, while competitive volume has increased from 1.6 billion pieces to 5 billion pieces. Market dominant and competitive products' respective proportions of total Postal Service volume are demonstrated in Figure IV–4 below.

[76] Source: PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

**Figure IV-4**
**Relative Proportions of Total Market Dominant and Competitive Volume, FY 2007 – FY 2017**[77]




As shown in Figure IV–4, since FY 2007 market dominant volume has decreased from 99.2 percent of all mail to 96.6 percent, and competitive volume has increased from 0.8 percent of all mail to 3.4 percent. In Order No. 1449, the Commission noted that a significant increase in competitive volume, particularly in relation to market dominant volume, would warrant a change in the appropriate share. Order No. 1449 at 23. Under the proposed formula-based approach, the Competitive Market Output incorporates such changes in the mail mix by reflecting the revenue the Postal Service receives from any increase in competitive product volume. Additionally, the Postal Service Lerner Index will reflect the growth or decline of more or less profitable competitive products.

c. Uncertainties

Another relevant circumstance that the Commission has identified in the past is uncertainty in the postal system as a whole. During the Commission's last review of the appropriate share, several dockets regarding the nature of postal services were pending before the Commission that had the potential to bring about fundamental changes in the postal system. *See* Order No. 1449 at 23. Additionally, the Postal Service's financial position was precarious, and the economy was still recovering from the global financial crisis of the late 2000s.[78] Under the proposed formula-based approach, shifts in market demand or macroeconomic conditions would be reflected in the appropriate share determination through changes in the Postal Service Lerner Index and Competitive Market Output.

Additionally, the Commission notes that over the last 5 years there have been significant innovative developments and changes in e-commerce and the delivery industry.[79] It is important for the formula-based approach to incorporate such changes. Efforts at innovation or changes in e-commerce would be evident through the Competitive Market Output, because they would be reflected in the respective competitors' revenues as their innovations succeeded (or failed), resulting in more (or less) revenue. Innovation from competitors could also affect the Postal Service Lerner Index. If an innovation makes a competitor's products more attractive to customers, the Postal Service may need to set its prices lower than it otherwise would to attract and retain volume. This would result in lower unit profitability and a lower Postal Service Lerner Index.

d. Risks

In previous orders regarding the appropriate share, the Commission has analyzed potential risks involved in setting the appropriate share too high or too low as part of section 3633(b)'s ''other relevant circumstances'' element. *See, e.g.,* Order No. 1449 at 12.

If the appropriate share level were set too high, the Postal Service would be forced to raise its prices to non-competitive levels in order to meet the minimum contribution required by the appropriate share. At these higher prices, consumers would likely stop using the Postal Service and transfer their volume to cheaper competitors. Depending on the scale of the volume

[77] Source: PRC–LR–RM2017–1/1. The FY 2017 value is preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[78] *Id.* at 23–24. As the Commission recently found in Order No. 4257, the Postal Service's financial situation remained precarious during the 10 years following the enactment of the PAEA. Order No. 4257 at 249.

[79] *See, e.g.,* United States Postal Service Office of Inspector General, Risk Analysis Research Center, The Evolving Logistics Landscape and the U.S. Postal Service, Risk Analysis Research Center, Report No. RARC–WP–16–015, August 15, 2016.

exodus and other factors,[80] the Postal Service may be unable to meet the minimum contribution. If the Postal Service were forced to exit the competitive market, competition in the market would decline, harming consumers and benefiting the Postal Service's competitors, who would be able to absorb the remaining volume and then set prices higher than the Postal Service had previously charged. The Commission's proposed formula-based approach addresses this issue by limiting increases in the appropriate share to no higher than appropriate to account for the Postal Service's growth in market power and the growth in the market as a whole.

Conversely, if the appropriate share were set too low, the Postal Service might be incentivized to discount its prices in order to gain market share. Such actions, however, would come at the expense of the Postal Service's profitability. Both the PAEA and the Postal Service's financial challenges incentivize profitability,[81] so little incentive exists for the Postal Service to significantly discount its prices. Additionally, the time lag in the formula discourages such discounting [82] because the negative consequences of such discounting (*i.e.,* lower revenue, and therefore lower contribution) would appear before the benefits (*i.e.,* a lower Postal Service Lerner Index).

The appropriate share has historically avoided the extremes of both being set too high and being set too low, and the proposed formula-based approach would continue to do so. Historically, the appropriate share has neither prevented the Postal Service from competing in the market, nor allowed the Postal Service to dominate the market. As Table IV–7 shows, the formula-based approach would have allowed the Postal Service to avoid both extremes over the past 10 years.

TABLE IV–7—POSTAL SERVICE CONTRIBUTION AND FORMULA-BASED APPROPRIATE SHARE, FY 2007–FY 2019 [83]

| Fiscal year | Postal service contribution as a percentage of institutional cost | Formula-based appropriate share (%) |
|---|---|---|
| FY 2007 | 5.67% | 5.5 |
| FY 2008 | 5.53% | 5.5 |
| FY 2009 | 6.78% | 5.5 |
| FY 2010 | 7.12% | 5.1 |
| FY 2011 | 7.82% | 5.2 |
| FY 2012 | 7.49% | 6.1 |
| FY 2013 | 11.64% | 6.0 |
| FY 2014 | 12.63% | 6.4 |
| FY 2015 | 13.37% | 7.1 |
| FY 2016 | 16.54% | 7.5 |
| FY 2017 | 23.16% | 7.8 |
| FY 2018 | not yet available | 9.5 |
| FY 2019 | not yet available | 10.8 |

As Table IV–7 demonstrates, the Postal Service's actual contribution has exceeded the proposed formula-derived appropriate share in every year since FY 2007. This demonstrates that the proposed formula-based approach would not have forced the Postal Service to set prices too high, nor prevented the Postal Service from effectively competing, as an excessive appropriate share would have done. The proposed formula would also prevent prices from being set too low because it responds to changes in the Postal Service's market power and the overall market size. Although these historical data demonstrate that the proposed formula-based approach would have been successful in the overall positive market conditions existing from FY 2007 through FY 2017, the Commission also expects the proposed formula-based approach to be effective in preserving competition in adverse market scenarios because the formula allows for decreases in the minimum appropriate share when adverse market conditions negatively impact the Postal Service Lerner Index, Competitive Market Output, or both.

*D. Conclusion*

The proposed formula-based approach to determining the appropriate share is less subjective and more responsive to changing market conditions than the considerations the Commission relied upon in the past. It accounts for each of the considerations required by 39 U.S.C. 3633(b): The prevailing competitive conditions in the market; the degree to which any costs are uniquely or disproportionately associated with competitive products; and all other relevant circumstances. The proposed approach encompasses factors previously considered by the Commission, and it adjusts annually in order to reflect changes in market conditions. For these reasons, the Commission proposes to change to a formula-based approach.

## V. Section 703(d) of the PAEA

As part of its enactment of the PAEA, Congress sought to determine whether the Postal Service's competitive products enjoyed any legal advantages over private companies providing similar products.[84] In section 703, Congress directed the FTC to prepare a report identifying federal and state laws that apply differently to the Postal Service's competitive products than similar products offered by private competitors.[85] The FTC was required to make recommendations concerning how to end any such legal differences and, in the interim, to account for the net economic effect resulting from such differences.[86] Additionally, section 703 directed the Commission, when revising regulations under 39 U.S.C. 3633, to consider the FTC's recommendations as well as subsequent events that affect the continuing validity of the FTC's net economic effect finding.[87]

In the instant proceeding, because the Commission proposes revisions to its regulations pursuant to 39 U.S.C. 3633(a)(3) and (b), an analysis pursuant to section 703(d) of the PAEA is necessary. In the sections below, the Commission discusses the FTC Report's net economic effect analysis, addresses comments related to section 703(d) received in this proceeding, describes the scope of the Commission's section 703(d) review, identifies events occurring since the FTC Report's issuance, and determines whether those events have affected the validity of the FTC's estimate of the net economic effect. The Commission does not address FTC recommendations because the FTC did not include any recommendations in the FTC Report. *See* FTC Report at 2.

*A. FTC Report*

The FTC issued its report in December 2007, which considered both the implicit subsidies enjoyed by and legal constraints imposed on the Postal Service's competitive products due to

[80] Other factors include competitors' price changes in response to volume shifts and changes in the Postal Service's competitive costs.

[81] *See* Order No. 4257 at 32–33, 165–178.

[82] See section IV.B.3, *supra,* and section VII, *infra,* for a discussion of the time lag.

[83] Source: PRC–LR–RM2017–1/1. The FY 2017 value in the second column and the FY 2019 value in the third column are preliminary, subject to revision of the underlying data in pending Docket No. ACR2017.

[84] *See* PAEA, 120 Stat. 3244; *see also* S. Rep. No. 108–318 at 29.

[85] PAEA section 703(a). Section 703 was not codified and is reproduced in the notes of 39 U.S.C.A. 3633. *See also* FTC Report.

[86] PAEA section 703(b).

[87] PAEA section 703(d).

the Postal Service's unique legal status.[88] In chapter IV of its report, the FTC completed its net economic effect analysis by specifically identifying those implicit subsides and legal constraints that could be quantified in order to calculate any impact on the Postal Service.[89] The FTC concluded that the Postal Service's unique legal status placed it at a net competitive disadvantage in offering competitive products relative to private competitors. *Id.* at 64.

1. Implicit Subsidies

The FTC listed multiple quantifiable implicit subsidies that the Postal Service received due to its status as a governmental entity. *Id.* at 57–58. These implicit subsides included the Postal Service's exemption from state and local taxes,[90] real property taxes, sales and use taxes, personal property taxes, and certain franchise and business taxes and fees. *Id.* at 57. The Postal Service is exempted from these taxes and fees because the Supremacy Clause prevents states from imposing taxes and some fees on federal agencies. *See id.* at 23–28. Other implicit subsidies included exemptions from parking tickets, vehicle registration fees, tolls, and tax compliance. *Id.* at 57. The FTC estimated that these implicit subsidies provided a benefit of $38 million to $113 million to Postal Service competitive products.[91]

In addition, the FTC discussed the borrowing authority permitted by the PAEA as a potential advantage the Postal Service receives unrelated to its status as a governmental entity.[92] The FTC noted the Postal Service has the ability to issue debt for use for competitive products possibly resulting in a more favorable interest rate compared to private competitors. *Id.* at 58. The FTC relied on figures provided by a commenter who estimated the Postal Service enjoyed a $30.45 million annual subsidy on its debt at the time, with competitive products enjoying approximately $1.4 to $4 million of the annual amount.[93] The FTC rounds the $1.4 million to $1 million in its calculation. *Id.* at 61.

