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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS–SC–18–0081, SC–19–326]

Removal of U.S. Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will remove seven voluntary U.S. grade standards and one consumer standard for fresh fruits and vegetables from the Code of Federal Regulations (CFR). This regulatory action is being taken as part of USDA's work to eliminate regulations that are outdated, unnecessary, ineffective, or impose costs that exceed benefits. None of the eight voluntary standards slated for removal from the CFR are related to a current, active marketing order, import regulation, or export act. The cost of printing these eight standards in the CFR annually exceeds the benefits of further inclusion in the CFR. These voluntary standards and all subsequent revisions or new standards for these products will be available in a separate publication. The standards for the affected commodities will continue to be administered by the AMS Specialty Crops Inspection (SCI) Division and catalogued using the existing numbering system for voluntary standards. Any proposed, new, or revised voluntary standards will appear in the **Federal Register** with the opportunity for public comment.

DATES: Effective February 1, 2019. Comments must be received April 2, 2019.

ADDRESSES: Interested persons are invited to submit written comments to the USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; fax: (540) 361–1199; or at *www.regulations.gov.* Comments should reference the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the above office during regular business hours, and can be viewed as submitted, including any personal information you provide, on the *www.regulations.gov* website.

FOR FURTHER INFORMATION CONTACT: Lindsay H. Mitchell at the address above, or by phone (540) 361–1120; fax (540) 361–1199; or, email *lindsay.mitchell@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: On February 24, 2017, President Trump signed Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda, which established a Federal policy to alleviate unnecessary regulatory burdens on the American people. Section 3(d) of the E.O. directs each Federal agency to establish a Regulatory Reform Task Force to identify regulations that: (i) Eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create serious inconsistencies or otherwise interfere with regulatory reform initiatives or policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision; or (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

This regulatory action is being taken as part of the Regulatory Reform Agenda to eliminate regulations that are outdated, unnecessary, ineffective, or impose costs that exceed benefits.

Executive Orders 12866, 13771, and 13563

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). 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 ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments nor significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Analysis

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Although this action will remove provisions from the CFR, small entities should see no change as the standards will continue to be administered to ensure their continued convenient availability and public input to their formulation.

Background

The Secretary of Agriculture is authorized to provide Federal grading and certification services, and to develop and establish efficient marketing methods and practices of agricultural commodities with the goal of facilitating the efficient marketing of agricultural commodities and allowing consumers to obtain the quality of products they desire at a reasonable

cost. 7 U.S.C. 1621–1627. For more than 100 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards that provide a uniform language that may be used to describe the characteristics of more than 450 commodities. These standards are widely used in private contracts, government procurement, marketing communication, and, for some commodities, consumer information.

Although use of most of the U.S. standards is voluntary, through the years, they have been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices, have outpaced the process of revising and issuing regulations. As a result, in some instances, industry and the marketplace have been burdened with outdated trading language. The President's Regulatory Reform Agenda has provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers while reducing the regulatory burden. To meet this initiative, regulations that are currently in the CFR that could be administered under the authority of AMS are being removed from the CFR. This includes all official grade standards except those that currently are in the rulemaking process, incorporated by reference in marketing orders/agreements appearing in 7 CFR parts 900 through 999, or used to implement government price supports. Those grade standards will continue to appear in the CFR although the text will also be available from AMS as are all other grade standards.

This rule eliminates selected standards that comprise approximately 30 pages of the CFR covering U.S. and consumer standards for fresh fruits and vegetables.

The following is an outline of standards being removed from the CFR, and those that will remain in the CFR and the reason they are not being removed.

7 Part 51	Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)
	Standards Being Removed From CFR
CFR Section	Title
51.475–494	Subpart—United States Standards for Grades of Cantaloups.
51.560–588	Subpart—United States Standards for Celery.
51.595–613	Subpart—United States Consumer Standards for Celery Stalks.
51.1000–1016	Subpart—United States Standards for Persian (Tahiti) Limes.
51.1210–1223	Subpart—United States Standards for Grades of Peaches.
51.2925–2934	Subpart—United States Standards for Grades of Apricots.
51.3145–3160	Subpart—United States Standards for Grades of Nectarines.
51.3740–3749	Subpart—United States Standards for Grades of Honey Dew and Honey Ball Type Melons.
	Regulations Being Retained in CFR Because They Provide Operational Regulations
CFR Section	Title
51.1–62	Subpart—Regulations.
	Standards Being Retained in CFR Because They are Currently Referenced in Marketing Orders/ Agreements, Import Regulations, or Export Acts
CFR Section	Title
51.300–322	Subpart—United States Standards for Grades of Apples.
51.340–349	Subpart—United States Standards for Grades of Apples for Processing.
51.620–653	Subpart—United States Standards for Grades of Grapefruit (Texas and States Other Than Florida, California, and Arizona).
51.680–714	Subpart—United States Standards for Grades of Oranges (Texas and States Other Than Florida, California, and Arizona).
51.750–784	Subpart—United States Standards for Grades of Florida Grapefruit.
51.880–914	Subpart—U.S. Standards for Grades of Table Grapes (European or Vinifera Type).
51.1140–1179	Subpart—United States Standards for Grades of Florida Oranges and Tangelos.
51.1260–1280	Subpart—United States Standards for Summer and Fall Pears.
51.1300–1323	Subpart—United States Standards for Winter Pears.
51.1345–1359	Subpart—United States Standards for Pears for Canning.
51.1400–1416	Subpart—United States Standards for Grades of Pecans in the Shell.
51.1430–1451	Subpart—United States Standards for Grades of Shelled Pecans.
51.1520–1538	Subpart—United States Standards for Grades of Fresh Plums and Prunes.
51.1540–1566	Subpart—United States Standards for Grades of Potatoes.
51.1575–1587	Subpart—United States Consumer Standards for Potatoes.
51.1810–1837	Subpart—United States Standards for Grades of Florida Tangerines.
51.1855–1877	Subpart—United States Standards for Grades of Fresh Tomatoes.
51.1900–1913	Subpart—United States Consumer Standards for Fresh Tomatoes.
51.1995–2009	Subpart—United States Standards for Grades of Filberts in the Shell.
51.2075–2091	Subpart—United States Standards for Grades of Almonds in the Shell.
51.2105–2131	Subpart—United States Standards for Grades of Shelled Almonds.
51.2275–2296	Subpart—United States Standards for Shelled English Walnuts (Juglans Regia).
51.2335–2341	Subpart—United States Standards for Grades of Kiwifruit.
51.2540–2549	Subpart—United States Standards for Grades of Pistachio Nuts in the Shell.
51.2555–2562	Subpart—United States Standards for Grades of Shelled Pistachio Nuts.
51.2646–2660	Subpart—United States Standards for Grades for Sweet Cherries.
51.2830–2854	Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types).
51.2945–2966	Subpart—United States Standards for Grades of Walnuts in the Shell.
51.3050–3069	Subpart—United States Standards for Florida Avocados.
51.3195–3212	Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions.
51.3410–3418	Subpart—United States Standards for Grades of Potatoes for Processing.
	Standards Being Retained in CFR Because They are Currently Referenced in Government Price Support Programs
CFR Section	Title
51.1235–1242	Subpart—United States Standards for Grades of Cleaned Virginia Type Peanuts in the Shell.

51.2710–2721	Subpart—United States Standards for Grades of Shelled Runner Type Peanuts.
51.2730–2741	Subpart—United States Standards for Grades of Shelled Spanish Type Peanuts.
51.2750–2763	Subpart—United States Standards for Grades of Shelled Virginia Type Peanuts.

To ensure that standards will continue to be developed, issued, and revised in accordance with procedures that ensure a fair and open process, all new and proposed revisions to existing AMS standards will be published in the **Federal Register** as a ''Notice'' with a public comment period. A final version of each standard also will be published in the **Federal Register** as a notice and will continue to be made available by AMS.

In developing new or revising existing grade standards, the Administrator will consider three factors: (1) A new or revised standard must be needed to facilitate trade in a particular commodity; (2) there must be demonstrated interest and support from the affected industry or other interested parties for a voluntary standard; and, (3) the standard must be practical to use.

Initial requests for development or revision of a standard may come from the industry, trade or consumer groups, State departments of agriculture, the U.S. Department of Agriculture, or others. Once a request has been received, AMS coordinates procedures to gather information needed to move forward with the new or revised standard. After this process is completed, AMS publishes a notice of proposed standards in the **Federal Register** to solicit comments from interested parties (normally the comment period is 60 days). After evaluating the comments received from interested parties, AMS determines whether to proceed, develop a new proposal, or terminate the process.

The public is informed of the outcome of the process through a notice to trade and a notice in the **Federal Register**. In addition, the AMS program that handles the commodity will distribute copies of each standard, upon request, as a pamphlet or other means.

Pursuant to 5 U.S.C. 553, AMS has determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for making it effective immediately because: (1) The standards are voluntary; (2) no changes are being made to the standards by this rule; (3) this action is in accordance with the President's Regulatory Reform Agenda.

List of Subjects in 7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart [Removed]

■ 2. The subpart entitled ''United States Standards for Grades of Cantaloups,'' consisting of §§ 51.475 through 51.494c, is removed.

Subpart [Removed]

■ 3. The subpart entitled ''United States Standards for Celery'' consisting of §§ 51.560 through 51.588, is removed.

Subpart [Removed]

■ 4. The subpart entitled ''United States Consumer Standards for Celery Stalks,'' consisting of §§ 51.595 through 51.613, is removed.

Subpart [Removed]

■ 5. The subpart entitled ''United States Standards for Persian (Tahiti) Limes,'' consisting of §§ 51.1000 through 51.1016, is removed.

Subpart [Removed]

■ 6. The subpart entitled ''United States Standards for Grades of Peaches,'' consisting of §§ 51.1210 through 51.1223, is removed.

Subpart [Removed]

■ 7. The subpart entitled ''United States Standards for Grades of Apricots,'' consisting of §§ 51.2925 through 51.2934, is removed.

Subpart [Removed]

■ 8. The subpart entitled ''United States Standards for Grades of Nectarines,'' consisting of §§ 51.3145 through 51.3160, is removed.

Subpart [Removed]

■ 9. The subpart entitled ''United States Standards for Grades of Honey Dew and Honey Ball Type Melons,'' consisting of §§ 51.3740 through 51.3749, is removed.

Dated: January 26, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–00551 Filed 1–31–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0349; Airspace Docket No. 17–AAL–5]

RIN 2120–AA66

Amendment of Class E Airspace for the Following Alaska Towns; St. Michael, AK; Shaktoolik, AK; and Tatitlek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 1,200 feet above the surface in Alaska at St. Michael Airport; Shaktoolik Airport; and Tatitlek Airport. This action adds exclusionary language to the legal descriptions of these airports to exclude Class E airspace extending beyond 12 miles from the shoreline, and ensures the safety and management of aircraft within the National Airspace System.

DATES: Effective 0901 UTC, February 28, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S. 216th St, Des Moines, WA, 98198–6547; telephone (206) 231–2329.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 1,200 feet above the surface at St. Michael Airport, Shaktoolik Airport, and Tatitlek Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 37773; August 2, 2018) for Docket No. FAA–2017–0349 to modify Class E airspace for the following Alaska Towns; St. Michael Airport, AK; Shaktoolik Airport, AK; and Tatitlek Airport, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at St. Michael Airport, AK; Shaktoolik Airport, AK; and Tatitlek Airport, AK. This action adds language to the legal descriptions of these airports that reads ''excluding that airspace that extends beyond 12 miles from the shoreline''.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, and is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 1,200 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Shaktoolik, AK [Amended]

Shaktoolik Airport, AK
(Lat. 64°22′16″ N, long. 161°13′26″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Shaktoolik Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Shaktoolik Airport, AK, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 St. Michael, AK [Amended]

St. Michael Airport, AK
(Lat. 63°29′24″ N, long. 162°06′37″ W)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of St. Michael Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Michael Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Tatitlek, AK [Amended]

Tatitlek Airport, AK
(Lat. 60°52′21″ N, long. 146°41′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tatitlek Airport, and within 2 miles southwest and 3.4 miles northeast of the 149° radial from Tatitlek Airport extending from the 6.4-mile radius to 11.8 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Tatitlek Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on December 14, 2018.