2. Legal Constraints

The FTC listed six quantifiable legal constraints imposed on the Postal Service due to its status as a governmental entity. The first legal constraint included was the costs associated with the Alaska Bypass. *Id.* at 56. The FTC noted the Postal Service had extensive regulations governing its transportation of mail to remote areas within Alaska. *Id.* at 44; 39 U.S.C. 5402. The FTC also included the legal constraints associated with international mail transportation. FTC Report at 56. While competitors were able to negotiate competitive terms for international mail air transportation rates, the Postal Service's rates were regulated by the Department of Transportation. *Id.* at 44–45.

The FTC also identified certain employment and labor law restrictions limiting the Postal Service, and specifically included the Postal Service's inability to access subsidies offered to private employers under the Medicare Part D program in its calculation. FTC Report at 38–39, 56. The largest quantifiable legal constraint identified by the FTC was the wage premium the Postal Service must pay its employees due to the statutes that govern the Postal Service's relationship with its employees. *Id.* at 39–40, 56. In its analysis, the FTC used a figure submitted by the Postal Service indicating that, in most localities, the Postal Service must pay its employees 21.2 percent more than competitors. *Id.* at 39; *see id.* at 39 n.197 and 56 n.268.

Additionally, the FTC was able to quantify two pricing restrictions imposed on the Postal Service as a result of the PAEA related to market dominant Periodicals and non-profit mail. *Id.* at 56. The Postal Service's ability to set flexible rates for Periodicals and non-profit mail is limited by legal requirements that affect pricing for these products. *Id.* at 44, 55–56; 39 U.S.C. 3622(c)(11); 39 U.S.C. 3626(a)(6). Although these pricing restrictions were valued between $87 million and $204 million, the FTC admitted it was ''unclear how restrictions on periodical pricing and non-profit mail affect competitive product costs.'' FTC Report at 56. As a result, the FTC ultimately excluded these pricing restrictions from its calculation. *Id.* at 56, 64.

3. FTC Report Conclusion: Net Economic Effect

In accounting for the differences between the various implicit subsidies and legal constraints placed on competitive products due to the Postal Service's unique legal status, the FTC determined that the Postal Service's costs were $330 million to $782 million higher than they would be otherwise, while the implicit subsidies the Postal Service enjoyed totaled $39 million to $117 million. *Id.* at 64. Therefore, the FTC determined the Postal Service incurred costs between $213 million to $743 million higher due to its legal status. *Id.* As a result, the FTC concluded that the Postal Service's unique legal status causes it to have a net competitive disadvantage relative to its private competitors. *Id.*

*B. Relevant Comments*

1. Postal Service

As part of its comments in the instant proceeding, the Postal Service asserts that no credible study has undermined the fundamental validity of the FTC's findings, and that, if anything, the FTC

[88] *Id.* at 55–77. In its review of the Postal Service's unique legal status, the FTC analyzed laws applicable to the Postal Service due to its status as a governmental entity as well as those disadvantages imposed on and advantages allowed by the PAEA.

[89] *Id.* at 55–77, n.287. The FTC Report discussed additional implicit subsidies and legal constraints beyond those listed in its net economic effect analysis, but because the additional subsidies and constraints could either not be quantified or the effect on the Postal Service was unclear, the FTC did not include them as part of its final analysis. Some of the implicit subsidies included the Postal Service's access to federal funding and eminent domain, preferential customs treatment compared to competitors, immunity from certain conduct under the Federal Tort Claims Act, its exemption from paying federal income taxes, and potential advantages stemming from the Postal Service's letter and mailbox monopolies. *Id.* at 29–37, 47–52, 64. Some of the legal constraints included pricing restrictions on competitive products, the costs associated with the Postal Service's USO, the limited ability of the Postal Service to close post offices, the inability to outsource delivery routes to private carriers, requirements related to retirees, and the restraints on financing and investing. *Id.* at 37–45.

[90] The FTC did not rely on a specific state and local tax figure in its net economic effect conclusions because those taxes would vary year-to-year based on Postal Service's annual net income. *See id.* at 57 n.270. For the same reason, the Commission does not include an estimated figure of the state and local tax implicit subsidy in its section 703(d) analysis.

[91] *Id.* at 58. The implicit subsidies identified benefited both market dominant and competitive products, but given none were readily assignable to either category; the FTC used competitive products' appropriate share of institutional costs and competitive product revenue to create an estimated range of impact on Postal Service competitive products. The low end of the range was based on the implicit subsidies inclusion in institutional costs, which would require competitive products to cover 5.5 percent and the high end of the range was based on competitive product revenue. *Id.* at 57.

[92] The FTC Report also included a discussion on Return on Equity as a potential Postal Service advantage, indicating that should the Postal Service be required to achieve the same level of return on equity for competitive products that private carriers achieved, the Postal Service would have to make significant pricing and operational changes for its competitive products. *Id.* at 62–64. However, this advantage was not considered in the FTC's net economic effect analysis. *See id.* at 64.

[93] *Id.* at 59. Applying the same methodology discussed above, the borrowing advantage range was based on the requirement that competitive products cover 5.5 percent of institutional costs (low-end) and competitive product revenue (high-end). *Id.* at 59; *see supra* at 56 n.91.

Report significantly understates the Postal Service's net competitive disadvantage because it fails to consider all of the legal differences between the Postal Service and its private competitors. Postal Service Comments at 8. Specifically, the Postal Service identifies the lack of mandatory integration between the Federal Employees Health Benefits Program and Medicare Parts A and B as well as differences in retirement benefits and workers' compensation. *Id.* at 8–9. The Postal Service also notes that the FTC failed to account for the private delivery companies' superior freedom and business flexibility, as well as their own unique economies of scale and scope. *Id.* at 9. The Postal Service does not address any subsequent events that would affect the continuing validity of the FTC's estimate of the net economic effect.

2. UPS

UPS states that the FTC Report's conclusions were incomplete because the FTC did not include an estimate of the value of either the letter or mailbox monopolies. UPS Comments at 10. UPS asserts that because these monopolies provide the Postal Service with an advantage over the private sector, the FTC's inability to estimate their value makes it impossible to conclude from the FTC's Report that the Postal Service operates at a net competitive disadvantage relative to the private sector.[94] UPS similarly criticizes the FTC Report for failing to quantify the economies of scope deriving from the letter and mailbox monopolies, despite the FTC Report acknowledging that such economies exist.[95] UPS contends that when the Postal Service's monopoly and scope advantages are properly quantified, they outweigh the burdens identified in the FTC Report, running counter to the FTC Report's conclusion that the Postal Service operates at a net competitive disadvantage.[96]

Like the Postal Service, UPS does not address any subsequent events that affect the continuing validly of the FTC's estimate of net economic effect and focuses its comments on the accuracy of the FTC Report itself.

3. Public Representative

The Public Representative focuses specifically on subsequent events occurring in the market since the FTC Report was issued. PR Comments at 12–13. He notes the transfer of various mail services from the market dominant product list to the competitive product list has eliminated any impact the market dominant price cap had on those products.[97] He explains the product transfers changed ''to some degree'' the net economic effect described in the FTC Report. PR Comments at 13. The Public Representative states that, for the transferred products, the Postal Service can compete more directly with its competitors without the pricing constraints imposed by the price cap, ultimately leveling the playing field.[98]

*C. Commission Section 703(d) Analysis*

In this analysis, the Commission first defines the scope of its review pursuant to section 703(d) and then discusses events subsequent to the FTC Report that may affect the validity of the FTC Report's estimate of the net economic effect. Finally, the Commission performs a supplementary analysis, which supports its conclusion that the FTC's finding of a Postal Service net economic disadvantage continues to be valid.

1. Scope of Section 703(d)

Section 703(d) directs the Commission to ''take into account the recommendations of the Federal Trade Commission, and subsequent events that affect the continuing validity of the estimate of the net economic effect.'' The statute does not define the phrase ''take into account.'' The dictionary provides that the phrase ''to take into account'' is the definition for the word ''consider.'' [99] The Commission thus applies the plain meaning of ''take into account'' and determines it will consider whether subsequent events have affected the continuing validity of the estimate of the net economic effect when the Commission proposes revisions to its regulations promulgated under 39 U.S.C. 3633.[100]

Likewise, the statute does not specifically define ''subsequent event.'' Section 703(d) is clear that the Commission's review is limited only to those subsequent events that affect the continuing validity of the FTC's net economic effect estimate. As discussed above, the FTC was tasked with identifying federal and state laws that apply differently to the Postal Service with respect to competitive products and using that information to estimate the laws' net economic effect on the Postal Service.[101] The FTC's net economic effect finding was based on the implicit subsidies and legal constraints that the FTC could quantify, each of which was linked to specific

[94] *Id.* Sidak likewise asserts that the FTC Report failed to quantify the postal monopoly and that, had it done so, this may have turned the FTC's finding to a net competitive advantage for the Postal Service. Sidak Reply Decl. at 11–13. Carlton states that the mailbox monopoly puts private firms at an artificial marginal cost disadvantage and that he is unaware of any efficiency rationale for the mailbox monopoly. Carlton Reply Decl. at 18–19. The Postal Service specifically denies that the postal monopoly confers any artificial advantage on it. Postal Service Comments at 6–10.

[95] UPS Comments at 10; Reply Comments of United Parcel Service, Inc. on Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, March 9, 2017, at 19–24 (UPS Reply Comments).

[96] *Id.;* UPS Comments at 10, 15–18. UPS notes the Commission estimated the value of the postal monopoly at $5.45 billion and the cost of maintaining the USO at only $4.24 billion. UPS Reply Comments at 24. *See* Postal Regulatory Commission, FY 2016 Annual Report to the President and Congress, January 12, 2017, at 40, 48. UPS lists multiple criticisms of the Commission's calculation on the postal monopoly, including focusing incorrectly on lost profits and using an incomplete estimation model that does not account for the Postal Service's ability to leave small packages in mailboxes. UPS Comments at 16–17. *See also* Sidak Comments at 6 (citing Robert J. Shapiro, The Basis and Extent of the Monopoly Rights and Subsidies Claimed by the United States Postal Service, March 2015).

Although the Commission's review under section 703(d) is limited, the Amazon Reply Comments highlight some of the flaws with UPS's proposed recalculation. UPS relies on a previous Commission analysis of the postal monopoly and a paper by UPS Economist Robert Shapiro (Shapiro Paper). Amazon points out that the Commission's analysis of the postal monopoly did not estimate ''the cost advantages enjoyed by the Postal Service over private carriers'' and instead focused on the contribution the Postal Service would lose if the postal monopoly was repealed. Amazon Reply Comments at 24. As it relates to the Shapiro Paper, Amazon notes Shapiro estimated the Postal Service received a $14.5 billion benefit from its postal monopoly but contends this estimate contains multiple flaws. *Id.* As an example, Amazon identifies Shapiro's failure to delineate between market dominant products and competitive products making the estimate ''useless'' because market dominant products represent the majority of Postal Service volume. *Id.* at 24–27. Amazon further contends that UPS representative Sidak's estimate of the Postal Service's postal monopoly advantage is also flawed due to his heavy reliance on the Shapiro Paper and the lack of support provided for apportioning ''legal advantages'' to competitive products. *Id.* at 26–27.

[97] *Id. See also* Docket No. MC2010–20, Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, June 17, 2010 (Order No. 472); Order No. 689; Order No. 780; Order No. 1411; Order No. 1461 (Outbound Single-Piece First-Class Mail International Packages and Rolls); Docket No. MC2014–28, Order No. 2160 (Inbound Surface Parcel Post (at UPU Rates)).

[98] *Id.* at 13. The Public Representative uses his conclusion to support the position that the appropriate share should be maintained at 5.5 percent because the playing field is already level. *Id.*

[99] Merriam-Webster, *https://www.merriam-webster.com/dictionary/consider. See also Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 515 (DC Cir. 1983) (confirming the plain language meaning of ''taking into account'' as requiring the agency ''consider'' statutory factors).

[100] As previously mentioned, the FTC did not provide any recommendations for the Commission to consider.

[101] *See generally* PAEA section 703(a) and (b).

federal or state laws. Therefore, the Commission determines ''subsequent event'' in section 703(d) refers to changes to federal or state laws quantified in the FTC's estimate of the net economic effect. As a result, the Commission finds the scope of its review under section 703(d) is limited to considering whether the laws behind the implicit subsidies and legal constraints quantified by the FTC have changed since the FTC Report's issuance, and if so, whether those changes affect the continuing validity of the FTC's estimate of the net economic effect of those laws.

Two commenters focus on what was excluded from the FTC's original estimate of the net economic effect and not on events occurring since the FTC Report's issuance that would affect the validity of that estimate. The Postal Service focuses on the FTC's failure to include healthcare, retirement, and workers' compensation costs and competitors' business flexibility, while UPS asserts that the FTC Report failed to estimate the value of the postal monopoly and the Postal Service's economies of scope. Both the Postal Service and UPS call for the Commission to reassess and recalculate the FTC's net economic effect estimate for information known at the time of the FTC Report that the FTC chose not to include or found was not quantifiable.

The reassessment and recalculation the Postal Service and UPS request is outside the scope of what section 703(d) calls on the Commission to do. As stated previously, section 703(d) requires the Commission to consider whether subsequent events affect the continuing validity of the FTC's estimate of net economic effect. As a result, the Commission does not reassess the FTC's original conclusions as to what implicit subsides and legal constraints should be included in and excluded from the estimate of the net economic effect and whether these constraints and subsidies were quantifiable.

In the analysis that follows, the Commission considers whether subsequent events have affected the validity of the FTC's estimate of the net economic effect and discusses what effects such events have on the FTC's estimate. The Commission then offers a supplemental analysis in support of its conclusion.

2. Events Subsequent to the FTC Report

Of the implicit subsidies and legal constraints separately accounted for in the FTC's calculation, the Commission finds that there has only been one law linked to a separately delineated element within the FTC's calculation that has been amended, thereby constituting an event subsequent to the FTC Report's issuance that affects the validity of the estimate of the net economic effect. In the FTC Report, the FTC explains that the Department of Transportation's regulation of international mail air transport rates cost the Postal Service up to $98 million more in FY 2006 than if the Postal Service were permitted to independently negotiate the rates on the free market as private companies were. FTC Report at 44, 56. The FTC apportioned $5 million to $13 million of the $98 million total costs associated with the legal constraint to competitive products specifically. *Id.* at 56.

In 2008, Congress eliminated the Department of Transportation's authority to regulate the prices paid by the Postal Service for air transport of international mail, allowing the Postal Service to negotiate terms for international air mail transportation contracts directly with airlines as private companies do.[102] As a result, this legal constraint originally estimated as a $5 million to $13 million additional cost to the Postal Service competitive products no longer exists.

The Commission finds no other changes to federal or state law affected the legal constraints estimate. The FTC Report estimated the total cost of the legal constraints imposed on the Postal Service ranged from $330 million to $782 million. FTC Report at 64. As Table V–1 demonstrates, after the constraint of international air transportation rate regulation is removed and the legal constraint total is recalculated, the total cost of the legal constraints imposed on the Postal Service is $325 million to $769 million.

As the Commission found no changes to the laws that generate the Postal Service's implicit subsidies, the Commission continues to accept the FTC's conclusion concerning the total cost of the implicit subsidies enjoyed by the Postal Service as $39 million to $117 million. Applying the updated estimate of the effect of legal constraints, Table V–1 demonstrates that the updated estimated net economic effect is $208 million to $730 million in net competitive disadvantage.

TABLE V–1—UPDATED ESTIMATE OF LEGAL CONSTRAINTS

| Legal constraints | Estimate (in millions) | |
|---|---|---|
| | 5.5% | 13% |
| FTC's Legal Constraints Total | $330 | $782 |
| International Air Transportation | −5 | −13 |
| Updated Legal Constraints Total | 325 | 769 |

TABLE V–2—UPDATED TOTAL RANGE

| Updated range | Estimate (in millions) | |
|---|---|---|
| | 5.5% | 13% |
| Updated Legal Constraints Total | $325 | $769 |
| FTC's Total Implicit Subsidies | 39 | 117 |

[102] *See* Public Law 110–405, 122 Stat. 4287 (2008); *see also* FTC Report at 44–45.

[103] The FTC subtracted the low subsidy from the high constraint and the high subsidy from the low constraint to create the maximum range of net economic effects. It is not guaranteed that both the subsidy and constraint will be near the same end of the estimated range (high or low). Using these differences maximized the range of possible effects. The Commission applies the same methodology in updating the total range of costs the Postal Service would incur.

TABLE V–2—UPDATED TOTAL RANGE—Continued

| Updated range | Estimate (in millions) | |
|---|---|---|
| | 5.5% | 13% |
| Updated Total Range [103] | 208 | 730 |

The Commission determines that the FTC's finding of a Postal Service net economic disadvantage continues to be valid. Although the subsequent event discussed above altered the overall estimate of the net economic effect, it does not undermine the FTC's overall finding of a net economic disadvantage.

3. Supplemental Analysis

Although the Commission's conclusion is based on legal changes occurring subsequent to the FTC Report's issuance, the Commission also performs a supplemental analysis by updating the high-end costs associated with both the implicit subsidies and legal constraints based on current competitive product revenue. This supports the Commission's finding that the FTC's estimate of a net competitive disadvantage remains valid.

As noted above, the FTC estimated the low-end cost impact of the quantifiable implicit subsidies and legal constraints on competitive products by using competitive products' 5.5-percent mandatory contribution to institutional costs, which was the appropriate share mandated at the time of the FTC's review. *See supra* at 56 n.91. Given that competitive products' appropriate share of institutional costs is currently 5.5 percent, it is unnecessary to update the low-end figures estimated by the FTC. *See* 39 CFR 3015.7(c).

The FTC's estimates of the high-end cost impact of the quantifiable implicit subsidies and legal constraints on competitive products was based on competitive product revenue, which at the time of the FTC's review was 13 percent of total Postal Service revenue. FTC Report at 55–57. Over the past 10 years, the Postal Service's competitive product revenue has increased, in part due to the increased number of competitive product offerings as a result of product transfers from the market dominant product list.[104] In FY 2017, competitive products made up 29.69 percent of total Postal Service revenue. USPS–FY17–1. Table V–3 shows the updated figures based on 29.69 percent of total revenue currently attributed to competitive products.

TABLE V–3—UPDATED ESTIMATES BASED ON CURRENT POSTAL SERVICE REVENUE

| | Estimate (in millions) | | |
|---|---|---|---|
| | 5.5% | 13% | 29.69% |
| FTC's Legal Constraints Total | $330 | $782 | $1,785 |
| International Air Transportation | −5 | −13 | −29 |
| Updated Legal Constraints Total | 325 | 769 | 1,756 |
| FTC's Total Implicit Subsidies | 39 | 117 | 267 |
| Updated Total Range [105] | 92 | ..... | 1,717 |

While the low-end estimated value of the implicit subsidies remains at $39 million, the adjusted high-end estimated value of implicit subsidies is $267 million, based on FY 2017 Postal Service competitive product revenue. The low-end estimated cost of the legal constraints continues to be $330 million, and the adjusted high-end estimated cost is $1,785 million, based on FY 2017 Postal Service competitive product revenue. As shown in Table V–3, when the high-end figure of the international mail air transportation legal constraint is updated to $29 million, and then both the low-end figure of $5 million and the updated high-end figure of $29 million are removed from the legal constraints total range, the impact is nominal, as the remaining legal constraints imposed on the Postal Service range from $325 million to $1,756 million. In combining the two ranges, using the same methodology as the FTC did in its report, the legal constraints imposed on the Postal Service continue to cause it to incur an estimated net economic disadvantage between $92 million and slightly more than $1.7 billion.

The updated range of the implicit subsidies and legal constraints support the Commission's determination that the FTC's initial estimate of a Postal Service net economic disadvantage remains valid.

*D. Conclusion*

In considering the effect of the sole subsequent event since the FTC Report's issuance, the Commission concludes the legal change to the Postal Service's ability to negotiate terms for international air mail transportation does not affect the continuing validity of the FTC's finding that the Postal Service operates at a net economic disadvantage.

**VI. Comments and Analysis**

To the extent comments and reply comments are directly applicable to the Commission's proposed approach or analysis above, the Commission summarizes and discusses them in the applicable sections, *supra.* In this

[104] The Public Representative contends the transfer of market dominant products to the competitive product list should be considered a subsequent event by the Commission as part of its section 703(d) analysis. *See* section V.B.3, *supra.* The Commission finds product transfers are outside the scope of its section 703(d) analysis, as product transfers do not relate to a legal change for either a quantifiable implicit subsidy or legal constraint discussed by the FTC. *See* FTC Report at 55–77. However, it should be noted that, in updating the high-end estimates of both the quantifiable implicit subsidies and legal constraints, the value of product transfers is reflected in those estimates as competitive product revenue captures all current competitive product offerings.

[105] *See supra* at 65 n.103.

section, the Commission discusses the remaining comments and reply comments received in response to Order No. 3624.

*A. Increase the Appropriate Share*

UPS, Sidak, Carlton, GCA, and FUR recommend that the Commission increase the appropriate share.[106] The Public Representative, the Postal Service, Amazon, Panzar, MDMCS, NAPM, NPPC, and BOS filed comments opposing an increase in the appropriate share.[107] Comments advocating to increase the appropriate share not previously discussed in this Notice of Proposed Rulemaking generally addressed two topics: (1) The question of whether the Postal Service has a competitive advantage and the risks associated with a low appropriate share and (2) approaches for setting the appropriate share. Following a summary of the comments, the Commission discusses the issues raised in the context of its proposed formula-based approach.