Byron Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–28101 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31237; Amdt. No. 544]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg., 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 23, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 03, 2010.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 544 effective date February 28, 2019]

FROM	TO	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6007 VOR Federal Airway V7 Is Amended To Read in Part		
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2800
PAPPI, IL FIX	*TALOR, WI FIX	**4000
*5300—MCA TALOR, WI FIX, N BND		
**1800—MOCA		
§ 95.6020 VOR Federal Airway V20 Is Amended To Read in Part		
COLUMBUS, GA VORTAC	GRANT, GA FIX	*3000
*2400—MOCA		
GRANT, GA FIX	*SMARR, GA FIX	**4000
*4500—MCA SMARR, GA FIX, NE BND		
**2500—MOCA		
**2600—GNSS MEA		
SMARR, GA FIX	*SINCA, GA FIX	**4500
*4500—MCA SINCA, GA FIX, SW BND		
**2500—MOCA		
**2500—GNSS MEA		
SINCA, GA FIX	ATHENS, GA VOR/DME	*3000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 544 effective date February 28, 2019]

FROM	TO	MEA
*2200—MOCA		
§ 95.6035 VOR Federal Airway V35 Is Amended To Read in Part		
SINCA, GA FIX	ATHENS, GA VOR/DME	*3000
*2200—MOCA		
§ 95.6051 VOR Federal Airway V51 Is Amended To Read in Part		
SHELBYVILLE, IN VOR/DME	*OCKEL, IN FIX	**5000
*4700—MCA OCKEL, IN FIX, SE BND		
**2900—MOCA		
OCKEL, IN FIX	BOILER, IN VORTAC	2600
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2800
§ 95.6066 VOR Federal Airway V66 Is Amended To Read in Part		
CANER, GA FIX	GRANT, GA FIX	*3000
*2400—MOCA		
GRANT, GA FIX	*SMARR, GA FIX	**4000
*4500—MCA SMARR, GA FIX, NE BND		
**2500—MOCA		
**2600—GNSS MEA		
SMARR, GA FIX	*SINCA, GA FIX	**4500
*4500—MCA SINCA, GA FIX, SW BND		
**2500—MOCA		
**2500—GNSS MEA		
SINCA, GA FIX	ATHENS, GA VOR/DME	*3000
*2200—MOCA		
§ 95.6070 VOR Federal Airway V70 Is Amended To Read in Part		
CHAFF, AL FIX	*RUTEL, AL FIX	**2500
*4500—MCA RUTEL, AL FIX, NE BND		
**1800—MOCA		
RUTEL, AL FIX	*CRENS, AL FIX	**4500
*4500—MCA CRENS, AL FIX, SW BND		
**1800—MOCA		
§ 95.6085 VOR Federal Airway V85 Is Amended To Read in Part		
FALCON, CO VORTAC	HYGEN, CO FIX.	
	SE BND	9400
	NW BND	16000
HYGEN, CO FIX	LARAMIE, WY VOR/DME	16000
§ 95.6097 VOR Federal Airway V97 Is Amended To Read in Part		
CINCINNATI, KY VORTAC	SHELBYVILLE, IN VOR/DME	2800
SHELBYVILLE, IN VOR/DME	*OCKEL, IN FIX	**5000
*4700—MCA OCKEL, IN FIX, SE BND		
**2900—MOCA		
OCKEL, IN FIX	BOILER, IN VORTAC	2600
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2800
§ 95.6155 VOR Federal Airway V155 Is Amended To Read in Part		
COLUMBUS, GA VORTAC	GRANT, GA FIX	*3000
*2400—MOCA		
GRANT, GA FIX	*SMARR, GA FIX	**4000
*4500—MCA SMARR, GA FIX, NE BND		
**2500—MOCA		
**2600—GNSS MEA		
SMARR, GA FIX	*SINCA, GA FIX	**4500
*4500—MCA SINCA, GA FIX, SW BND		
**2500—MOCA		
**2500—GNSS MEA		
§ 95.6164 VOR Federal Airway V164 Is Amended To Read in Part		
BUFFALO, NY VOR/DME	*BENEE, NY FIX	**11000
*11000—MCA BENEE, NY FIX, N BND		

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 544 effective date February 28, 2019]

FROM	TO	MEA
**4400—MOCA **5000—GNSS MEA BENEE, NY FIX *4500—MOCA *5000—GNSS MEA	WELLSVILLE, NY VORTAC	*6000
§ 95.6167 VOR Federal Airway V167 Is Amended To Read in Part		
PROVIDENCE, RI VOR/DME *1800—MOCA ZUNUX, MA FIX *1800—MOCA	ZUNUX, MA FIX PEAKE, MA FIX	*2500 *3000
§ 95.6170 VOR Federal Airway V170 is Amended to Delete		
WORTHINGTON, MN VOR/DME FAIRMONT, MN VOR/DME	FAIRMONT, MN VOR/DME ROCHESTER, MN VOR/DME	3300 3000
§ 95.6191 VOR Federal Airway V191 Is Amended To Read in Part		
NEWTT, IL FIX *5000—MRA **2200—MOCA	*BOJAK, IL FIX	**5000
§ 95.6219 VOR Federal Airway V219 is Amended to Delete		
SIOUX CITY, IA VORTAC *3300—MOCA RITTA, IA WP MILSS, IA FIX FAIRMONT, MN VOR/DME *2500—MOCA	RITTA, IA WP. NE BND SW BND MILSS, IA FIX FAIRMONT, MN VOR/DME MANKATO, MN VOR/DME	 *9000 *4500 9000 8000 *3000
§ 95.6220 VOR Federal Airway V220 Is Amended To Read in Part		
KREMMLING, CO VOR/DME *15900—MOCA NIWOT, CO FIX *14500—MCA GILL, CO VOR/DME, SW BND	NIWOT, CO FIX *GILL, CO VOR/DME. NE BND SW BND	*17000 7400 17000
§ 95.6263 VOR Federal Airway V263 Is Amended To Read in Part		
HUGO, CO VOR/DME *8500—MOCA *9000—GNSS MEA KANDO, CO FIX *7500—MOCA	KANDO, CO FIX AKRON, CO VOR/DME. NE BND SW BND	*10000 *8500 *10000
§ 95.6361 VOR Federal Airway V361 Is Amended To Read in Part		
KREMMLING, CO VOR/DME *15600—MOCA BARGR, CO FIX	BARGR, CO FIX CHEYENNE, WY VORTAC. NE BND SW BND	*16000 9200 16000
§ 95.6454 VOR Federal Airway V454 Is Amended To Read in Part		
CHAFF, AL FIX *4500—MCA RUTEL, AL FIX, NE BND **1800—MOCA RUTEL, AL FIX *4500—MCA CRENS, AL FIX, SW BND **1800—MOCA BANBI, AL FIX COLUMBUS, GA VORTAC *2400—MOCA	*RUTEL, AL FIX *CRENS, AL FIX COLUMBUS, GA VORTAC GRANT, GA FIX	**2500 **4500 2400 *3000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 544 effective date February 28, 2019]

FROM	TO	MEA
GRANT, GA FIX *4500—MCA SMARR, GA FIX, NE BND **2500—MOCA **2600—GNSS MEA	*SMARR, GA FIX	**4000
SMARR, GA FIX *4500—MCA SINCA, GA FIX, SW BND **2500—MOCA **2500—GNSS MEA	*SINCA, GA FIX	**4500
SINCA, GA FIX *4000—MCA MADDI, GA FIX, NE BND **2200—MOCA	*MADDI, GA FIX	**3000
MADDI, GA FIX *4000—MCA VESTO, GA FIX, SW BND **2300—MOCA	*VESTO, GA FIX	**4000
GREENWOOD, SC VORTAC	LOCKS, SC FIX	2400

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V97 Is Amended To Add Changeover Point			
CINCINNATI, KY VORTAC	SHELBYVILLE, IN VOR/DME	39	CINCINNATI
Is Amended To Delete Changeover Point			
SHELBYVILLE, IN VOR/DME	BOILER, IN VORTAC	50	SHELBYVILLE
V219 Is Amended To Delete Changeover Point			
SIOUX CITY, IA VORTAC	FAIRMONT, MN VOR/DME	74	SIOUX CITY

[FR Doc. 2019–00759 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 250 and 385

[Docket No. RM19–9–000; Order No. 853]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

DATES: This final rule is effective February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8794, *Todd.Hettenbach@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),[1] which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),[2] required the head of each federal agency to issue a rule by July 2016 adjusting for inflation each ''civil monetary penalty'' provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.[3]

II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.[4] This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),[5] the Natural Gas Act (NGA),[6] the Natural Gas Policy Act of 1978 (NGPA),[7] and the Interstate Commerce Act (ICA).[8]

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI–U) for October of the

[1] Sec. 701, Pub. L. 114–74, 129 Stat. 584, 599.

[2] Pub. L. 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

[3] 28 U.S.C. 2461 note, at (4). The Commission made its January 2018 adjustment on January 8, 2018, in Docket No. RM18–4–000. *See Civil Monetary Penalty Inflation Adjustments*, Order No. 839, 83 FR 1550 (Jan. 12, 2018), FERC Stats. & Regs. ¶ 31,397 (2018).

[4] *Id.* (3).

[5] 16 U.S.C. 791a *et seq.*

[6] 15 U.S.C. 717 *et seq.*

[7] 15 U.S.C. 3301 *et seq.*

[8] 49 App. U.S.C. 1 *et seq.* (1988).

preceding year exceeds the CPI–U for October of the year before that.[9] The CPI–U for October 2018 exceeded the CPI–U for October 2017 by 2.522 percent.[10]

5. The second step requires multiplying the CPI–U percentage increase by the applicable existing maximum civil monetary penalty.[11] This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new adjusted maximum civil monetary penalty.[12]

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.[13]

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted maximum civil monetary penalty
16 U.S.C. 825–1(b), Sec. 316A of the Federal Power Act.	$1,238,271 per violation, per day	$1,269,500 per violation, per day.
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act.	$22,363 per violation, per day	$22,927 per violation, per day.
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act.	$2,852 per violation	$2,994 per violation.
15 U.S.C. 717t–1, Sec. 22 of the Natural Gas Act.	$1,238,271 per violation, per day	$1,269,500 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	$1,238,271 per violation, per day	$1,269,500 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	$1,296 per offense and $65 per day after the first day.	$1,329 per offense and $67 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	$12,964 per violation, per day	$13,291 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	$1,296 per offense, per day	$1,329 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	$1,296 per offense, per day	$1,329 per offense, per day.

III. Administrative Findings

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA).[14] Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the APA, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

IV. Regulatory Flexibility Statement

10. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.[15] The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.[16] The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

V. Paperwork Reduction Act

11. This rule does not require the collection of information. The Commission is therefore not required to submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[17]

VI. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

13. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

14. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202)–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659, *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

15. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the Administrative Procedure Act,[18] and therefore, the regulation is effective upon publication in the **Federal Register**.

16. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of

[9] 28 U.S.C. 2461 note, at (5)(b)(1).

[10] *See, e.g.,* Memorandum from Mick Mulvaney, Office of Management and Budget, Implementation of the Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 1 (Dec. 14, 2018).

[11] *Id.* (5)(a).

[12] *Id.*

[13] *Id.* (6).

[14] *Id.* (3)(b)(2).

[15] 5 U.S.C. 601 *et seq.*

[16] 5 U.S.C. 603, 604.

[17] 44 U.S.C. 3507(d).

[18] 5 U.S.C. 553(d)(3).

the Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: January 8, 2019.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 250 and 385, chapter I, title 18, *Code of Federal Regulations* as follows:

PART 250—FORMS

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 2. Amend § 250.16 by revising paragraph (e)(1) to read as follows:

§ 250.16 Format of compliance plan transportation services and affiliate transactions.

* * * * *

(e) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to subpart B or G of part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $1,269,500 for any one violation.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Revise § 385.1504(a) to read as follows:

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $22,927 for each day that the violation continues.

* * * * *

■ 5. Revise § 385.1602 to read as follows:

§ 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978: $1,269,500.

(b) 16 U.S.C. 823b(c), Federal Power Act: $22,927 per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: $2,994.

(d) 16 U.S.C. 825o–1(b), Federal Power Act: $1,269,500 per day.

(e) 15 U.S.C. 717t–1, Natural Gas Act: $1,269,500 per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: $1,329 per offense and $67 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: $13,291 per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: $1,329 per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: $1,329 per day.

[FR Doc. 2019–00455 Filed 1–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 100

[Docket ID: DOD–2018–OS–0069]

RIN 0790–AK28

Unsatisfactory Performance of Ready Reserve Obligation

AGENCY: Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation which contains internal policy on actions to be taken in regard to members of the Ready Reserve whose performance of duty or participation in Reserve training is unsatisfactory. This part has not been updated since 1979 and is obsolete. Current internal procedures will continue to be maintained and updated in a DoD issuance.

DATES: This rule is effective on February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Colonel David Feeley, (703) 693–2195 or *david.c.feeley.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department's issuance website. DoD Instruction 1215.13, ''Ready Reserve Member Participation Policy,'' most recently updated in 2015, is the governing DoD policy (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/121513p.pdf*).

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

List of Subjects in 32 CFR Part 100

Armed forces reserves.

PART 100—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 100 is removed.

Dated: January 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–00445 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 101

[Docket ID: DOD–2018–OS–0070]

RIN 0790–AK29

Participation in Reserve Training Programs

AGENCY: Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation which contains internal policy regarding criteria and training requirements for satisfactory participation by members of the Reserve components of the U.S. Armed Forces, and uniform DoD policy for training

members of such Reserve components who may be temporarily residing in sovereign foreign nations. This part is internal, has not been updated since 1979, and is obsolete. Current internal procedures will continue to be maintained and updated in a DoD issuance.

DATES: This rule is effective on February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Colonel David Feeley, (703) 693–2195 or *david.c.feeley.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department's issuance website. DoD Instruction 1215.13, ''Ready Reserve Member Participation Policy,'' most recently updated in 2015, is the governing DoD policy (available at: *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/121513p.pdf*).

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

List of Subjects in 32 CFR Part 101

Armed forces reserves.

PART 101—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 101 is removed.

Dated: January 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–00449 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 279

[Docket ID: DOD–2018–OS–0071]

RIN 0790–AK39

Retroactive Stop Loss Special Pay Compensation

AGENCY: Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation which contains obsolete DoD policy regarding Retroactive Stop Loss Special Pay Compensation, a program which was terminated on October 21, 2012. In accordance with law, this rule was issued to provide for Retroactive Stop Loss Special Pay. The last day for submission of claims to the Secretaries of the Military Departments was October 21, 2012. Following that date, the Secretaries concerned are not authorized to make payments.

DATES: This rule is effective on February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Colonel David Feeley, (703) 693–2195 or *david.c.feeley.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing obsolete DoD policies.

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

List of Subjects in 32 CFR Part 279

Armed forces, Claims, Reporting and recordkeeping requirements, Wages.

PART 279—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 279 is removed.

Dated: January 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–00486 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0030]

RIN 1625–AA00

Safety Zone; Containment Installation, South of New Orleans, LA, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the vessels OCEAN PATRIOT and ROSS CANDIES operating in the Mississippi Canyon Block 20 in the Gulf of Mexico. The safety zone encompasses all navigable waters within a 500-yard radius of the vessels. The safety zone is needed to protect persons, vessels, and the marine environment from hazards associated with the vessels' limited maneuverability during installation of a containment system. Persons and vessels are prohibited from entering or remaining in this zone unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: This rule is effective from 6 a.m. on February 14, 2019, through 8 p.m. on March 14, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0030 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Benjamin.P.Morgan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by February 14, 2019, and we lack sufficient time to provide a reasonable comment period and then

consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because the safety zone is necessary to respond to potential hazards associated with sub-surface containment installation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector New Orleans (COTP) has determined that a temporary moving safety zone is necessary to provide for the safety of persons, vessels, and the marine environment during sub-surface containment installation operations in the vicinity of the Mississippi Canyon Block 20. Potential hazards include risk of injury or pollution if normal vessel traffic were to interfere with the vessel's movement or deployed equipment. The containment installations are scheduled to take place from 6 a.m. on February 14, 2019, through 8 p.m. on March 14, 2019, in the navigable waters of the Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico. This rule is needed to protect persons, vessels, and the marine environment from hazards associated with the vessels' limited maneuverability during deployment of underwater equipment and containment installation.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone from 6 a.m. on February 14, 2019 through 8 p.m. on March 14, 2019. The safety zone will cover all navigable waters within 500 yards of the vessels, OCEAN PATRIOT and ROSS CANDIES, and equipment being used by personnel to conduct sub-surface containment installation in Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico. The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters while installation is being conducted. No vessel or person will be permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative. The COTP or designated representative may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will restrict vessel traffic from entering or remaining within a 500-yard area around vessels OCEAN PATRIOT and ROSS CANDIES for approximately thirty days while these vessels conduct sub-surface containment installation activities in Mississippi Canyon Block 20. Other vessels can safely transit around the zone, which impacts a small area of the Gulf of Mexico. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 30 days that will prohibit entry within 500 yards of the vessels being used for sub-surface containment installation. It is categorically excluded from further review under paragraph L(60)a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034; 46 U.S.C. 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0030 to read as follows:

§ 165.T08–0030 Safety Zone; Mississippi Canyon Block 20, South of New Orleans, LA, Gulf of Mexico.

(a) *Location.* The following area is a safety zone: All navigable waters within a 500-yard radius around the vessels, OCEAN PATRIOT and ROSS CANDIES, in Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico.

(b) *Effective period.* This section is effective from 6 a.m. on February 14, 2019, through 8 p.m. on March 14, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or remaining within this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: January 28, 2019.

K.M. Luttrell,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2019–00511 Filed 1–31–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

[Docket ID ED–2019–OGC–0004]

RIN 1801–AA18

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2019 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on January 16, 2018 (2018 final rule).

DATES: These regulations are effective February 1, 2019. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after February 1, 2019 whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Levon Schlichter, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E235, Washington, DC 20202–2241. Telephone: (202) 453–6387. Email: *levon.schlichter@ed.gov.*

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

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SUPPLEMENTARY INFORMATION:

Background. A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act provides for the regular evaluation of

CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on January 16, 2018 (83 FR 2062), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. L. 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) Adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2018, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2019 of 1.02522, as directed by the Office of Management and Budget (OMB) Memorandum No. M–19–04 issued on December 14, 2018.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.02522 provided in OMB Memorandum No. M–19–04.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. Law 105–244, title I, section 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2018 final rule, we increased this amount to $37,601.

New Regulations: The new penalty for this section is $38,549.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $37,601 × 1.02522 = $38,549.30, which makes the adjusted penalty $38,549, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. L. 110–315, title II, section 201(2), August 14, 2008, 122 Stat. 3147), is a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2018 final rule, we increased this amount to $31,320.

New Regulations: The new penalty for this section is $32,110.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $31,320 × 1.02522 = $32,109.89, which makes the adjusted penalty $32,110, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (Section 432(g) of the HEA), as last set out in statute in 1986 (Pub. L. 99–498, title IV, section 402(a), October 17, 1986, 100 Stat. 1401), is a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2018 final rule, we increased this amount to $55,907.

New Regulations: The new penalty for this section is $57,317.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $55,907 × 1.02522 = $57,316.97, which makes the adjusted penalty $57,317, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. L. 99–498, title IV, section 407(a), October 17, 1986, 100 Stat. 1488), is a fine of up to $25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2018 final rule, we increased this amount to $55,907.

New Regulations: The new penalty for this section is $57,317.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $55,907 × 1.02522 = $57,316.97, which makes the adjusted penalty $57,317, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. L. 103–382, title II, section 238, October 20, 1994, 108 Stat. 3918), is a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2018 final rule, we increased this amount to $1,650.

New Regulations: The new penalty for this section is $1,692.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $1,650 × 1.02522 = $1,691.61, which makes the adjusted penalty $1,692, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989 (Pub. L. 101–121, title III, section 319(a)(1), October 23, 1989, 103 Stat. 750), are a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. In the 2018 final rule, we increased these amounts to $19,639 to $196,387.

New Regulations: The new penalties for these sections are $20,134 to $201,340.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new minimum penalty is calculated as follows: $19,639 × 1.02522 = $20,134.30, which makes the adjusted penalty $20,134, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $196,387 × 1.02522 = $201,339.88, which makes the adjusted penalty $201,340, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99–509, title VI, section 6103(a), Oct. 21, 1986, 100 Stat. 1937), are a fine of up to $5,000 for false

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

claims and statements made to the Government. In the 2018 final rule, we increased this amount to $11,181.

New Regulations: The new penalty for this section is $11,463.

Reason: Using the multiplier of 1.02522 from OMB Memorandum No. M–19–04, the new penalty is calculated as follows: $11,181 × 1.02522 = $11,462.98, which makes the adjusted penalty $11,463, when rounded to the nearest dollar.

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 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 ''economically significant'' regulations);

(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.

We have determined that these final regulations: (1) Exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–19–04; and (3) have an annual impact of less than $100 million. Therefore, based on OMB Memorandum No. M–19–04, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations 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 upon 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 providing 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 these final regulations as required by statute and in accordance with OMB Memorandum No. M–19–04. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For fiscal year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2019 penalty amounts notwithstanding the requirements of 5 U.S.C. 553. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the Secretary's discretion. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 36

Claims, Fraud, Penalties.

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.

Dated: January 29, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

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

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by section 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising Table I to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE I—SECTION 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$38,549.
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	$32,110.
20 U.S.C. 1082(g) (Section 432(g) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	$57,317.
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	$57,317.
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	$1,692.
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	$20,134 to $201,340.
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	$11,463.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

§ 668.84 [Amended]

■ 4. Section 668.84 is amended in paragraph (a) by removing the number ''$55,907'' and adding in its place the number ''$57,317''.

[FR Doc. 2019–00670 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3035

[Docket No. RM2018–12; Order No. 4973]

Amendments to Market Test Rules

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting final rules amending the Commission's regulations governing market tests of experimental products. The final rules revise the method for calculating applicable market test revenue limitations and clarify the process for filing a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. For additional information, Order No. 4973 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

DATES: *Effective:* March 4, 2019.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements
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I. Relevant Statutory Requirements

Section 3641 of title 39 of the United States Code authorizes the Postal Service to conduct market tests of experimental products. 39 U.S.C. 3641. Generally, each product offered by the Postal Service must comply with section 3622 (governing market dominant products) or section 3633 (governing competitive products), as well as section 3642 (governing changes to the lists of market dominant and competitive products) and applicable regulations. Experimental products, however, are not subject to these requirements. 39 U.S.C. 3641(a)(2).

The Postal Service may decide to add a non-experimental product or price category to the product list based on its performance or other factors. Accordingly, the regulations in this part set forth procedures for filing a request to add a current or former experimental product to the market dominant or competitive product list in non-experimental status, that is—subject to the applicable requirements of sections 3622 or 3633, 3642, and the applicable regulations promulgated thereunder.[1]

In accordance with its specific authority to regulate market tests under section 3641 and its general authority under section 503 to promulgate regulations and establish procedures, the Commission initiated a rulemaking proceeding to consider amendments to the existing market test regulations that would better reflect current practice and improve transparency and accountability.

II. Basis and Purpose of Rule Change

The final rules amend existing market test rules in 39 CFR part 3035 in two areas. First, the final rules revise the method for calculating applicable revenue limitations for market tests appearing in §§ 3035.15 and 3035.16 to be consistent with the current level of precision used in calculating the annual limitation on the percentage change in rates for market dominant products (price cap). Second, the final rules clarify the process under § 3035.18 for filing a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. The final rules also emphasize the necessity of receiving specific detailed information in such requests.

III. Final Rule

The final rules amend existing §§ 3035.15, 3035.16, and 3035.18. The final rules replace ''214.5'' with ''214.463'' in existing § 3035.15(d) and (e) as well as § 3035.16(c) and (d). The final rules change the heading of existing § 3035.18 to ''Request to add a non-experimental product or price category based on an experimental product to the product list.'' Final § 3035.18(a) replaces the word ''permanent'' in existing § 3035.18 with general language about adding a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. Final § 3035.18(b) identifies instances when the Postal Service must file a request compliant with § 3035.18. Final § 3035.18(c) lists the information that the Postal Service must include in a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list.

Final § 3035.18(d) contains separate notice requirements for a request filed under § 3035.18 that seeks to continue services provided under a market test immediately when the market test ends. Final § 3035.18(d) also specifies a different advance notice requirement for competitive NSAs (45 days) as compared to other products (60 days).