1. Competitive Advantage and Risks Associated With a Low Appropriate Share

a. Comments in Favor of Increasing the Appropriate Share

UPS and Sidak assert that the Postal Service possesses a competitive advantage over its competitors as a result of the economies of scale and scope arising from the postal monopoly.[108] UPS states that, given the Postal Service's increasing focus on the parcels market, the necessity of ensuring a ''fair playing field'' is even more vital today than it was during previous Commission appropriate share determinations. UPS Reply Comments at 7–8. UPS notes this is particularly important in the context of this proceeding because the appropriate share is the only provision to ensure the Postal Service competes on a level playing field. UPS Comments at 11–13.

UPS notes that, in terms of both volume and revenue, competitive products comprise a much larger part of the Postal Service's business today than they did in 2007, when the 5.5-percent level was initially set. *Id.* at 19, 22–24. UPS asserts that competitive products' share of the Postal Service's total volume has more than tripled since the PAEA's enactment, and that competitive products currently make up 26.6 percent of the Postal Service's total revenue. *Id.* at 22–23. Sidak echoes this, stating competitive volumes and revenues have substantially increased in recent years. Sidak Decl. at 9–10. UPS and Carlton further contend that overall institutional costs have increased even as market dominant volumes and revenues have decreased, suggesting that the growth of competitive product volume is driving the growth of overall institutional costs.[109]

In addition, multiple commenters emphasize what they view to be risks associated with maintaining a low appropriate share requirement. UPS asserts that the growth of Postal Service competitive products dissuades entry and expansion of competitors and disincentivizes competitor innovation and investment. UPS Comments at 25–26. Sidak opines that the Postal Service is incentivized to underprice its competitive products in order to increase the scale of its operations. Sidak Decl. at 11–12. He states that increasing the appropriate share is necessary to protect market dominant consumers and ensure financial stability for the Postal Service. *Id.* at 10, 14–16. In the short term, Sidak contends that the institutional cost recovery burden that a low appropriate share requirement places on market dominant products puts pressure on the Postal Service to make market dominant service cuts, effectively increasing the price of market dominant products. *Id.* at 15. He suggests that the Postal Service's ability to effectively increase prices (by reducing service) is strongest for market dominant products because demand for them is less elastic than demand for competitive products. *Id.*

FUR echoes this, stating that under assigning institutional costs burdens market dominant mailers and distorts the competitive market. FUR Comments at 3. FUR asserts that the current appropriate share requirement bears no relationship to any actual cost or revenue numbers, which is particularly problematic given the Postal Service's high level of institutional costs. This lack of a relationship heightens the potential for the Postal Service to cross-subsidize competitive products with market dominant products. FUR Comments at 11–12.

Sidak and Carlton also take the position that a low appropriate share requirement inhibits dynamic efficiency, wherein firms compete by introducing new products, entering new markets, or developing cost-reducing innovations, in favor of static efficiency, which lacks such innovation.[110] In particular, Carlton states that the dynamic efficiency of the parcel industry is threatened because incentives to invest in research and development by competitors are reduced due to the Postal Service's inefficiencies. Carlton Reply Decl. at 14. Carlton finds this to be concerning because in his view competitors are better innovators than the Postal Service.[111]

b. Comments in Opposition to Increasing the Appropriate Share

As discussed in the sections below, most commenters advocate that the appropriate share requirement be either left at its current level or eliminated entirely.[112] In response to UPS's assertion that the Postal Service has a competitive advantage, the Postal Service, Panzar, and Amazon deny that the postal monopoly or any other aspect of the Postal Service's unique legal status provides it with any competitive advantage relative to private carriers.[113] BOS maintains that the Postal Service remains at a competitive disadvantage relative to its competitors. BOS Reply Comments at 10.

Amazon, the Postal Service, and the Public Representative disagree with UPS's concerns about an unlevel playing field, contending those concerns lack evidentiary support, especially in light of the Postal Service's modest market share and its competitors' financial health and investments in innovation.[114] Amazon and the Public Representative also note that economies of scale and scope benefit both the Postal Service and its competitors. They

[106] *See, e.g.,* UPS Comments at 13–40; Sidak Decl. at 1; Carlton Reply Decl. at 31; GCA Comments at 6–7; FUR Comments at 13–14.

[107] *See, e.g.,* PR Reply Comments at 7; Postal Service Reply Comments at 6–37; Amazon Reply Comments at 35–48; Panzar Reply Decl. at 10–13; MDMCS Reply Comments at 1–3; NAPM Reply Comments at 2–3; NPPC Reply Comments at 5; BOS Reply Comments at 11–14.

[108] UPS Comments at 13–14; Sidak Decl. at 5–9.

[109] UPS Comments at 2–3, 9, 29–33; Carlton Reply Decl. at 26–27.

[110] Sidak Decl. at 16–17; Carlton Reply Decl. at 14–16. Dynamic efficiency exists, in a macroeconomic context, when an economy invests less than the return to capital. *See* Andrew B. Abel *et al., Assessing Dynamic Efficiency: Theory and Evidence,* The Review of Economic Studies, at 2 (1989), available at: *http://scholar.harvard.edu/files/mankiw/files/assessing_dynamic_efficiency.pdf.* Applied to a microeconomic context, dynamic efficiency exists when a market is growing because of entry and innovation. Static efficiency exists when a market is in equilibrium (prices are close to marginal cost, and supply is equal to demand), but not exhibiting growth.

[111] *Id.* at 14–16. Carlton asserts these views are widely supported by economic literature. *See, e.g., id.* at 17–18.

[112] *See, e.g.,* PR Comments at 2; *Stamps.com* Comments at 5; MDMCS Comments at 1; Amazon Comments at 1; ACMA Comments at 3.

[113] *See* Postal Service Reply Comments at 17–28; Panzar Reply Decl. at 6; Amazon Reply Comments at 23–27.

[114] *See* Amazon Reply Comments at 29–32; Postal Service Reply Comments at 15; PR Reply Comments at 2–3.

assert that many of the benefits competitors have are in the provision of services that the Postal Service is legally barred from providing, and that competitors benefit from the Postal Service's economies of scale and scope by using the Postal Service for last-mile delivery.[115] Panzar asserts that while some statutory provisions confer scale economies on the Postal Service, raising the appropriate share would not eliminate them and would instead transfer their benefits to profitable competitors. Panzar Reply Decl. at 6.

With regard to Sidak's assertions concerning the Postal Service's incentives to underprice competitive products to gain scale at the expense of profit, Amazon, Panzar, and the Postal Service all maintain that such arguments are unfounded.[116] The Postal Service asserts that Sidak's view is not factually supported and that if the Postal Service were to increase scale at the expense of profit, it would likely start with market dominant operations, which ''dwarf[ ] the scale of competitive operations.'' Postal Service Reply Comments at 29. Amazon and Panzar state that both trends (including price and contribution increases associated with competitive products) and theory disprove Sidak's position.[117] The Public Representative asserts that there has been no demonstration that the Postal Service is underpricing its competitive products or attempting to expand the scale of its operations at its rivals' expense using unfair tactics, and that it is ''highly unlikely'' that the Postal Service could leverage the postal monopoly in order to underprice its competitors. PR Reply Comments at 4, 10. He maintains that Sidak's argument, which focuses on the incentives of management in regulated industries, does not apply to the Postal Service's competitive products because those products have been specifically deregulated to allow the Postal Service to maximize profits. *Id.* at 10. He also posits that ''due to the Postal Service's precarious finances, it does not have the luxury of trading scale for profits.'' *Id.*

With regard to Sidak's and FUR's arguments regarding the institutional cost recovery burden placed on market dominant products, the Public Representative asserts that such arguments are misleading. *Id.* at 5. He maintains that the appropriate share requirement for competitive products has no impact on rates for market dominant products. *Id.* at 6, 9. BOS echoes this, stating as long as incremental costs are properly categorized, institutional costs cannot be caused by competitive products alone. BOS Reply Comments at 8.

With regard to UPS's, Sidak's, and Carlton's assertions that competitive products have driven increases in institutional costs, the Postal Service responds that institutional costs have risen due to the growth in delivery points, an increase in the Federal Employees Retirement System (FERS) supplemental liability payment, and a methodology change for city carriers—not the growth of competitive products. Postal Service Reply Comments at 32–33. With regard to Sidak's and Carlton's assertions concerning the effects of a low appropriate share requirement on dynamic efficiency, Amazon and Panzar both maintain that such arguments are unsound because there is evidence of both innovation and new entrants into the market.[118]

c. Commission Analysis

The Commission addresses UPS's and Sidak's comments asserting that the Postal Service has a competitive advantage and that the playing field is not level in section V, *supra.* The Commission concludes that the FTC's finding that the Postal Service operates at a net competitive disadvantage relative to its competitors remains valid. *See* section V, *supra.* However, the Commission agrees with UPS that competitive volume and revenue has grown over the past 11 years. As the Commission explains in section IV.A, *supra,* the Commission considers these changes as among the reasons it proposes a new approach to calculating the appropriate share. Further, the formula-based approach itself directly takes into account the growth in revenue and market share. Under the proposed approach, the appropriate share will increase during periods of Postal Service competitive product growth. *See* section IV.B and C, *supra.*

Concerning UPS's, Sidak's, and Carlton's assertions that competitive volume is driving a larger percentage of the Postal Service's institutional costs, the Commission finds that this assertion misconstrues the nature of institutional costs, which, by definition, do not have a reliably identifiable causal relationship with any specific Postal Service product(s). Therefore, an increase in institutional costs cannot be driven by competitive products because if such a cost increase could be attributed to competitive products then it would not be an institutional cost. The Commission further discusses the distinction between attributable and institutional costs in section IV.C.2, *supra.* The Commission also agrees with the Postal Service that other known sources are driving the increase in institutional costs. *See* Postal Service Reply Comments at 32–33.

With regard to Sidak's view that the Postal Service is incentivized to underprice its competitive products in order to increase the scale of its operations, the Commission finds that given the low volume of competitive products relative to the Postal Service's overall operations, underpricing competitive products would not be effective in significantly expanding the Postal Service's scale. Additionally, the incremental cost test restricts the extent to which the Postal Service can underprice competitive products by ensuring that competitive products recover, at a minimum, their incremental costs. *See* 39 U.S.C. 3633(a)(1). Further, there is no evidence that the Postal Service has attempted to expand its scale at the expense of profit. Instead, the record shows the Postal Service actively competing. *See* section IV, *supra.* For example, as Table IV–7 in section IV.C.3.d, *supra* shows, the contribution of competitive products as a percentage of institutional cost has grown substantially since FY 2007.

With regard to Sidak's and FUR's assertions that a higher appropriate share is necessary to protect market dominant mailers, the Commission notes that the commenters representing the interests of market dominant mailers in this proceeding do not have the same concerns and generally take an opposite view on if and by how much the appropriate share should be changed.[119] Some express concern that setting the appropriate share too high will harm market dominant mailers by making it more difficult for the Postal Service to contribute to institutional costs, as well as harm the overall finances of the Postal Service.[120] The Commission's proposed approach protects market dominant mailers because it ensures that competitive products are contributing an amount to institutional costs that is reflective of market conditions.