Existing § 3035.18(c) is moved to final § 3035.18(e), but replaces the phrase ''its request to make an experimental product permanent'' with ''a request filed under this section'' and adds ''if the market test proceeding's docket is an active case before the Commission'' at the end of the first sentence.

List of Subjects in 39 CFR Part 3035

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends 39 CFR part 3035 as follows:

PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

■ 1. The authority citation for part 3035 is revised to read as follows:

Authority: 39 U.S.C. 503; 3641.

■ 2. Amend § 3035.15 by revising paragraphs (d) and (e) to read as follows:

§ 3035.15 Dollar amount limitation.

* * * * *

(d) The calculation of the $10 Million Adjusted Limitation involves the following steps. First, a simple average CPI–U index was calculated for fiscal year 2008 by summing the monthly CPI–U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.463. Then, a second simple average CPI–U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI–U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying $10,000,000 by the Recent Average divided by 214.463. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the $10 Million Adjusted Limitation is as follows: $10 Million Adjusted Limitation = $10,000,000 * (Recent Average/214.463).

■ 3. Amend § 3035.16 by revising paragraphs (c) and (d) to read as follows:

§ 3035.16 Exemption from dollar amount limitation.

* * * * *

(c) The calculation of the $50 Million Adjusted Limitation involves the following steps. First, a simple average CPI–U index was calculated for fiscal year 2008 by summing the monthly CPI–U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.463. Then, a second simple average CPI–U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI–U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying $50,000,000 by the Recent Average divided by 214.463. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the $50 Million Adjusted Limitation is as follows: $50 Million Adjusted Limitation = $50,000,000 * (Recent Average/214.463).

* * * * *

■ 4. Revise § 3035.18 to read as follows:

§ 3035.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

(a) If the Postal Service seeks to add a non-experimental product or price category based on a former or current experimental product to the market dominant or competitive product list, the Postal Service shall file a request, pursuant to 39 U.S.C. 3642 and part 3020, subpart B of this chapter, to add a non-experimental product or price category to the applicable product list.

(b) The Postal Service shall comply with the requirements specified in paragraphs (c) through (e) of this section of this section if the proposed non-experimental product or price category:

(1) Offers the same (or similar) service as a former or current experimental product;

(2) Has the same distinct cost or market characteristic as a former or current experimental product; or

(3) Uses (or is based on) data or assumptions from a former or current market test proceeding.

(c) A request filed under this section shall:

(1) Identify the market test and docket number that the proposed non-

[1] *See* Docket No. RM2013–5, Order Adopting Final Rules for Market Tests of Experimental Products, August 28, 2014, at 24 (Order No. 2173).

experimental product or price category is based on;

(2) Explain the relationship between the proposed non-experimental product or price category and market test or experimental product;

(3) Identify any assumptions from the market test that the request uses or is based on;

(4) Include all data from data collection reports filed during the market test in the financial model supporting the request, or separately identify and explain any differences between the data collection reports filed during the market test and the data used in the financial model supporting the request; and

(5) Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test was implemented.

(d) The Postal Service must provide advance notice of a request filed under this section.

(1)(i) The requirements in this paragraph (d)(1) apply if the Postal Service seeks to add a non-experimental product or price category based on an experimental product to the competitive product list as an NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 45 days before:

(A) The market test expires (including any extension period granted); or

(B) The market test is expected to exceed any authorized limitation specified in §§ 3035.15 and 3035.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 45 days before the requested date for the Commission's decision.

(2)(i) The requirements in this paragraph (d)(2) apply if the Postal Service seeks to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list as a product other than a competitive NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 60 days before:

(A) The market test expires (including any extension period granted); or

(B) The market test is expected to exceed any authorized limitation specified in §§ 3035.15 and 3035.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 60 days before the requested date for the Commission's decision.

(e) The Postal Service shall also file a notice of a request filed under this section in the market test proceeding's docket if the market test proceeding's docket is an active case before the Commission. This notice shall include the applicable docket number(s) for the proceeding evaluating the request.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–00398 Filed 1–31–19; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0314; FRL–9988–58–Region 6]

Air Plan Approval; Oklahoma; Interstate Transport Requirements for the 1997 Ozone 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 a portion of an Oklahoma State Implementation Plan (SIP) submittal that pertains to the good neighbor provision requirements of the CAA with respect to interstate transport of air pollution which will interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires, in part, that each state, in its SIP, prohibit emissions that will interfere with maintenance of a new or revised NAAQS in another state. In this action, EPA is approving the Oklahoma SIP submittal as having met the interfere with maintenance requirement of the good neighbor provision for the 1997 ozone NAAQS in accordance with section 110 of the CAA.

DATES: This rule is effective on March 4, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2007–0314. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *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 *https://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: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our November 16, 2018 proposal (83 FR 57701). In that document we proposed to (1) approve the portion of a May 1, 2007 Oklahoma SIP submittal pertaining to the interfere with maintenance requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS and (2) find that the state's conclusion that Oklahoma emissions do not interfere with maintenance of the 1997 ozone NAAQS in another state is consistent with our conclusion regarding this good neighbor obligation. We did not receive any comments regarding our proposal.

II. Final Action

We are approving the portion of a May 1, 2007 Oklahoma SIP submittal pertaining to the interfere with maintenance requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. We find that the state's conclusion that Oklahoma emissions do not interfere with maintenance of the 1997 ozone NAAQS in another state is consistent with our conclusion regarding this good neighbor obligation. This action is being taken under section 110 of the Act.

III. 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 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, 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).

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 2, 2019. 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, Ozone.

Dated: December 27, 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 LL—Oklahoma

■ 2. In § 52.1920, paragraph (e), the table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' is amended by revising the entry for ''Interstate transport for the 1997 ozone NAAQS (contribute to nonattainment)'' to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Interstate transport for the 1997 ozone NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	5/1/2007	2/1/2019, [Insert **Federal Register** citation].	The contribute to nonattainment portion was approved on 12/29/2011, (76 FR 81837).
* *	*	*	*	* *

[FR Doc. 2019–00655 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8565]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A document withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Maryland:				
Garrett County, Unincorporated Areas ..	240034	January 21, 1976, Emerg; June 5, 1985, Reg; February 1, 2019, Susp.	Feb. 1, 2019	Feb. 1, 2019.
West Virginia:				
Grant County, Unincorporated Areas	540038	October 22, 1975, Emerg; August 1, 1987, Reg; February 1, 2019, Susp.	.....do*	Do.
Region VII				
Iowa:				
Ankeny, City of, Polk County	190226	June 13, 1975, Emerg; May 16, 1983, Reg; February 1, 2019, Susp.	.....do	Do.
Bondurant, City of, Polk County	190707	February 6, 1978, Emerg; April 2, 1990, Reg; February 1, 2019, Susp.	.....do	Do.
Clive, City of, Dallas and Polk Counties	190488	August 25, 1977, Emerg; November 1, 1979, Reg; February 1, 2019, Susp.	.....do	Do.
Grimes, City of, Polk County	190228	November 6, 1985, Emerg; November 6, 1985, Reg; February 1, 2019, Susp.	.....do	Do.
Johnston, City of, Polk County	190745	June 3, 1977, Emerg; May 3, 1982, Reg; February 1, 2019, Susp.	.....do	Do.
Pleasant Hill, City of, Polk County	190489	October 8, 1982, Emerg; October 8, 1982, Reg; February 1, 2019, Susp.	.....do	Do.
Polk County, Unincorporated Areas	190901	September 6, 1978, Emerg; March 1, 1984, Reg; February 1, 2019, Susp.	.....do	Do.
Runnells, City of, Polk County	190800	February 17, 2011, Emerg; N/A, Reg; February 1, 2019, Susp.	.....do	Do.
Urbandale, City of, Dallas and Polk Counties.	190230	June 4, 1975, Emerg; June 15, 1979, Reg; February 1, 2019, Susp.	.....do	Do.
West Des Moines, City of, Dallas and Polk Counties.	190231	July 25, 1974, Emerg; November 1, 1979, Reg; February 1, 2019, Susp.	.....do	Do.
Windsor Heights, City of, Polk County ..	190687	October 7, 1977, Emerg; June 15, 1979, Reg; February 1, 2019, Susp.	.....do	Do.
Region X				
Idaho:				
Cascade, City of, Valley County	160161	August 13, 1976, Emerg; September 15, 1989, Reg; February 1, 2019, Susp.	.....do	Do.
Oregon:				
Gresham, City of, Multnomah County ...	410181	January 21, 1974, Emerg; July 16, 1979, Reg; February 1, 2019, Susp.	.....do	Do.
Troutdale, City of, Multnomah County ..	410184	June 13, 1974, Emerg; September 30, 1988, Reg; February 1, 2019, Susp.	.....do	Do.
Wood Village, City of, Multnomah County.	410185	March 3, 1975, Emerg; November 20, 1985, Reg; February 1, 2019, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 28, 2019.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–00699 Filed 1–31–19; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 84, No. 22
Friday, February 1, 2019

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2018–0004]

RIN 0584–AE57

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents

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

ACTION: Proposed rule.

SUMMARY: Federal law generally limits the amount of time an able-bodied adult without dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in a 36-month period, unless the individual meets certain work requirements. On the request of a State SNAP agency, the law also gives the Department of Agriculture (the Department) the authority to temporarily waive the time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. The law also provides State agencies with a limited number of percentage exemptions that can be used by States to extend SNAP eligibility for ABAWDs subject to the time limit. The Department proposes to amend the regulatory standards by which the Department evaluates State SNAP agency requests to waive the time limit and to end the unlimited carryover of ABAWD percentage exemptions. The proposed rule would encourage broader application of the statutory ABAWD work requirement, consistent with the Administration's focus on fostering self-sufficiency. The Department seeks comments from the public on the proposed regulations.

DATES: Written comments must be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method:* Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302. *SNAPCPBRules@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Acronyms or Abbreviations

[Phrase, Acronym or Abbreviation]

Able-Bodied Adult without Dependent(s), ABAWD(s)
Advanced Notice of Public Rulemaking, ANPRM
Bureau of Labor Statistics, BLS
Census Bureau's American Community Survey, ACS
Code of Federal Regulations, CFR
Department of Labor, DOL
Employment and Training Administration, ETA
Employment and Training, E&T
Food and Nutrition Act of 2008, Act
Food and Nutrition Service, FNS
Labor Market Area(s), LMA(s)
Labor Surplus Area(s), LSA(s)
Supplemental Nutrition Assistance Program, SNAP
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PRWORA
U.S. Department of Agriculture, the Department or USDA

References

The following references may be useful to help inform those wishing to provide comments.

(1) Section 6(d) and section 6(o) of the Food and Nutrition Act of 2008, as amended
(2) Title 7 of the Code of Federal Regulations, parts 273.7 and 273.24
(3) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999). Available at: *https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personalresponsibility-provisions-of-the-personalresponsibility-and-work*
(4) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Final Rule, 66 FR 4437 (January 17, 2001). Available at: *https://www.federalregister.gov/documents/2001/01/17/01-1025/foodstamp-program-personal-responsibilityprovisions-of-the-personal-responsibilityand-work*
(5) Guide to Serving ABAWDs Subject to Time-limited Participation, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/Guide_to_Serving_ABAWDs_Subject_to_Time_Limit.pdf*
(6) Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf*
(7) Expiration of Statewide ABAWD Time Limit Waivers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf*
(8) ABAWD Time Limit Policy and Program Access, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf*
(9) ABAWD Questions and Answers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-June%202015.pdf*
(10) ABAWD Questions and Answers, 2013. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-December-2013.pdf*
(11) BLS Local Area Unemployment Statistics. Available at: *https://www.bls.gov/lau/*
(12) BLS Labor Surplus Area. Available at: *https://www.doleta.gov/programs/lsa.cfm*

The Rationale for Modifying Waiver Standards

The President's Executive Order on Reducing Poverty in America by

Promoting Opportunity and Economic Mobility (April 10, 2018) provided guiding principles for public assistance programs, one of which was to improve employment outcomes and economic independence by strengthening existing work requirements for work-capable individuals. The Executive Order directed Federal agencies to review regulations and guidance documents to determine whether such documents are consistent with the principles of increasing self-sufficiency, well-being, and economic mobility. Consistent with the Executive Order and the Administration's focus on fostering self-sufficiency, as well as the Department's extensive operational experience with ABAWD waivers, the Department has determined that the standards for waivers must be strengthened so that the ABAWD work requirement is applied to ABAWDs more broadly. The Department is confident that these changes would encourage more ABAWDs to engage in work or work activities if they wish to continue to receive SNAP benefits.

The Department believes that the proposed changes reinforce the Act's intent to require these individuals to work or participate in work activities in order to receive SNAP benefits for more than 3 months in a 36 month period. Section 6(o) of the Act, entitled, ''Work Requirements,'' allows these individuals to meet the ABAWD work requirement by working and/or participating in a qualifying work program at least 20 hours per week (averaged monthly to 80 hours per month) or by participating in and complying with workfare. For the purposes of meeting the ABAWD work requirement, working includes unpaid or volunteer work that is verified by the State agency. The Act specifically exempts individuals from the ABAWD time limit and corresponding work requirement for several reasons, including, but not limited to, age, unfitness for work, having a dependent child, or being pregnant.

The Act authorizes waivers of the ABAWD time limit and work requirement in areas in which the unemployment rate is above 10 percent, or where there is a lack of sufficient jobs. The Department believes waivers of the ABAWD time limit are meant to be used in a limited manner in situations in which jobs are truly unavailable to ensure enforcement of the ABAWD work requirements as much as possible to promote greater engagement in work or work activities.

Immediately following the Great Recession, the vast majority of the States, including the District of Columbia, Guam, and the Virgin Islands, qualified for and implemented statewide ABAWD time limit waivers in response to a depressed labor market. In the years since the Great Recession, the national unemployment rate has dramatically declined. Despite the national unemployment rate's decline from 9.9 percent in April 2010 to 3.9 percent in April 2018, a significant number of States continue to qualify for and use ABAWD waivers under the current waiver standards. Right now, nearly half of ABAWDs live in areas that are covered by waivers despite a strong economy. The Department believes waiver criteria need to be strengthened to better align with economic reality. These changes would ensure that such a large percentage of the country can no longer be waived when the economy is booming and unemployment is low.

The Department is committed to enforcing the work requirements established by Congress and is concerned about the current level of waiver use in light of the current economy. The regulations afforded States broad flexibility to develop approvable waiver requests. The Department's operational experience has shown that some States have used this flexibility to waive areas in such a way that was likely not foreseen by the Department.

Some of the key concerns have stemmed from the combining of data from multiple individual areas to waive a larger geographic area (*e.g.,* a group of contiguous counties) and the application of waivers in individual areas with low unemployment rates that do not demonstrate a lack of sufficient jobs. For example, some States have maximized the number of areas or people covered by waivers by combining data from areas with high unemployment with areas with low unemployment. This grouping has resulted in the combined area qualifying for a waiver when not all individual sub-areas would have qualified on their own. States have combined counties with unemployment rates under 5 percent with counties with significantly higher unemployment rates in order to waive larger areas. For example, current regulations required the Department to approve a State request to combine unemployment data for a populous county with a high unemployment rate of over 10 percent with the unemployment data of several other less populous counties with very low unemployment rates that ranged between 3 and 4 percent. Other States have combined data from multiple areas that may only tenuously be considered an economic region. In some cases, States have grouped areas that are contiguous but left out certain low-unemployment areas that would otherwise logically be considered part of the region. In this manner, States have created questionable self-defined economic areas with gaping holes to leverage the flexibility of the regulations.

The Department has also noted that, despite the improving economy, the lack of a minimum unemployment rate has allowed local areas to qualify for waivers based solely on having relatively high unemployment rates as compared to national average, regardless of how low local areas unemployment rates fall. Since the current waiver criteria have no floor, a certain percentage of States will continue to qualify for waivers even if unemployment continues to drop.

It is the Department's understanding that the intent of Congress in passing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was to provide SNAP to unemployed ABAWDs on a temporary basis (3 months in any 3-year period) with the expectation that they work and/or engage in a work program at least 20 hours per week, or participate in workfare, to receive SNAP on an ongoing basis. The Department is committed to implementing SNAP as Congress intended and believes that those who can work should work. The widespread use of waivers has allowed some ABAWDs to continue to receive SNAP benefits while not meeting the ABAWD work requirement for longer than 3 months. The proposed rule addresses these areas of concern and places safeguards to avoid approving waivers that were not foreseen by Congress and the Department, and to restrict States from receiving waivers in areas that do not clearly demonstrate a lack of sufficient jobs.

As stated above, given the widespread use of ABAWD waivers during a period of historically low unemployment, the Department believes that the current regulatory standards should be reevaluated. Based on the Department's approximately two decades' experience with reviewing ABAWD waivers, the Department is proposing that the standards for approving these waivers be updated to ensure the waivers are applied on a more limited basis. The application of waivers on a more limited basis would encourage more ABAWDs to take steps towards self-sufficiency.

The Department proposes stricter criteria for ABAWD waiver approvals that would establish stronger, updated standards for determining when and where a lack of sufficient jobs justifies temporarily waiving the ABAWD time

limit. The proposed rule would also ensure the Department only issues waivers based on representative, accurate, and consistent economic data, where it is available. Limiting waivers would make more ABAWDs subject to the time limit and thereby encourage more ABAWDs to engage in meaningful work activities if they wish to continue to receive SNAP benefits. The Department recognizes that long-term, stable employment provides the best path to self-sufficiency for those who are able to work. The Department believes it is appropriate and necessary to encourage greater ABAWD engagement with respect to job training and employment opportunities that would not only benefit ABAWDs, but would also save taxpayers' money. The Department and the States share a responsibility to help SNAP participants—especially ABAWDs—find a path to self-sufficiency. Through the stricter criteria for waiver approvals, the Department would encourage greater engagement in meaningful work activities and movement toward self-sufficiency among ABAWDs, thus reducing the need for nutrition assistance.

Waiver Standards Framework

Current regulations at 7 CFR 273.24(f) set standards and requirements for the data and evidence that States must provide to FNS to support a waiver request. States enjoy considerable flexibility to make these waiver requests pursuant to the current regulations. For example, these regulatory standards give States broad flexibility to define the waiver's geographic scope. The discretion for States to define areas allows waivers based on data for combined areas that are not necessarily economically tied. An economically tied area is an area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, while the current regulations establish criteria for unemployment data that rely on standard Bureau of Labor Statistics (BLS) data or methods, the regulations also allow States to rely on alternative, less robust economic indicators, which include data other than unemployment data from BLS, to demonstrate a lack of sufficient jobs. Moreover, the waiver standards allow areas within States to qualify for waivers as a result of unemployment rates relative to the national average, without consideration for whether the national or local area unemployment rate is high or low. Put differently, under the current regulations, which do not include a local unemployment rate floor, even if the national unemployment rate falls, a particular area's unemployment rate may support a waiver if that area's unemployment rate is low but sufficiently higher than the national average. As a result of these and other shortcomings, the current regulations give States an opportunity to qualify for waivers and avoid the ABAWD time limit when economic conditions do not justify such relief. For these reasons, the Department believes that the waiver standards under this proposed rule will better identify areas that do not have a sufficient number of jobs to provide employment for ABAWDs.

As of September 2018, the national unemployment rate is the lowest unemployment rate since 1969; however, States continue to request and qualify for ABAWD waivers based on the current waiver criteria, which define the lack of sufficient jobs in an area too broadly. In April 2010, the national unemployment rate stood at 9.9 percent. From 2010 through 2013, the vast majority of States qualified for and continued to implement statewide ABAWD time limit waivers. SNAP participation peaked at an average of 47.6 million recipients per month in FY 2013 and has gradually declined since then. In July 2013, the national unemployment rate was 7.3 percent; 45 ABAWD time limit waivers covered the entire State,[1] and 6 waivers covered specific areas within the State. In April 2018, SNAP participation totaled 39.6 million participants, and the national unemployment rate stood at 3.9 percent. In April 2018, 8 waivers applied to an entire State, and 28 covered specific areas within a State. Although the national unemployment rate has dropped from 9.9 percent in April 2010 to 3.9 percent in April 2018, many States continue to qualify for and use ABAWD time limit waivers under the current waiver standards, and nearly half of all ABAWDs live in areas that are covered by waivers.

The Department is concerned that ABAWD time limit waivers continue to cover significant portions of the country and are out of step with a national unemployment rate hovering at less than 4 percent. Since the current waiver criteria have no floor, a certain percentage of States will continue to qualify for waivers even if unemployment continues to drop. In other words, regardless of how strong the economy is, the criteria are written in such a way that areas will continue to qualify even with objectively low unemployment rates. Many currently-waived areas qualified based on 24-month local unemployment rates below 6 percent.

The current criteria for waiver approval permit States to qualify for waivers without a sufficiently robust standard for a lack of sufficient jobs. The waiver criteria should be updated to ensure States submit data that is more representative of the economic conditions in the requested areas. Such reforms would make sure the Department issues waivers based on representative, accurate, and consistent economic data.

This proposed rule would set clear, robust, and quantitative standards for waivers of the ABAWD time limit. The proposal would also: Eliminate waivers for areas that are not economically tied together; eliminate the ability of an area to qualify for a waiver based on its designation as a Labor Surplus Area (LSA) by the Department of Labor; limit the use of alternative economic indicators to areas for which standard data is limited or unavailable, such as Indian Reservations and U.S. Territories; and provide additional clarity for States regarding the waiver request process. The proposed changes would ensure the Department issues waivers only to provide targeted relief to areas that demonstrate a lack of sufficient jobs or have an unemployment rate above 10 percent and that the ABAWD time limit encourages SNAP participants to find and keep work if they live in areas that do not lack sufficient jobs.

Background

Previous Action

On February 23, 2018, the Department published an Advanced Notice of Public Rulemaking (ANPRM) entitled ''Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents'' (83 FR 8013) to seek public input to inform potential policy, program, and regulatory changes that could consistently encourage ABAWDs to obtain and maintain employment and thereby decrease food insecurity. The Department specifically asked whether changes should be made to: (1) The existing process by which State agencies request waivers of the ABAWD time limit; (2) the information and data States must provide to support the waiver request; (3) the Department's implementation of the waiver approval; and (4) the waiver's duration. The ANPRM generated nearly 39,000 comments from a range of stakeholders including private citizens, government

[1] The term ''State'' refers to any of the 50 States, the District of Columbia, and the U.S. territories

agencies and officials, food banks, advocacy organizations, and professional associations.

The comments addressed the broad scope of topics covered by the ANPRM. Comments about the ABAWD waiver included diverse perspectives, ranging from those who supported stricter waiver approval requirements to those who favored maintaining or expanding the criteria for waiver approval. Many commenters favored no change or expressed support for greater flexibility. Other commenters identified a number of areas of concern with current practices, including the use of waivers by States to waive the ABAWD work requirement and avoid promoting work, waiving areas with relatively low unemployment rates, and allowing the use of certain metrics for waiver approvals.

The Department received more than 3,500 comments regarding potential reforms to the ABAWD time limit and waivers of the time limit through the Department's request for information (RFI) entitled, ''Identifying Regulatory Reform Initiatives'' published July 17, 2017 (82 FR 32649). This RFI requested ideas on how the Department can provide better customer service and remove unintended barriers to participation in the Department's programs in ways that least interfere with the Department's customers and allow the Department to accomplish its mission. The Department specifically requested ideas on regulations, guidance documents, or any other policy documents that require reform. While commenters disagreed with certain SNAP provisions outlined previously, specific changes to regulations and policies were not provided. The Department received a range of comments to the RFI in addition to the comments listed above that are not relevant to this proposed rule.

Summary of Proposed Changes

The Department believes current regulations at 7 CFR 273.24(c) and 7 CFR 273.24(f) should be updated and strengthened. The proposed rule focuses on updating the standards for ABAWD waivers. Current regulations at 7 CFR 273.24(f) set standards and requirements for the data and evidence that States must provide to FNS to support an ABAWD waiver request. States enjoy considerable flexibility to make these waiver requests pursuant to the current regulations. This flexibility has resulted in the widespread use of waivers during a period of low unemployment, which reduces the application of the work requirement.