With regard to FUR's assertion that the lack of any specific connection

[115] Amazon Reply Comments at 27–29, 34–35; PR Reply Comments at 2–3, 7–8.

[116] Amazon Reply Comments at 20; Panzar Reply Decl. at 7–9; Postal Service Reply Comments at 28–29.

[117] Amazon Reply Comments at 10–13, 20–22; Panzar Reply Decl. at 7–9.

[118] Amazon Reply Comments at 34; Panzar Reply Decl. at 9–10.

[119] *See e.g.,* NPPC Reply Comments at 2; PostCom Comments at 2; *Stamps.com* Comments at 5; MDMCS Comments at 1; ACMA Comments at 3; GCA Reply Comments at 2.

[120] *See* NPPC Reply Comments at 5; MDMCS Comments at 7; ACMA Comments at 3.

between the appropriate share and the actual revenue or costs of competitive products is problematic due to the risk of cross-subsidy, this concern is obviated by the fact that the Commission employs an incremental cost test to prevent market dominant products from cross-subsidizing competitive products.[121]

With regard to Sidak's and Carlton's comments concerning dynamic efficiency, the Commission finds that the market itself does not appear to be lacking innovation. The delivery industry since the enactment of the PAEA has been defined by innovation and entry, including the introduction of more efficient vehicles, improved dynamic routing algorithms, Sunday delivery by the Postal Service, and the growth of Amazon as both a customer of, and competitor to, other delivery services.[122] Furthermore, the Commission's proposed formula-based approach is designed to address changes in both static and dynamic efficiency because it raises the appropriate share in response to both increases in the Postal Service's market power and growth in the overall market, whether such growth is based on increases in demand, entry of new firms, or innovations in the industry.

2. Proposed Methodology for Setting the Appropriate Share

a. Comments in Favor of Increasing Appropriate Share

UPS contends that the appropriate share level should ideally be based on the stand-alone costs of the Postal Service's competitive services. UPS Comments at 33. In the alternative, UPS asserts that the best proxy for the appropriate share level would be attributable cost shares—*i.e.,* for competitive products to contribute to institutional costs in the same proportion at which they contribute to total attributable costs. *Id.* at 34–35. UPS suggests that its approach is the one used by the European Commission in its regulation of European Union postal operators. *Id.* at 37–39. Suggesting a 3-year average be used, UPS states that the average of the last 3 years' attributable cost shares for competitive products was 29.4 percent. *Id.* at 35. Therefore, UPS contends that the appropriate share should be set at approximately 29 percent.[123]

As an alternative to this proposal, UPS states that if the Commission is not inclined to use attributable cost shares, then it should use revenue shares—*i.e.,* set the appropriate share equal to the revenue from competitive products as a percentage of the Postal Service's total revenue. *Id.* at 39. Under this approach, the appropriate share would be 24.2 percent. *Id.* UPS also urges the Commission to set the appropriate share to adjust annually to mitigate the risk of it ''becoming outdated shortly after it is set.'' *Id.* at 39–40.

GCA also proposes a methodology for increasing the appropriate share, which is based on an average of the actual contribution competitive products have made to institutional costs since FY 2010. GCA Comments at 6–7. GCA's proposed methodology would yield an appropriate share level of between 10.5 and 11 percent. *Id.* at 6.

b. Comments in Opposition to Increasing Appropriate Share

All reply commenters not affiliated with UPS generally oppose UPS's proposed approaches. Panzar specifically objects to UPS's proposal of a stand-alone competitive enterprise measure because he asserts it is a method for determining the maximum price and is inappropriate for setting a price floor. Panzar Reply Decl. at 6.

Several commenters object to UPS's proposed attributable cost shares approach. Amazon asserts that UPS's proposal is unfair to mailers, shippers, and consumers and would tilt the playing field in the marketplace against the Postal Service. Amazon Reply Comments at 22, 33–34. Amazon, Panzar, MDMCS, and GCA all assert that UPS's proposal essentially amounts to fully-allocated costing, an approach which the Commission has previously rejected.[124] Amazon maintains that fully-allocated costing is arbitrary because it assigns costs without a basis in causation and has been widely rejected by economists, Congress, and the courts. Amazon Reply Comments at 3, 36–47.

The Postal Service maintains that UPS's proposal is ''illogical and unworkable'' because in order for market dominant products to pay their attributable cost share, market dominant rates would have to be raised significantly, likely in violation of 39 U.S.C. 3622(d)'s price cap. Postal Service Reply Comments at 12–13. Additionally, the Postal Service asserts that UPS's proposal amounts to an equal markup requirement which fails to account for prevailing market conditions, and as such contradicts the underlying purpose of the appropriate share provision.[125] The Public Representative suggests that a fairer method than UPS's would be to look at the true proportion of institutional costs actually covered by competitive products because the Postal Service does not recover all of its institutional costs in a given year. PR Reply Comments at 8.

The Postal Service contends that UPS's proposal would fail to account for the asymmetric distribution of worksharing, which results in market dominant products having a higher cost coverage than competitive products and thus being better positioned to contribute more to institutional costs. Postal Service Reply Comments at 13–14. The Postal Service asserts that UPS's proposed methodology is arbitrary because competitive products' attributable costs are disproportionately concentrated in transportation, which competitive products consume more of than market dominant products. The Postal Service maintains that there is no reason to conclude that institutional costs should be allocated on the same basis. *Id.* at 14–15.

Several commenters are concerned that UPS's proposal would harm competition. NPPC characterizes an appropriate share of 29.4 percent as ''wholly unrealistic, not to mention noncompetitive (and probably unachievable).'' NPPC Reply Comments at 5. MDMCS asserts that UPS's proposal would require substantial competitive product price increases, which could jeopardize the Postal Service's position in the market and undermine the contribution that competitive products currently make to institutional costs. MDMCS Reply Comments at 1. NAPM contends that a substantial increase in the appropriate share would compel the Postal Service to raise competitive product prices substantially, jeopardizing its position in the market and, derivatively, the

[121] This test ensures that competitive products cover their incremental costs, or the costs avoided by not providing competitive products. *See, e.g.,* Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 79; Order No. 3506 at 8.

[122] *See* PR Comments at 15–17; Amazon Comments at 23–28.

[123] *Id.* at 33; UPS Reply Comments at 19. UPS also notes that, if necessary, the increase could be phased in by setting the requirement as a weighted average of the 3-year average attributable cost share and the current appropriate share level. UPS Comments at 36–37.

[124] Amazon Reply Comments at 35–47; Panzar Reply Decl. at 10–13; MDMCS Reply Comments at 2; GCA Reply Comments at 1–2.

[125] *Id.* at 7–12. A markup requirement constitutes a minimum amount the Postal Service would have to charge beyond the cost of a product or set of products. An equal markup requirement is a markup for one product or for a set of products designed to ensure the product's contribution (or cost coverage) is as high as that of another product or set of products.

contribution that competitive products currently make to institutional costs. NAPM Reply Comments at 2. BOS echoes this, citing concerns that the Postal Service would have to increase competitive product prices, which would substantially harm the market. BOS Reply Comments at 2.

The Public Representative asserts that ''[r]egardless of the method used to calculate the benchmark contribution requirement, if the minimum contribution level is continually revised upward based on the most recent contribution level, the required contribution will increase as competitive product profits increase to ever higher levels until they become, in effect, a ceiling.'' PR Reply Comments at 7. He warns that such a scenario could ''increase competitive product prices in the near future to a level higher than the market will bear and thus . . . reduce [competitive products'] revenue and contribution.'' *Id.*

The Public Representative criticizes UPS's proposed revenue shares methodology, stating that such an approach ignores the fact that the increasing share of total revenue derived from competitive products is partially based on the decline in market dominant volumes. *Id.* at 5. As a result, he asserts that basing the appropriate share level on such methodology would overstate competitive products' share of institutional costs. *Id.* GCA is also opposed to the revenue shares methodology and asserts that it constitutes a form of fully-allocated costing. GCA Reply Comments at 1–2.

Several reply commenters were also opposed to GCA's proposed approach. The Postal Service asserts that historic institutional cost contribution levels do not yield a meaningful analysis of the market and would be unsupported by the PAEA and Commission precedent. Postal Service Reply Comments at 34–37. Amazon criticizes GCA's proposal on the ground that it ''would still be below the actual contribution from competitive products in any year since [FY] 2013 . . . .'' Amazon Reply Comments at 47. Amazon asserts that the non-binding nature of GCA's proposal illustrates why the Commission should eliminate the appropriate share requirement. *Id.* at 48.

c. Commission Analysis

With regard to UPS's proposal that the appropriate share be based on the stand-alone cost of the Postal Service's competitive business, the Commission finds that UPS appears to misconstrue the nature of stand-alone costs. Stand-alone costs are the costs used in evaluating the maximum price that can be charged to customers in order to avoid cross-subsidizing other products offered by a firm. *See* Panzar Reply Decl. at 6. Although stand-alone costs for Postal Service's competitive products could be used to develop maximum prices for those products to ensure there is no cross-subsidization of market dominant products, this is not required by the PAEA.[126] In addition, the Commission has and continues to view the appropriate share as a minimum requirement. As a result, an approach designed to develop a maximum price or ceiling would be inappropriate for setting a minimum price or floor.

With regard to UPS's proposal that the appropriate share be based on attributable cost shares, the Commission notes multiple issues with UPS's proposed approach. First, using attributable cost shares alone fails to take into account the relevant circumstances and prevailing competitive conditions in the market, as required by section 3633(b). The Postal Service's attributable cost shares do not provide any insight into its market power, the size of the overall competitive market, or any other prevailing competitive conditions. Although changes in attributable cost shares partly reflect transfers to the competitive product list from the market dominant product list, they are also affected to a much larger degree by the decline in market dominant mail volumes and costs.

Second, UPS's attributable cost shares proposal is tantamount to fully-allocated costing. Such an approach, which would allocate institutional costs to products based on those products' relative shares of total attributable costs, has long been rejected by the Commission and by economists in general as being inherently arbitrary.[127] Assigning costs in that manner does not reasonably reflect causation and can lead to widely different results depending on whether total volume or total attributable cost shares are used.[128] In addition, such an approach fails to maximize economic efficiency because it is not based on marginal cost and does not yield prices reflecting market demand. *Id.* The approach also violates the Commission's long-standing approach to cost attribution that necessitates attribution be established through reliably identified causal relationships.[129]

With regard to UPS's alternate proposal that the appropriate share be based on revenue shares, the Commission finds it suffers from similar weaknesses to the attributable cost shares proposal. First, considering revenue alone does not take into account the statutory criteria and Commission precedent. Moreover, the Postal Service's total revenue is also driven by its market dominant revenue, and market dominant mail has experienced declining demand since FY 2007 and a reduction in its revenue share relative to competitive product revenue. Should those trends continue, declines in market dominant revenue would increase the appropriate share for competitive products under the UPS proposal. The substantial impact that unrelated factors (*e.g.,* a decline in market dominant revenue) can have on the appropriate share under this approach demonstrates the major flaw with this and other approaches that assign costs based on non-causation factors.