The Department proposes several changes. First, the proposed rule would limit the ability of areas to qualify for waivers as local economies and the overall national economy improve. Second, the proposed rule would no longer allow State agencies to combine unemployment data from areas with high unemployment with areas with lower unemployment and more plentiful employment opportunities in order to maximize the area waived. Instead, the proposed rule would ensure the Department issues waivers only to economically tied areas that meet the new criteria defining what is meant by a lack of sufficient jobs. The proposed rule would also limit the duration of waivers to one year, and curtail the use of less robust data to approve waivers. The subsequent sections provide details about the changes proposed in this rule.

Discussion of Proposed Changes

General

The Department proposes that the rule, once finalized, would go into effect on October 1, 2019, which is the beginning of federal fiscal year 2020. All waivers in effect on October 1, 2019, or thereafter, would need to be approvable according to the new rule at that time. Any approved waiver that does not meet the criteria established in the new rule would be terminated on October 1, 2019. States would be able to request new waivers if the State's waiver is expected to be terminated. The Department requests feedback from States regarding the implementation date. In addition, the Department proposes clarifying that any State agency's waiver request must have the Governor's endorsement to ensure that such a critical request is supported at the highest levels of State government.

Establishing Core Standards for Approval

The Department proposes updating criteria for ABAWD time limit waivers to improve consistency across States and only allow approvals in areas where waivers are truly necessary. These revisions would include the establishment of core standards that would allow a State to reasonably anticipate whether it would receive approval from the Department. These core standards would serve as the basis for approval for the vast majority of waiver requests, save for areas with exceptional circumstances or areas with limited data or evidence, such as Indian Reservations and U.S. Territories. The proposed rule would continue to allow approvals for waivers based on data from BLS or a BLS-cooperating agency that show an area has a recent, 12-month average unemployment rate over 10 percent.

The proposed rule emphasizes that the basis for approval of waivers would be sound data and evidence that primarily relies on data from BLS or BLS-cooperating agencies. Any supporting unemployment data provided by the State would need to rely on standard BLS data or methods. BLS unemployment data is generally considered to be reliable and robust evidence for evaluating labor market conditions. BLS is an independent Federal statistical agency that is required to provide accurate and objective statistical information and is the principal fact-finding agency for the Federal government in the broad field of labor economics and statistics. It collects, processes, analyzes, and disseminates essential statistical data for the public and Federal agencies.

The proposed core standards for waiver approval would be codified in 7 CFR 273.24(f)(2).

Core Standards: Retaining Waivers Based on an Unemployment Rate Over 10 Percent

The Department does not propose changes to the regulations for waivers when an area has an unemployment rate over 10 percent. The proposed rule would continue to allow approvals for waivers based on data from BLS or a BLS-cooperating agency that show an area has a recent, 12-month average unemployment rate over 10 percent.

Core Standards: Establishing a Floor for Waivers Based on the 20 Percent Standard

Current regulations at 7 CFR 273.24(f)(2) and (3) provide for waiver approvals for requested areas with an average unemployment rate at least 20 percent above the national average for a recent 24-month period, beginning no earlier than the same 24-month period that DOL uses to determine LSAs for the current fiscal year (otherwise known as the ''20 percent standard''). Under the current regulations, the Department adopted the 20 percent standard, in addition to LSA designation, to provide States with the flexibility to support waivers for areas in the country that are not considered by DOL for LSA designation and to allow States to use a more flexible 24-month reference period.

There are key differences between the two standards. DOL's criteria for LSAs require an average unemployment rate that is at least 20 percent above the national average and at least 6 percent for the preceding two calendar years (a

24-month period). DOL's local unemployment rate floor of 6 percent prevents areas with unemployment rates below that threshold from qualifying as LSAs. The 20 percent standard is the same, except that it allows for a flexible 24-month data reference period (no earlier than that which is used for LSAs) and it does not include any unemployment rate floor.

Based upon operational experience, the Department has observed that, without an unemployment rate floor, local areas will continue to qualify for waivers under the Department's 20 percent standard based on high unemployment relative to the national average even as local unemployment rates fall to levels as low as 5 to 6 percent (depending upon the national rate). The Department believes that amending the waiver regulations to include an unemployment floor is a critical step in achieving more targeted criteria. While the 20 percent standard is similar to the calculation of an LSA, the Department believes it is appropriate to request public comment to explore a floor that is designed specifically for ABAWD waivers.

The Department believes a floor should be set for the 20 percent standard so that areas do not qualify for waivers when their unemployment rates are generally considered to be normal or low. The ''natural rate of unemployment'' is the rate of unemployment expected given normal churn in the labor market, with unemployment rates lower than the natural rate tending to result in inflationary pressure on prices. Thus, unemployment rates near or below the ''natural rate of unemployment'' are more indicative of the normal delay in unemployed workers filling the best existing job opening for them than a ''lack of sufficient jobs'' in an area. Generally, the ''natural rate of unemployment'' hovers around 5 percent. The Department believes that only areas with unemployment rates above the ''natural rate of unemployment'' should be considered for waivers. The Department seeks to establish a floor that is in line with the Administration's effort to encourage greater engagement in work and work activities. The Department believes that the 7 percent floor for the 20 percent standard would strengthen the standards for waivers so that the ABAWD work requirement would be applied more broadly and fully consider the ''lack of sufficient jobs'' criteria in the statute. Furthermore, this aligns with the proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4015 (as passed by House, June 21, 2018). As stated previously, the Department seeks to make the work requirements the norm rather than the exception to the rule because of excessive use of ABAWD time limit waivers to date. Using the proposed rule's 7 percent floor for this criterion and eliminating waiver approvals based on an LSA designation (as well as utilizing the proposed limit on combining areas discussed below), an estimated 11 percent of ABAWDs would live in areas subject to a waiver. Currently, approximately 44 percent of ABAWDs live in a waived area. The Department views the proposal as more suitable for achieving a more comprehensive application of work requirements so that ABAWDs in areas that have sufficient number of jobs have a greater level of engagement in work and work activities, including job training. In sum, the proposed rule modifies the current waiver criterion so that an area must have an average unemployment rate at least 20 percent above the national average and at least 7 percent for a recent 24-month period, beginning no earlier than the same 24-month period that DOL uses to determine LSAs for the current fiscal year, to qualify for a waiver. The 7 percent floor prevents a requested area with an unemployment rate 20 percent above the national average, but below 7 percent, from qualifying for a waiver.

Although the Department believes the local unemployment floor should be set at 7 percent to best meet its goals of promoting self-sufficiency and ensuring areas with unemployment rates generally considered normal are not waived, it is requesting evidence-based and data-driven feedback on the appropriate threshold for the floor. Specifically, the Department requests feedback on which unemployment rate floor—6 percent, 7 percent, or 10 percent—would be most effective at limiting waivers consistent with the Act's requirement that waivers be determined based on a lack of sufficient jobs.

The Department is interested in public comments on establishing an unemployment floor of 6 percent, which would be consistent with DOL standards for LSAs. A 6 percent floor would require that an area demonstrate an unemployment rate of at least 20 percent above the national average for a recent 24-month period and at least a 6 percent unemployment rate for that same time period in order to receive waiver approval. The 6-percent floor also bears a relationship to the ''natural rate of unemployment.'' in that it is approximately 20 percent higher. As previously noted, the ''natural rate of unemployment'' generally hovers around 5 percent, meaning that 20 percent above that rate is 6.0 percent. In combination with other changes in the proposed rule, the Department estimates that a 6-percent floor would reduce waivers to the extent that approximately 24 percent of ABAWDs would live in waived areas. The Department is concerned that too many areas would qualify for a waiver of the ABAWD time limit with a 6 percent floor and that too few individuals would be subject to the ABAWD work requirements, which can be met through working or participating in a work program or workfare program, thereby moving fewer individuals towards self-sufficiency.

The Department would also like to receive comments on establishing a floor of 10 percent for the 20 percent standard. A 10-percent floor would allow for even fewer waivers than the other options and would result in the work requirements being applied in almost all areas of the country. In combination with other changes in the proposed rule, the Department estimates that a 10-percent floor would reduce waivers to the extent that approximately 2 percent of ABAWDs would live in waived areas.

It is important to note that a 10-percent floor would be distinct from the criteria for approval of an area with an unemployment rate of over 10 percent. The 10-percent unemployment floor would be attached to the 20 percent standard, which would mean an area would require an average unemployment rate 20 percent above the national average for a recent 24-month period and at least 10 percent for the same period; the other similar, but separate standard requires an area to have an average unemployment rate of over 10 percent for a 12-month period.

Based on the Department's analysis, nearly 90 percent of ABAWDs would live in areas without waivers and would be encouraged to take steps towards self-sufficiency if a floor of 7 percent was established. In comparison, a 6 percent floor would mean that 76 percent of ABAWDs would live in areas without waivers and a 10 percent floor would mean that 98 percent of ABAWDs would live in areas without waivers. A higher floor allows for the broader application of the time limit to encourage self-sufficiency.

The Department is thus requesting comments on the various proposed options for setting a floor for the 20 percent standard. This will ensure that the Department fully considers the range of evidence available to establish a floor that meets the need of evaluating waivers.

Core Standards: Retaining the Extended Unemployment Benefits Qualification Standard

Under the proposed rule, the Department would continue to approve a State's waiver request that is based upon the requesting State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service. Extended unemployment benefits are available to workers who have exhausted regular unemployment insurance benefits during periods when certain economic conditions exist within the State. The extended benefit program is triggered when the State's unemployment rate reaches certain levels. Qualifying for extended benefits is an indicator, based on DOL data, that a state lacks sufficient jobs. Current regulations include this criterion as evidence of lack of sufficient jobs. The Department has consistently approved waivers based on qualification for extended unemployment benefits because it has been a clear indicator of lack of sufficient jobs and an especially responsive indicator of sudden economic downturns, such as the Great Recession. Therefore, the Department proposes to continue to include this criterion, reframed as a core standard for approval in this proposed regulation.

The three provisions described above (the unemployment rate over 10 percent standard, the 20 percent standard, and the qualification for extended unemployment benefits standard), would be considered the core standards for approval and, thus, the basis for most conventional waiver requests and approvals. The core standards would be codified in 7 CFR 273.24(f)(2).

Criteria Excluded From Core Standards

The proposed core standards would not include some of the current ABAWD time limit waiver criteria that are rarely used, sometimes subjective, and not appropriate when other more specific and robust data is available, such as unemployment rates from BLS. These excluded criteria include a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) that describes an area's lack of jobs. These standards would no longer suffice for a waiver's approval if BLS data is available. These proposed changes would ensure that ABAWD time limit waiver requests are only approved in areas where waivers are truly necessary.

The proposed rule would emphasize sound data and evidence that primarily relies on BLS and other DOL data for waiver approvals. Any supporting unemployment data that a State provides must, under the core standards, rely on standard data from BLS or a BLS-cooperating agency.

Other Data and Evidence in Exceptional Circumstances

The proposed core standards would form the primary basis for determining waiver approval. However, the rule also proposes that the Department can approve waiver requests in exceptional circumstances based on other data and evidence. The Department proposes that other data and evidence still primarily rely on BLS unemployment data. Such alternative data would only be considered in exceptional circumstances or if BLS data is limited, unavailable, or if BLS develops a new method or data that may be applicable to the waiver review process. Given that economic conditions can change quickly, the Department believes it is appropriate to maintain a level of flexibility to approve waivers as needed in extreme, dynamic circumstances. Such waiver requests must demonstrate that an area faces an exceptional circumstance and provide data or evidence that the exceptional circumstance gives rise to an area not having a sufficient number of jobs to provide employment for the individuals in the area. For example, an exceptional circumstance may arise from the rapid disintegration of an economically and regionally important industry or the prolonged impact of a natural disaster. A short-term aberration, such as a temporary closure of a plant, would not fall within the scope of exceptional circumstances. For waiver requests in exceptional circumstances, the State agency may use additional data or evidence other than those listed in the core standards to support its need for a waiver under exceptional circumstances. In these instances, the State may provide data from the BLS or a BLS-cooperating agency showing an area has a most recent three-month average unemployment rate over 10 percent. This provision to strengthen the standards for waivers would be codified in 7 CFR 273.24(f)(3).

Restricting Statewide Waivers

Current regulations at 7 CFR 273.24(f)(6) and the Department's policy guidance provide States with the discretion to define the areas to be covered by waivers. A State may request that a waiver apply to the entire State (statewide) or only to certain areas within the State (*e.g.,* individual counties, cities, or towns), as long as the State provides data that corresponds to each requested area showing that the area meets one of the qualifying standards for approval.

The proposed rule would eliminate statewide waiver approvals when substate data is available through BLS, except for those waivers based upon a State's qualification for extended unemployment benefits as determined by DOL's Unemployment Insurance Service. The Department proposes this change so that waivers of the ABAWD time limit are more appropriately targeted to those particular areas in which unemployment rates are high. Since statewide unemployment figures may include areas in which unemployment rates are relatively low, the Department believes that a more targeted approach would ensure that waivers exist only in areas that do not have a sufficient number of jobs to provide employment for the individuals living in that specific area. This proposed change further supports the Department's goal that more individuals are subject to the ABAWD time limit and work requirement, which can be met through working or participating in a work program or workfare program, consistent with the intent of the Act.

The Department requests public comment specific to the proposed restriction on statewide waivers, especially with consideration to how the change may affect different States in different ways based upon geographic size, population, and other factors.

These changes would be codified in 7 CFR 273.24(f)(4).

Restricting the Combining of Data to Group Substate Areas

Current regulations at 7 CFR 273.24(f)(6) and the Department's policy guidance provide States considerable flexibility to define areas covered by ABAWD waivers. This flexibility allows States to combine data to group two or more substate areas, such as counties, together (otherwise referred to as ''grouped'' areas or ''grouping''). In order to meet the requirement for qualifying data or evidence that corresponds to the requested area, States use the unemployment and labor force data from the individual areas in the group to calculate an unemployment rate representative of the whole group. States can only group areas and support approval based on qualifying unemployment data. Under current regulations, States must demonstrate that the areas within any such group are contiguous and/or share the same Federal- or State-recognized economic region. For example, two or more contiguous counties could be grouped together, and the group's average unemployment rate could be calculated,

by combining the unemployment and labor force data from each individual county.

The Department's existing general conditions for the grouping of areas—that the areas must be either contiguous and/or share the same economic region—were intended to ensure that the areas grouped together are economically tied. However, in practice, the Department has learned that its standards for combining areas provide too much flexibility for State agencies and are often ineffective at ensuring that States are only grouping areas that are economically tied. For example, some States have grouped nearly all contiguous counties in the State together while omitting a few counties with relatively low unemployment in order to maximize the waived areas in the State. In other cases, States have grouped certain towns together that share the same economic region while omitting others with relatively low unemployment from the group, thereby maximizing the waived areas in the State.

The proposed rule would prohibit States from grouping areas, except for areas that are designated a Labor Market Area (LMA) by the Federal government.[2] This change would ensure that only areas that are economically tied are grouped together. Moreover, the proposed rule would require States to include the unemployment data representative of all areas in the LMA in the State. As a result, States would be unable to omit certain areas within the LMA in the State for the purposes of achieving a qualifying unemployment rate for part of an LMA. These changes would be codified in 7 CFR 273.24(f)(5).

The Department requests public comments on whether it should include Labor Market Areas (LMAs) defined by the Federal government as the basis for grouping areas or whether it should prohibit grouping entirely. If grouping were prohibited entirely, waived areas would be limited to individually qualifying jurisdictions with corresponding data (for example, counties and their equivalents, cities, and towns). The Department requests comments on the potential impacts of either policy. The Department believes that only allowing the use of Federally designated LMAs will limit the combination of areas that are not contiguous and economically integrated. The Department is interested in feedback on whether the LMA definition will target waivers to jurisdictions with a demonstrable lack of sufficient jobs without including jurisdictions that do not lack sufficient jobs.

Duration of Waiver Approvals and Timeliness of Data

The proposed approach would limit the duration of waiver approvals. Under the current regulations, the Department typically approves waivers for one year. However, the current regulations allow the Department to approve shorter or longer waivers in certain circumstances. The Department proposes limiting a waiver's duration to one year, but continuing to allow a waiver for a shorter period at a State's request. The Department believes that a one year waiver term allows sufficient predictability for States to plan and implement the waiver; at the same time, a one-year waiver term ensures that the waiver request reflects current economic conditions.

The proposed rule would also prioritize recent data by preventing States from requesting to implement waivers late in the Federal fiscal year, which broadens the available data reference period. Through operational experience, the Department has observed that several States that have historically requested 12-month waivers on a fiscal year basis (*i.e.,* October 1 of one year through September 30 of the following year), have shifted their waiver request and implementation dates to later in the fiscal year (*e.g.,* September 1 through August 31). The States that have made this shift have supported their waivers based on the 20 percent standard. In the current regulations, the 24-month data reference period for this waiver is tied to the fiscal year and only updates each year on October 1. The Department has noticed that as the unemployment rates have improved, States that shift the waiver operational period to later in the fiscal year have been able to capitalize on older data and qualify for waivers of the ABAWD time limit for additional time. States are able to take advantage of this loophole if their unemployment rates for the requested areas have been improving relative to the national average. As a result, these States are able to obtain a waiver and maximize the areas waived into the next fiscal year, using data that is no longer appropriate as of the October 1 update.

To curtail this practice, the Department proposes that waivers based on the 20 percent standard would not be approved beyond the fiscal year in which the waiver is implemented. In addition, these waivers must utilize data from a 24-month period no less recent than that DOL used in its current fiscal year LSA designation. Such an approach ensures waivers rely on sufficiently recent data for the current fiscal year and prevents States from using older data, which may not accurately reflect current economic conditions.

This provision would streamline the implementation of the program and would be codified in 7 CFR 273.24(f)(6).

Areas With Limited Data or Evidence

Current practices provide flexibility to State agencies to rely on alternative data sources regardless of whether the area has corresponding BLS unemployment data available. Currently, the Department may approve requests supported by an estimated unemployment rate of an area based on available data from BLS and Census Bureau's American Community Survey (ACS), a low and declining employment-to-population ratio, a lack of jobs as a consequence of declining occupations or industries, or an academic study or other publication describing the area's lack of a sufficient number of jobs. At times, State agencies will use these alternative data sources to justify a waiver request even when the corresponding BLS data shows that the unemployment rate in the area is relatively low. As stated previously, the Department believes that waivers of the ABAWD time limit should be limited to only circumstances in which the area clearly does not have a sufficient number of jobs to provide employment for the individuals. By not restricting the use of these alternative to areas with limited data or evidence, the Department has permitted States to take advantage of these alternative data sources, when BLS employment data is readily available.

Under the proposed rule, all of these criteria would only be applicable to areas for which BLS or a BLS-cooperating agency data is limited or unavailable, such as a reservation area or U.S. Territory. In these areas, the Department could approve requests supported by an estimated unemployment rate of an area based on available data from BLS and ACS, a low and declining employment-to-population ratio, a lack of jobs as a consequence of declining occupations or industries, or an academic study or other publication describing the area's lack of a sufficient number of jobs. Waiver requests for an area for which standard data from BLS or a BLS-

[2] An LMA is an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. LMAs include Federally-designated statistical areas such as metropolitan statistical areas, micropolitan statistical areas, and other combined statistical areas. A nationwide list of every LMA is maintained by BLS.

cooperating agency is limited or unavailable would not be required to conform to the criteria for approval proposed under paragraphs (f)(2), (f)(3), (f)(4), (f)(5), and (f)(6). Additionally, the Department would consider other data in line with BLS methods or considered reliable. This allows for flexibility if new methods or data are developed for Indian Reservation or U.S. Territory regions currently with limited or no data.

Using an estimated unemployment rate based on available data from BLS and ACS is part of current practice. The Department proposes codifying this criteria in the regulations only for areas with limited data or evidence, such as a reservation area or U.S. Territory. Currently, States often estimate unemployment rates for reservation areas by applying data from ACS to available BLS data. In addition, some tribal governments generate their own labor force and/or unemployment data, which would remain acceptable to support a waiver.

These changes would be codified in 7 CFR 273.24(f)(7).

Other Changes to Waivers

The proposed rule would eliminate three provisions in current regulations: The designation as an LSA as a criterion for approval; the implementation of waivers before approval; and the historical seasonal unemployment as a criterion for approval. These provisions are eliminated to ensure that the ABAWD work requirement is applied in accordance with the Department's goal to strengthen work requirements.

The proposed rule would no longer allow an area to qualify for a waiver based on DOL's Employment and Training Administration (ETA) designation of the area as an LSA for the current fiscal year. This change is central to the Department's efforts to raise the standards by which it determines whether an area is lacking a sufficient number of jobs to provide employment for ABAWDs in order to require more ABAWDs to engage in work, work training, or workfare if they wish to receive SNAP. As explained in a previous section, DOL's criteria for LSAs require an average unemployment rate that is at least 20 percent above the national average and at least 6 percent for the preceding two calendar years (a 24-month period). The Department is eliminating LSA designation as a basis for waiver approval because LSAs are determined using a minimum unemployment rate floor of 6 percent, whereas the Department proposes using a minimum unemployment rate of 7 percent for its similar, but more flexible, 20 percent standard. Continuing to allow LSA designation as a basis for waiver approval would be inconsistent. Moreover, LSAs are not designated for all different types of areas across the country, and having an LSA criteria separate from the 20 percent criteria could be seen as unnecessary moving forward.

The proposed rule would bar States from implementing a waiver prior to its approval. Though rarely used, current regulations allow a State to implement an ABAWD waiver as soon as the State submits the waiver request based on certain criteria.[3] By removing the current pertinent text in 273.24(f)(4), the proposed rule would require States to request and receive approval before implementing a waiver. This would allow the Department to have a more accurate understanding of the status of existing waivers and would provide better oversight in the waiver process. It would also prevent waivers from being implemented until the Department explicitly reviewed and approved the waiver.

The proposed rule would also remove the criterion of a historical seasonal unemployment rate over 10 percent as a basis for approval. Historical seasonal unemployment does not demonstrate a prolonged lack of sufficient number of jobs to provide employment for the individuals. Historical seasonal unemployment rates, by definition, are limited to a relatively short period of time each year. Nor does a historical seasonal unemployment rate indicate early signs of a declining labor market. Historical seasonal unemployment rates are cyclical rather than indicative of declining conditions. Based on operational experience, the Department has not typically seen the use of this criterion by States. The Department has not approved a waiver under this criterion in more than two decades. For these reasons, the Department proposes removing a historical seasonal average unemployment rate as a way to qualify for a waiver.

In addition, as stated previously, the proposed rule would no longer provide for statewide waivers except for those waivers approved based upon a state's qualification for extended unemployment benefits.

[3] Under current regulations, the State must certify that data from the BLS or the BLS-cooperating agency show a most recent 12-month average unemployment rate over 10 percent or that ETA designated the area as an LSA for the current fiscal year.

Ending the ''Carryover'' of ABAWD Exemptions

The proposed rule would end the unlimited carryover and accumulation of ABAWD percentage exemptions, previously referred to as 15 percent exemptions before the enactment of the Agriculture Improvement Act of 2018. Upon enactment, Section 6(o)(6) of the Act provides that each State agency be allotted exemptions equal to an estimated 12 percent of ''covered individuals,'' which are the ABAWDs who are subject to the ABAWD time limit in the State in Fiscal Year 2020 and each subsequent Fiscal Year. States can use these exemptions available to them to extend SNAP eligibility for a limited number of ABAWDs subject to the time limit. When one of these exemptions is provided to an ABAWD, that one ABAWD is able to receive one additional month of SNAP benefits. The Act and current regulations give States discretion whether to use these exemptions, and, as a result, some States use the exemptions that are available to them and others do not.

Each fiscal year, the Act requires the Department to estimate the number of exemptions that each State be allotted and to adjust the number of exemptions available to each State. Based on the Act's instructions, the regulations provide the specific formulas that the Department must use to estimate the number of exemptions, which are referred to as ''earned'' exemptions, and to adjust the exemptions available to the State each year. The proposed rule would not change any part of the calculation that the Department follows to estimate earned exemptions, or any other part of 273.24(g). The proposed rule would only change the calculation that the Department uses to adjust the number of exemptions available for each fiscal year at 7 CFR 273.24(h).