The Commission agrees with UPS's suggestion that the appropriate share should adjust annually. At this time, the Commission finds that an annual adjustment would better reflect market conditions and mitigate the risks of the appropriate share being set too high or too low. As a result, the proposed formula-based approach would adjust the minimum appropriate share annually.

With regard to GCA's proposal that the appropriate share be based on an average of the actual contribution competitive products have made to institutional costs, the Commission finds it also suffers from several deficiencies. First, as with UPS's other proposals, relying on historic contribution alone does not address the prevailing competitive conditions in the market or the other required elements of

[126] The PAEA does, however, prohibit the cross-subsidization of competitive products by market dominant products. *See* 39 U.S.C. 3633(a)(1).

[127] *See, e.g.,* Docket No. R94–1, Opinion and Recommended Decision, November 30, 1994, Appendix F at 7; Docket No. R84–1, Opinion and Recommended Decision, Vol. I, September 7, 1984, at 143 (Docket No. R84–1 Opinion).

[128] *Id.* In its comments, UPS demonstrates this with the differing appropriate share percentages it calculates as a result of its attributable cost shares and revenue shares approaches.

[129] *See* 39 U.S.C. 3622(c)(2); Docket No. R84–1 Opinion at 140 (citing *Nat'l Ass'n of Greeting Card Publishers* v. *United States Postal Service,* 462 U.S. 810 (1983)). In *Nat'l Ass'n of Greeting Card Publishers,* the Supreme Court addressed UPS arguments similar to those it makes in this proceeding, stating: ''[p]etitioner [UPS] argues that extended use of cost-of-service principles is necessary to avoid subsidization of those classes of mail for which the Postal Service has competition . . . by other classes of mail for which the Postal Service enjoys a statutory monopoly . . . [,] [b]ut Congress adopted the . . . conclusion that, unless a reliable connection is established between a class of service and a cost, allocation of costs on cost-of-service principles is entirely arbitrary.'' *Nat'l Ass'n of Greeting Card Publishers,* 462 U.S. at 829 n.24.

section 3633(b). *See* 39 U.S.C. 3633(b). Second, it is unclear why GCA proposes to use the average historic contribution since FY 2010, rather than FY 2007 when the PAEA was enacted. Finally, relying on a rolling average of historic contribution levels can result in an appropriate share that does not react easily to economic changes. For example, if the Postal Service were to experience several years of high contribution, followed by a significant recessionary shock, an appropriate share level based on average historic contribution may become difficult for the Postal Service to achieve in the face of adverse market conditions. Similarly, if demand for Postal Service competitive products were to decline over time, it would take years for an appropriate share based on average historic contribution to incorporate the effect of this decline. In the meantime, the Postal Service may be unable to both respond to the decline through altering its pricing and meet the appropriate share. Because the Commission's proposed approach adapts to changes in market conditions, it mitigates the risks associated with changes in the market.

*B. Maintain the Appropriate Share*

The Public Representative, NPPC, and PostCom [130] recommend that the Commission maintain or slightly increase the appropriate share.[131] UPS and Carlton filed comments in opposition.[132] Following a summary of the comments, the Commission discusses the issues raised in the context of its proposed formula-based approach.

1. Comments in Favor of Maintaining the Appropriate Share

Although there are minor divergences in the commenters' views, the Public Representative, NPPC, and PostCom generally advocate that the Commission maintain or slightly increase the appropriate share.[133]

All three commenters discuss why they see the competitive market as functioning correctly. For example, the Public Representative maintains that UPS's and FedEx's profits indicate healthy competition in the competitive market. PR Comments at 17. He asserts that UPS and FedEx together comprise roughly 84 percent of the total competitive market, while the Postal Service comprises only about 15 percent. *Id.* at 11. He maintains that relative market share for the 3 largest delivery companies—UPS, FedEx, and the Postal Service—has been stable for years, indicating strong competitive conditions in the market. *Id.* at 14. In advocating for a moderate approach, PostCom supports maintaining ''the stable structure'' that has allowed the Postal Service to grow its competitive products while safeguarding against predatory pricing and cross-subsidization. PostCom Comments at 6–7. NPPC and PostCom emphasize the appropriate share's effectiveness in allowing the Postal Service's competitive products to compete and be profitable.[134]

Despite advocating for the appropriate share to be maintained at 5.5 percent, the commenters acknowledge the changes that have occurred in the competitive market. For example, the Public Representative identifies changes to the market, including the growth of e-commerce and the rise of Amazon, and notes that the Postal Service's financial condition remains precarious. PR Comments at 15. He acknowledges that competitive volumes have increased relative to market dominant volumes, but he states that competitive volumes remain a minor share of overall volume. *Id.* at 16. Similarly, PostCom also states that despite ''impressive growth in volumes, revenues, and contribution,'' competitive products have remained a small share of overall volume. PostCom Comments at 2, 5. NPPC discusses the growth in the package and overnight delivery markets, stating that a ''modest upward adjustment would not be unreasonable.'' NPPC Reply Comments at 5–6. However, NPPC cautions that any upward adjustment should not disrupt competitive products' pricing. *Id.* at 6.

All three commenters also raise concerns about the risks of setting the appropriate share too high and harming competition. The Public Representative asserts that if the Commission were to raise the appropriate share level, it could fuel industry-wide price increases for competitive products that solely benefit competitors. PR Comments at 17, 18. He is also concerned that ''there is simply too little margin for error,'' and that too high of an appropriate share would ''cause a loss of otherwise profitable volumes'' for the Postal Service. *Id.* at 18.

PostCom urges the Commission to avoid ''radical action that could serve to unfairly hamstring the Postal Service's pricing flexibility and endanger its ability to compete in the competitive marketplace.'' PostCom Comments at 1. PostCom asserts that the current appropriate share has not impeded the Postal Service's ability to compete, but it is concerned that a large increase in the appropriate share would be disruptive to the Postal Service and overall market. *Id.* at 6. Similarly, NPPC is concerned that too high of an appropriate share would ''[choke] off business in the Competitive Products area,'' which it states is not in the interests of market dominant mailers and would reduce overall competitiveness. NPPC Reply Comments at 5.

2. Comments in Opposition to Maintaining the Appropriate Share

As discussed in the sections above and below, many commenters advocate for a much larger increase in the appropriate share or for the appropriate share to be eliminated.[135] A few of those commenters voice general opposition to maintaining the appropriate share at 5.5 percent.[136] UPS and Carlton are the only commenters to respond directly to the positions of those who advocate for the appropriate share to be maintained or slightly increased.

UPS states the current 5.5-percent appropriate share does not ensure a level playing field, fails to account for competitive products' growth, and ''bears no rational relationship to current market conditions.'' UPS Comments at 1–2. UPS takes the position that competitive products are

[130] Although PostCom does not advocate for a particular appropriate share level, PostCom recommends that the Commission maintain a moderate approach. As a result, the Commission discusses PostCom's comments in this section.

[131] *See, e.g.,* PR Comments at 2; NPPC Reply Comments at 2; PostCom Comments at 2. The Postal Service and NALC make alternative arguments that if the Commission is not inclined to eliminate the appropriate share then it should be maintained at its current level. *See* Postal Service Comments at 1; NALC Comments at 4. *Stamps.com* takes the position that the appropriate share should be eliminated or retained. *Stamps.com* Comments at 5. The Commission includes *Stamps.com*'s comments in section VI.C.1, *infra.*

[132] *See, e.g.,* UPS Reply Comments at 1–2; Carlton Reply Decl. at 5.

[133] PR Comments at 2 (''the Commission should retain the current 5.5 percent requirement''); NPPC Reply Comments at 2 (''the Commission should either retain the current 5.5 percent minimum or raise it only modestly . . .''); PostCom Comments at 2 (''the PRC should follow a moderate approach. . .'').

[134] NPPC Reply Comments at 6; PostCom Comments at 4, 6.

[135] *See, e.g.,* UPS Comments at 4; Amazon Comments at 1.

[136] *See, e.g.,* FUR Comments at 9–12; (stating that the current appropriate share is too low in light of similar network type industries, competitive products' growth and increasing revenue, the lack of relationship between the current appropriate share and actual costs and revenues, and the high percentage of costs designated as institutional); Amazon Comments at 54–55 (citing to costs and risks the appropriate share imposes and stating that sound policy calls for removing unnecessary and non-binding rules); MDMCS Comments at 1–2 (stating that ''[e]ven leaving the required minimum contribution in place at its current level would be a needless invitation to mischief.'').

driving up the Postal Service's costs and investments, but have little responsibility to fund them. UPS Reply Comments at 1, 26. For this reason, UPS maintains that ''[c]urrent regulatory requirements . . . provide the Postal Service with an artificial advantage over the private sector,'' because private sector companies cannot ''avoid covering the costs and investments associated with selling [their] products.'' *Id.* at 1, 2. In UPS's view, the current 5.5-percent requirement ''is so low and outdated that it is effectively meaningless today.'' *Id.* at 2. UPS asserts that there will not be a level playing field unless the Postal Service sets prices high enough to produce sufficient revenue to cover all costs, which it states the current 5.5-percent appropriate share fails to do. *Id.* at 3.

Carlton states that maintaining the current 5.5-percent appropriate share ''would promote the inefficient expansion of USPS' competitive products, as well as harm innovation and the dynamic efficiency of the parcel delivery industry.'' Carlton Reply Decl. at 5. UPS dismisses the concerns raised by other commenters that raising the appropriate share would be detrimental to consumers and the Postal Service. It asserts that such arguments fail to consider the harm the Postal Service causes to dynamic efficiency, and asserts that no commenter demonstrated that the Postal Service's ability to compete would be harmed by an increase in the appropriate share. UPS Reply Comments at 34–35.

3. Commission Analysis

As discussed in detail in section IV, *supra,* the Commission finds that its proposed formula-based approach best captures the prevailing competitive conditions in the market and other relevant circumstances under 39 U.S.C. 3633(b).

Although several commenters advocating for the appropriate share to be maintained or slightly increased assert that the current appropriate share has been successful at preserving competition and has allowed the Postal Service to grow its competitive business, those commenters also acknowledge the substantial changes that the competitive market has experienced over the past 11 years. As the Commission discusses in section IV.A, *supra,* these changes render a change in approach appropriate at this time. The Commission agrees with the Public Representative and PostCom that competitive volume remains a minor share of overall volume. *See* section IV.C.3.b, *supra.* However, as the Commission discusses in sections IV.B and IV.C.1, the prevailing competitive conditions in the market have changed, with the Postal Service's market power and market share, as well as the competitive market as a whole, all growing since FY 2007.

Although under current market conditions the minimum appropriate share provided by the formula would increase over the current 5.5-percent requirement, the operation of the formula and the proposed annual adjustment of the appropriate share should mitigate many of the concerns raised by the commenters who advocate for the Commission to maintain or slightly increase the appropriate share. For example, several commenters express concern that the appropriate share will be set too high and harm the Postal Service's ability to compete (which they assert, in turn, will hurt competition as a whole and the Postal Service's finances). In section IV.C.3.d, *supra,* the Commission considers concerns with setting the appropriate share too high and discusses how the proposed formula limits increases to no higher than needed to account for growth in the Postal Service's market power or growth in the market as a whole. The proposed formula-based approach also mitigates this risk by adjusting annually to reflect market conditions. As a result, if the Postal Service were to lose market share and the competitive market were to retract, those changes would be reflected in a future decrease in the appropriate share. Further, as demonstrated by Table IV–7 in section IV.C.3.d, *supra,* the proposed formula-based approach should not force the Postal Service to raise prices or harm its ability to compete.

*C. Eliminate the Appropriate Share*

Amazon, Panzar, the Postal Service, *Stamps.com,* NALC, MDMCS, ACMA, eBay, and BOS recommend that the Commission eliminate the appropriate share.[137] UPS, Carlton, and Sidak filed comments opposing elimination of the appropriate share.[138] Following a summary of the comments, the Commission discusses the issues raised in the context of its proposed formula-based approach.

1. Comments in Favor of Eliminating the Appropriate Share

Several commenters cite the competitive nature of the market as a reason for eliminating the appropriate share. The Postal Service asserts that the current market is competitive—even more competitive than it was when the appropriate share was last reviewed—and that the Postal Service's competitors are profitable and growing. Postal Service Comments at 6–7, 17. It represents that its market position has remained relatively unchanged since the last review, although it acknowledges that the market has grown overall. *Id.* at 10–12. ACMA asserts that there is considerable competition in the delivery sector, despite each competitor having unique strengths and weaknesses. ACMA Comments at 1–2. *Stamps.com* states that the market is ''workably competitive,'' with many factors other than price affecting the market. *Stamps.com* Comments at 1–3. Amazon asserts that the Postal Service's competitors have ''undeniably thrived.'' Amazon Comments at 7–8.

Among the commenters advocating for elimination of the appropriate share, commenters generally maintain that the Postal Service does not have a competitive advantage, and many assert that the Postal Service is operating at a competitive disadvantage. The Postal Service, ACMA, and BOS state that the Postal Service remains at a competitive disadvantage relative to its competitors.[139] The Postal Service asserts that if the playing field is level or otherwise not tilted in favor of the Postal Service, ''the importance of the [appropriate share] provision is diminished, and the appropriate share requirement should at the very least be reduced, if not eliminated.'' Postal Service Comments at 4–5. Amazon maintains that on the whole, a balanced assessment of the benefits and burdens accruing to the Postal Service as a result of its unique governmental status shows that it receives no unfair advantage. Amazon Comments at 41.

Several commenters assert that the Postal Service is engaging in fair competition and, as a result, the appropriate share is unnecessary. MDMCS states the requirement is ''an irrelevant anachronism,'' because it is unnecessary to level the playing field, prohibit cross subsidization, or ensure that competitive products contribute to institutional costs. MDMCS Comments at 1. Similarly, Amazon and Panzar take the position that the appropriate share requirement is not necessary to provide

[137] *See, e.g.,* Amazon Comments at 1; Panzar Decl. at 2; Postal Service Comments at 1; *Stamps.com* Comments at 1; NALC Comments at 1; MDMCS Comments at 1; ACMA Comments at 3; eBay Reply Comments at 2; BOS Reply Comments at 14. The Commission notes that *Stamps.com* advocates for the appropriate share to be eliminated or retained at 5.5 percent. *Stamps.com* Comments at 5.

[138] *See, e.g.,* UPS Reply Comments at 3; Carlton Reply Decl. at 5; Sidak Reply Decl. at 1.

[139] Postal Service Comments at 6–10; ACMA Comments at 2; BOS Reply Comments at 8–10.

a ''level playing field'' for the Postal Service's competitors.[140] Amazon asserts that any unique legal treatment which the Postal Service receives is the result of deliberate policy choices made by Congress. Amazon Comments at 39. Moreover, Amazon maintains that the Postal Service's competitors have their own unique economies of scale and scope which are unavailable to the Postal Service, and that the economies of scale and scope in last-mile delivery which the Postal Service possesses are shared with its competitors, who are permitted to access the Postal Service's network. *Id.* at 34–42.

ACMA, MDMCS, *Stamps.com,* and Panzar assert that the Postal Service is behaving appropriately in the market, as it tries to maximize profits while retaining customers.[141] *Stamps.com* and Amazon maintain that contribution to institutional costs is an outcome of the Postal Service's pursuit of profits and pricing.[142] As a result, both assert that the minimum contribution has no role to play.[143] Similarly, eBay takes the position that the appropriate share requirement is unnecessary because historical experience has shown that the Postal Service prices its competitive products so as to increase contribution levels to institutional costs.[144]

Panzar, NALC, and MDMCS assert that there is no need for a minimum appropriate share because the Postal Service has increased competitive prices, the contribution of competitive products to institutional costs has exceeded the minimum appropriate share, and there has been no evidence of predatory pricing or unfair subsidization on the part of the Postal Service.[145] Similarly, Amazon asserts that the fact that the actual contribution level from competitive products has consistently exceeded the required level renders the appropriate share requirement effectively irrelevant as a pricing constraint. Amazon Comments at 29.

Amazon and MDMCS assert that the minimum share requirement is not necessary to protect against cross-subsidization of competitive products by market dominant products because the Commission already employs its incremental cost test to prevent cross-subsidization. This test ensures that competitive products cover their incremental costs, and these commenters maintain that as long as competitive product prices cover those products' incremental costs, there is no risk of cross-subsidization.[146] For the same reason, Amazon and Panzar maintain that the appropriate share requirement is not necessary to prevent predatory pricing by the Postal Service, because prices which cover their incremental costs, by definition, cannot be predatory.[147] The Postal Service states that there is no basis to find that it has engaged in predatory pricing. Postal Service Comments at 10.

Amazon asserts that the Postal Service ''is aggressively pursuing contribution from competitive products, not trying to minimize it.'' Amazon Comments at 19. Amazon explains that this has resulted in the growth of contribution to institutional costs by competitive products since the last review of the appropriate share, and it posits that much of this growth has been the result of above-inflation price increases. *Id.* at 19–20, 22–23. Amazon maintains that the Postal Service's competitors have also been able to impose above-inflation price increases for their products, and that they are profitable and are investing heavily in expansion and improved technology. *Id.* at 23, 28.

Amazon and Panzar take the position that the appropriate share requirement is not necessary to provide a margin of safety with regard to the Postal Service's cost estimates.[148] Amazon notes that current cost coverage levels for competitive products are high, and it maintains that the Postal Service's cost estimation methods have been demonstrated to be reliable. Amazon Comments at 33–34. Panzar maintains that the Postal Service should be permitted to price its competitive products down to the level of incremental costs. Panzar Decl. at 5–11.

Amazon, Panzar, *Stamps.com*, MDMCS, and NALC are concerned that if the appropriate share were set too high, both the Postal Service's finances and consumers would be harmed.[149] MDMCS and Amazon assert that shippers and ultimately consumers would be harmed through higher prices and shipping costs, and MDMCS, Amazon, Panzar, and ACMA suggest that all Postal Service customers would be hurt if declining finances resulted in service declines.[150] In addition, Amazon suggests that rural customers and customers who receive packages at residences would be most harmed. Amazon Comments at 47–51. Amazon maintains that the only winners in the case of a substantial price increase would be the Postal Service's competitors, which would gain additional pricing power. *Id.* at 10, 45–46.

MDMCS also expresses concern that having any appropriate share requirement is risky because market conditions could change unexpectedly (*e.g.,* a competitor could shift a portion of package volume from the Postal Service to its own delivery network). MDMCS Comments at 7. The Postal Service echoes this concern, stating that setting the appropriate share too high would injure consumers by pricing the Postal Service out of the market, lessening overall price and service competitiveness in the market and harming the Postal Service's ability to fund necessary network infrastructure. Postal Service Comments at 4–5. It also discusses the growth of last-mile delivery, which has been largely driven by three major customers. *Id.* at 12. The Postal Service asserts that a substantial reduction in packages from these three customers could impact its ability to maintain current levels of contribution, and it asserts that the risk of losing this volume ''cannot be dismissed as mere conjecture.'' *Id.* The Postal Service also discusses several changes to the market that it asserts may threaten the Postal Service's competitive position. *Id.* at 14. These changes include steadily increasing customer demands and expectations, major e-commerce retailers taking more logistics and delivery operations in-house, and new competition providing last-mile delivery. *Id.* at 14–16.

### 2. Comments in Opposition to Eliminating the Appropriate Share

Several commenters state generally that they are opposed to eliminating the appropriate share.[151] UPS, Sidak, and

[140] Amazon Comments at 34–43; Panzar Decl. at 7–8.

[141] ACMA Comments at 3; MDMCS Comments at 2; *Stamps.com* Comments at 3; Panzar Reply Decl. at 7–9.

[142] *Stamps.com* Comments at 4; Amazon Comments at 6.

[143] *Stamps.com* Comments at 5; Amazon Comments at 6.

[144] eBay Reply Comments at 2. eBay also notes that it posted a petition on its website, which received 32,805 signatures supporting elimination of the appropriate share from its online community. *Id.* at 3–4, App. A.

[145] *See* Panzar Decl. at 10–11; NALC Comments at 2, 3; MDMCS Comments at 2–6.

[146] Amazon Comments at 30–32; MDMCS Comments at 3.

[147] Amazon Comments at 32–33; Panzar Decl. at 5–6.

[148] Amazon Comments at 33–34; Panzar Decl. at 6–7.

[149] *See* Amazon Comments at 4–5, 9; Panzar Decl. at 11–12; *Stamps.com* Comments at 5; MDMCS Comments at 1–2, 6–7; NALC Comments at 4.

[150] MDMCS Comments at 7; Amazon Comments at 9–10, 43–46; Panzar Decl. at 14; ACMA Comments at 2.

[151] *See, e.g.,* PostCom Comments at 4, 6 (stating that ''dispensing with the appropriate share requirement does not appear to be a viable option,'' and that the appropriate share continues to have an important protective role against the possibility of

Continued

Carlton are the only commenters to respond directly to the positions of those who advocate for the appropriate share to be eliminated.

UPS asserts that the appropriate share is critical to ensuring the Postal Service competes on a level playing field. UPS Reply Comments at 7. UPS takes the position that ''without a significant contribution requirement, the playing field is artificially tilted in the Postal Service's favor.'' *Id.* at 19. As discussed in section V.B, *supra,* UPS and Sidak both maintain this is due in large part to the advantages of the postal monopoly.[152] UPS views the bar on the Postal Service's ability to sell non-postal products as insufficient to overcome the advantages of the postal monopoly. UPS Reply Comments at 24–26.

UPS opposes several of the views held by other commenters. UPS disagrees with the Postal Service's characterization that its position in the market has remained unchanged since the Commission last reviewed the appropriate share. *Id.* at 29. UPS provides an alternative analysis that shows that the Postal Service has ''achieved significant gains in ground-based services in recent years.'' *Id.* at 31. UPS contends that the Postal Service has rapidly gained market share in recent years in ''critical segments.'' *Id.* at 32. UPS also objects to the characterization by several commenters that price increases on competitive products alleviate concerns of market distortion. *Id.* at 32–33. UPS alleges that because the Postal Service's competitive products have been historically underpriced, the Postal Service is able to raise prices and undercut competitors at the same time. *Id.* at 33. UPS disputes the view that the appropriate share is not needed because the Postal Service has incentives to exceed it and advocates that the Commission not give weight to competitors' profitability. *Id.* at 33–34.

Carlton asserts that the problems with the current 5.5-percent appropriate share would be exacerbated if the appropriate share were eliminated. Carlton Reply Decl. at 5. He states that the Postal Service's incentives differ from those of the private firms because the Postal Service has less incentive to decrease costs, use capital assets wisely, maximize profits, and innovate. *Id.* at 7–8. As a result, Carlton views the Postal Service as having ''a long track record of inefficiency and excess capacity.'' *Id.* at 8. Sidak echoes this, stating that Panzar incorrectly assumes the Postal Service to be profit maximizing, and asserting that this assumption impacts the overall reliability of Panzar's analysis.[153] Sidak asserts that the Postal Service has the incentive to sacrifice profit in order to expand its scale, and he is concerned that this creates a further incentive for the Postal Service to underprice competitive products, engage in predatory pricing, and harm competitors and market dominant customers. *Id.* at 3–4, 5–6, 10–11, 13–14. He suggests that market dominant products are unable to bear higher costs and that the Postal Service will need to recover more institutional costs from competitive products ''[t]o avoid financial collapse.'' *Id.* at 14. Carlton and Sidak directly contest Amazon's and Panzar's view that requiring coverage of incremental costs alone is sufficient to preserve competition.[154] Sidak cites concerns that Amazon and other large shippers are incentivized to engage in rent-seeking behavior at the expense of market dominant customers and taxpayers. Sidak Reply Decl. at 2, 34–41. Carlton asserts that the incremental costs test for cross-subsidy only applies when the firm at issue operates efficiently. Carlton Reply Decl. at 7, 11. Carlton maintains that the Postal Service's inefficiency and excess capacity allow the Postal Service to expand competitive products and provide them at a lower incremental cost than if the Postal Service were efficient. *Id.* at 10–13. This is because underutilized labor and facilities, which would not exist if the Postal Service operated efficiently, can be used for competitive products. *Id.*

UPS echoes this, stating if the Postal Service downsized its operations as market dominant mail volumes declined, it would have been more expensive to add competitive products. UPS Reply Comments at 10. However, because it did not, UPS sees the Postal Service's low incremental costs as reflecting ''its high fixed costs rather than genuine economic efficiency.'' *Id.* at 11. Carlton asserts that this displaces activities by more efficient competitors, harms economic efficiency, and distorts competition. Carlton Reply Decl. at 11. Carlton also takes the position that the framework for estimating incremental costs is flawed because incremental costs are consistently understated due to a different view than the standard economic view, misattribution of costs, and implicit subsidies due to the Postal Service's government status. *Id.* at 19–30.

3. Commission Analysis

Several commenters contend that the market has become sufficiently competitive such that the appropriate share is no longer necessary. The Commission's analysis, however, demonstrates that the market continues to develop and change. As the Commission discusses in sections IV.B and IV.C.1, the Postal Service has gained some market power and increased its market share since the Commission's last review of the appropriate share, while the market as a whole has grown. As discussed in detail in section IV, *supra,* the Commission finds that its proposed formula-based approach best captures the prevailing competitive conditions in the market and other relevant circumstances under 39 U.S.C. 3633(b).

Many commenters take the position that either the playing field is level or the Postal Service operates at a competitive disadvantage, which they maintain supports elimination of the appropriate share. Those commenters point to a lack of predatory pricing on the part of the Postal Service, above-inflation price increases by both the Postal Service and its competitors, and increased contribution from competitive products to institutional costs. UPS and its representatives take the opposite view, maintaining that the playing field is not level, that the Postal Service's price increases are insufficient to alleviate concerns, that the Postal Service has made significant gains in areas like last-mile delivery, and that competitor profitability is irrelevant.

As discussed in section V, *supra,* the Commission concludes that the FTC's finding that the Postal Service operates with a net economic disadvantage in offering competitive products continues to be valid. However, the Commission does not find that the appropriate share should be eliminated as a result. Instead, the Commission contends that the proposed formula-based approach best captures the statutory criteria of 39 U.S.C. 3633(b) and balances the concerns of all groups—customers, competitors, market dominant mailers, shippers, and the general public.

As explained in section IV.C.1.a, *supra,* the inclusion of the Postal

cross subsidization or predatory pricing); NPPC Reply Comments at 3–4 (calling on the Commission to reject elimination of the appropriate share altogether and voicing concern that it could cause market dominant mailers to bear all institutional costs).

[152] *See* UPS Reply Comments at 19–24; Sidak Reply Decl. at 12.

[153] Sidak Reply Decl. at 2. Sidak asserts that much of Panzar's declaration would be inadmissible in federal court and urges the Commission to hold declarations to the same admissibility standard. Sidak encourages the Commission to disregard much of Panzar's declaration under a federal court standard. *Id.* at 16–34.

[154] Carlton Reply Decl. at 5; Sidak Reply Decl. at 2. UPS echoes Carlton's views throughout its reply comments. *See* UPS Reply Comments at 4–6, 8–12, 14–19.

Service Lerner Index in the proposed formula-based approach actively takes into account many of the considerations raised by commenters. For example, sudden large increases in the Postal Service Lerner Index may indicate a competitive advantage under certain circumstances, and under the proposed formula-based approach, an increase in the Postal Service Lerner Index will result in an increased appropriate share, assuming all else remains constant. In section IV.C.1.a, *supra,* the Commission also explains how the Postal Service Lerner Index can be used to test whether the Postal Service has engaged in predatory pricing for competitive products as a whole, which the Commission's analysis shows has not occurred over the past 11 years in Figure IV–1.

Although UPS asserts that competitor performance is not relevant to the Commission's inquiry, the Commission disagrees. Section 3633(b) requires the Commission to consider ''the prevailing competitive conditions in the market,'' which necessitates that the scope of the Commission's review look at the competitive market in which the Postal Service operates. The Commission includes the Competitive Market Output in the proposed formula to capture changes in the competitive market as whole. *See* section IV.B, *supra.*

Panzar advocates that the Postal Service be permitted to price its competitive products at their incremental costs. While setting price at marginal cost (or, for multi-product firms such as the Postal Service and its competitors, average incremental costs), is the economically efficient point, the Postal Service and its competitors have priced well above this point since FY 2007, and there is no evidence that competition has significantly suffered. As discussed in sections IV.B and IV.C, *supra,* the Postal Service has gained some market share and some additional market power, but its competitors have also become more profitable, and the market itself has grown through increased demand and new entrants. These above-cost prices are, therefore, a result of the inherent imperfect competition in the market. As competition in the market grows and circumstances change, evidence may arise which would warrant a further change to the appropriate share.

Although the Commission does not find that elimination of the appropriate share is the most appropriate course of action in light of current market conditions, the Commission will consider it in future reviews as one of the options set forth in the plain language of 39 U.S.C. 3633(b). The competitive market remains in a state of flux, innovation, and growth, with more efficient vehicles, dynamic routing algorithms, and Sunday delivery becoming increasingly common, and alternative forms of delivery (*e.g.,* drone delivery) being explored. Given this, the Commission finds that retaining the appropriate share and modifying it to capture market changes on an annual basis is the best approach at this time.

## VII. Proposed Rules

In order to implement the Commission's proposed formula-based approach, existing § 3015.7(c), which describes the appropriate share, must be revised.

Proposed § 3015.7(c)(1) establishes the formula to be used in calculating the appropriate share and defines each term, as discussed above. *See* section IV.B.3, *supra.* Existing § 3015.7(c) states that the appropriate share of institutional costs to be covered by competitive products set forth in that rule is a minimum or floor. Proposed § 3015.7(c)(1) retains this concept.

Proposed § 3015.7(c)(2) describes the process by which the Commission shall update the appropriate share for each fiscal year. As discussed in section IV.B.3, *supra,* the Commission proposes to annually use the formula to calculate the minimum appropriate share for the upcoming fiscal year. Because the data necessary to calculate the appropriate share for an upcoming fiscal year (which begins each October 1st) is not final until the most recent ACD issues (typically at the end of the prior March), the Commission proposes to report the new minimum appropriate share level for the upcoming fiscal year as part of its ACD. For example, under the proposal, the Commission would calculate and report the appropriate share for FY 2020 as part of the FY 2018 ACD.

As indicated above, both components of the Commission's proposed formula-based approach rely on CRA data that is submitted by the Postal Service as part of its ACR. *See* section IV.B.3, *supra.* The timing of the availability of the CRA data makes the ACD an appropriate vehicle for calculating and reporting competitive products' appropriate share for the upcoming fiscal year. In addition, reporting the appropriate share for the upcoming fiscal year in the ACD would give the Postal Service time to incorporate any resulting changes into its proposed rates for the following fiscal year.

## VIII. Administrative Actions

Additional information concerning this rulemaking may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on this Notice of Proposed Rulemaking no later than 60 days after the date of publication of this Notice of Proposed Rulemaking in the **Federal Register**. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IX. Ordering Paragraphs

*It is ordered:*

1. Interested persons may submit comments no later than 60 days from the date of the publication of this document in the **Federal Register**.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be appointed to serve as the Public Representative in this proceeding.

3. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

## List of Subjects for 39 CFR Part 3015

Administrative practice and procedure.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

## PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

■ 1. The authority citation for part 3015 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3633.

■ 2. Amend § 3015.7 by revising paragraph (c) to read as follows:

### § 3015.7 Standards for compliance.

* * * * *

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$$AS_{t+1} = AS_t * (1 + \%\Delta LI_{t-1} + \%\Delta CMO_{t-1})$$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place
LI = Postal Service Competitive Lerner Index
CMO = Competitive Market Output
t = Fiscal Year
If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report

competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

[FR Doc. 2018–02932 Filed 2–13–18; 8:45 am]

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Wednesday, February 14, 2018

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