The regulation's current interpretation of Section 6(o)(6)(G) of the Act, which requires the adjustment of exemptions, causes unused exemptions to carry over and accumulate from one year to the next, unless the State uses all of its available exemptions in a given year. For FY 2018, States earned approximately 1.2 million exemptions, but had about an additional 7.4 million exemptions available for use due to the carryover of unused exemptions from previous fiscal years. The Department views the carryover of significant amounts of unused exemptions to be an unintended outcome of the current regulations. The Department is concerned that such an outcome is inconsistent with Congressional intent to limit the number of exemptions

available to States each year. Concerns about the carryover of exemptions were also expressed by the September 2016, USDA Office of the Inspector General (OIG) audit report ''FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents.'' Therefore, the Department proposes revising 7 CFR 273.24(h) to end the unlimited carryover of unused percentage exemptions. The Department proposes this change to implement the Act more effectively and to advance further the Department's goal to promote self-sufficiency.

In order to address the carryover issue, the proposed rule would change the adjustment calculation that the Department uses to increase or decrease the number of exemptions available to each State for the fiscal year based on usage during the preceding fiscal year. The proposed rule would no longer allow for unlimited carryover from all preceding years. Instead, each State agency's adjustment would be based on the number of exemptions earned in the preceding fiscal year minus the number of exemptions used in the preceding fiscal year. The resulting difference would be used to adjust (by increasing or decreasing) the earned exemption amount. In addition, the adjustment will apply only to the fiscal year in which the adjustment is made.

The three examples below show how the proposed rule's adjustment calculation would work in practice based on no exemption use, varied exemption use, and exemption overuse. These examples assume that a State earns five new exemptions every year over a 4-year period.

Example 1, No Exemption Use

Example 1 shows how the proposed adjustment calculation would work for a State that uses zero exemptions, and how it would end the carryover and accumulation of unused exemptions. The State earned five exemptions for the current fiscal year (FY) of 2021 in this example (row A). The State's adjustment for FY 2021 is based on the number of exemptions earned in the previous year (FY 2020) minus the number of exemptions used for the previous year (FY 2020). In this example, we assume the State earned five exemptions in FY 2020 and used no exemptions in FY 2020, so the adjustment for FY 2021 is five (row B). The adjustment of five (row B) is then added to the five earned for FY 2021 (row A) to obtain the State's total of 10 exemptions after adjustment for FY 2021 (row C). In FY 2021, the State uses zero exemptions (row D), so it does not have any overuse liability for that year because row E results in a positive number. In FY 2022, FY 2023, and FY 2024, the calculation is the same and results are the same each year. The number of exemptions available to the State is increased based on the number earned for and used in the preceding fiscal year, but the State does not carryover accumulated exemptions indefinitely. Whereas the State would have 25 total exemptions after adjustment for FY 2024 under the current regulations, the State would have 10 total exemptions after adjustment for FY 2024 under the proposed regulation.

EXAMPLE 1

	Fiscal year (FY)	2021	2022	2023	2024
A	Earned for current FY	5	5	5	5
B	(+) Adjustment for current FY (earned minus used for previous FY).	5	5	5	5
C	(=) Total after adjustment for current FY	10	10	10	10
D	(−) Used in current FY	0	0	0	0
E	(=) Liability for overuse? (Yes or No)	10 (No)	10 (No)	10 (No)	10 (No)

Example 2, Varied Exemption Use

Example 2 shows how the proposed adjustment calculation would work for a State that uses different amounts of exemptions each fiscal year and therefore receives an increase or decrease in the exemptions available to it each subsequent fiscal year. In other words, the number of exemptions available to the State is adjusted for an increased total exemptions one year, then a decreased total exemptions the next. The State earned five exemptions for the current FY of 2021 (row A). The State's adjustment for FY 2021 is based on the number of exemptions earned in the previous year (FY 2020) minus the number of exemptions used for the previous year (FY 2020). We assume the State earned five exemptions in FY 2020 but used zero exemptions in FY 2020, so the State's total after adjustment for FY 2021 is 10 (row C). In FY 2021, the State uses eight exemptions (row D), so it does not have any over-usage liability for that year (row E). That is, though the State only earned 5 exemptions for FY 2021, the adjustment allowed the State to avoid any over usage liability for FY 2021. However, for the purposes of adjustment in FY 2022, the 8 used exemptions are subtracted from the 5 earned exemptions for FY 2021, not from the 10 adjusted exemption amount available in FY 2021. Therefore, the adjustment amount for FY 2022 is negative three. In FY 2022, the State again earns five exemptions but the adjustment is negative three (the result of subtracting row D, FY 2021 from row A, FY 2022). The State then has a total of two exemptions for FY 2022. The State chooses to use two exemptions for FY 2022, therefore it has no overuse in FY 2022. This example shows how the proposed regulation increases or decreases the number of exemptions available to States while also limiting the average number of exemptions in effect to 12 percent over time. As shown in row D, the State can use no more than 10 exemptions over the course of any 2-year period, which is equal to the 10 exemptions earned over every 2-year period.

EXAMPLE 2

	Fiscal year (FY)	2021	2022	2023	2024
A	Earned for current FY	5	5	5	5
B	(+) Adjustment for current FY (earned minus used for previous FY).	5	−3	3	−3
C	(=) Total after adjustment for current FY	10	2	8	2
D	(−) Used in current FY	8	2	8	2

EXAMPLE 2—Continued

	Fiscal year (FY)	2021	2022	2023	2024
E	(=) Liability for overuse? (Yes or No)	2 (No)	0 (No)	0 (No)	0 (No)

Example 3, Exemption Overuse

Example 3 shows how the proposed adjustment calculation would work for a State that overuses exemptions. In this example, we again assume the State earned five exemptions in FY 2020 but used zero exemptions in FY 2020, so the State's total after adjustment for FY 2021 is 10 (row C). In FY 2021, the State uses six exemptions (row D); once again, it does not have any over-usage liability for that year (row E), but the adjustment for FY 2022 will be negative one (the result of subtracting row D, FY 2021 from row A, FY 2022). Put differently, the five exemptions earned for FY 2022 offset the adjustment of negative one. The State then has a total of four exemptions for FY 2022 (row C). However, the State uses six exemptions in FY 2022. Because the State used more exemptions in FY 2022 than its total after adjustment for FY 2022, it has an overuse liability of two for FY 2022. The Department would consider the exemption overuse an overissuance and would hold the State liable for the total dollar value of the exemptions, as estimated by the Department.

EXAMPLE 3

	Fiscal year (FY)	2021	2022	2023	2024
A	Earned for current FY	5	5	5	5
B	(+) Adjustment for current FY (earned minus used for previous FY).	5	−1	−1	1
C	(=) Total after adjustment for current FY	10	4	4	6
D	(−) Used for current FY	6	6	4	4
E	(=) Liability for overuse? (Yes or No)	4 (No)	−2 (Yes)	0 (No)	2 (No)

Under the proposed rule, the Department would continue to provide States with its estimated number of exemptions earned for each upcoming fiscal year as data becomes available, typically in September. The Department would also continue to provide States with the exemption adjustments as soon as updated caseload data is available and states have provided final data on the number of exemptions used in the preceding fiscal year, typically in January.

The Department also seeks comments from States on how to treat State agencies' existing total number of percentage exemptions, which in some cases have carried over and accumulated over many years, and on when the proposed change should be implemented. Under the proposed rule, these accumulated percentage exemptions would not be available to States once the change is implemented. Additionally, because the adjusted number of exemptions is based on the preceding fiscal year, the change in regulatory text will impact State's ability to use exemptions in the fiscal year preceding the fiscal year that the provision goes into effect. Therefore, the Department seeks comment on how to best handle these issues.

The proposed rule would not change or affect the ''caseload adjustments'' at 273.24(h)(1), which apply to any State that has a change of over 10 percent in its caseload amount. However, the Department is taking this opportunity to correct the cross-reference that this paragraph makes to 273.24(g)(2) for accuracy. The proposed regulation cross-references 273.24(g)(3), instead of (g)(2). The Department is making this change because it is more accurate and precise to cross-reference to 273.24(g)(3), given that the caseload adjustments apply to the number of exemptions estimated as earned for each State for each fiscal year.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for rules that have been designated as economically significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

The Department has estimated the net reduction in federal spending associated with the proposed transfer rule to be approximately $1.1 billion in fiscal year (FY) 2020 and $7.9 billion over the five years 2020–2024. This is a reduction in federal transfers (SNAP benefit payments); the reduction in transfers represents a 2.5 percent decrease in projected SNAP benefit spending over this time period.

Under current authority, the Department estimates that about 60 percent of ABAWDs live in areas that are not subject to a waiver and thus face the ABAWD time limit. Under the revised waiver criteria the Department estimates that nearly 90 percent of ABAWDs would live in such an area. Of those newly subject to the time limit, the Department estimates that approximately two-thirds (755,000 individuals in FY 2020) would not meet the requirements for failure to engage meaningfully in work or work training.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review,

it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because the proposed rule primarily impacts State agencies. As part of the requirements, State agencies would have to update their procedures to incorporate the new criteria for approval associated with requesting waivers of ABAWD time limit. Small entities, such as smaller retailers, would not be subject to any new requirements. However, all retailers would likely see a drop in the amount of SNAP benefits redeemed at stores if these provisions were finalized, but impacts on small retailers are not expected to be disproportionate to impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (nearly 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up the majority of authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits. The proposed rule is expected to reduce SNAP benefit payments by about $1.7 billion per year. This would equate to about a $100 loss of revenue per small store on average per month ($1.7 billion × 15%/200,000 stores/12 months). In 2017, the average small store redeemed more than $3,800 in SNAP each month; the potential loss of benefits represents less than 3 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 redemption data, a 2.7 percent reduction in SNAP redemptions represented between 0.01 and 0.5 percent of these stores gross sales.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process.

This proposed rule is expected to be an Executive Order 13771 deregulatory action. The rule does not include any new costs. FNS is proposing a reduction in burden hours since State agencies are no longer able to group areas together for waiver approval. The reduction would result in an estimated collective savings of $12,092 for State Agencies.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

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

Federalism Summary Impact Statement

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

The Department has determined that this rule does not have Federalism implications. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. While we believe that a reduction in the number of ABAWD waivers granted to State agencies will adversely affect potential program participants in all groups who are unable to meet the employment requirements, and have the potential for disparately impacting certain protected groups due to factors affecting rates of employment of members of these groups, we find that the implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.

Executive Order 13175

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

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require tribal consultation under E.O. 13175. FNS invited Tribal leaders to a consultation held on March 14, 2018. Tribal leaders did not provide any statement or feedback to the Department on the rule. FNS and OTR will determine if a future consultation is needed. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, this proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by April 2, 2019. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

Title: Supplemental Nutrition Assistance Program Waivers of Section 6(o) of the Food and Nutrition Act.

OMB Number: 0584–0479.

Expiration Date: [July 31, 2021].

Type of Request: Revision of a currently approved collection.

Abstract: Section 6(o) of the Food and Nutrition Act of 2008, (the Act, as amended through Pub. L. 113–xxx), limits the amount of time an able-bodied adult without dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in a 36-month period, unless the individual is working and/or participating in a work program half-time or more, or participating in workfare. The Act exempts individuals from the time limit for several reasons, including age, unfitness for work, or having a dependent child. The ABAWD time limit and work requirement currently apply to people ages 18 through 49, unless they are already exempt from the general work requirements, medically certified as physically or mentally unfit for employment, responsible for a child under 18, or pregnant. ABAWDs are also work registrants and must meet the general work requirements. In addition, ABAWDs subject to the time limit must work and/or participate in a work program 80 hours per month or more, or participate in and comply with workfare to receive SNAP for more than 3 months in a 36-month period. Participation in SNAP E&T, which is a type of work program, is one way a person can meet the 80 hour per month ABAWD work requirement, but other work programs are acceptable as well.

The Act also provides State agencies with flexibility to request a waiver of this time limit if unemployment is high or the area does not have a sufficient number of jobs to provide employment. State agencies can request to waive the ABAWD time limit if an area has an unemployment rate of over 10 percent or the State can meet one of the regulatory options to show it does not have a sufficient number of jobs to provide employment. If the time limit is waived, individuals are not required to meet the ABAWD work requirement to receive SNAP for more than 3 months in a 36-month period. This collection of information is necessary for FNS to perform its statutory obligation to review waivers of the SNAP ABAWD time limit.

This is a revision of a currently approved information collection request associated with this rulemaking. In the previous submission, the Food and Nutrition Service (FNS) estimated 35 hours for each waiver request for a total of 1,198 hours. Based on the experience of FNS during calendar year 2018, FNS projects that 36 out of 53 State agencies would submit requests for a waiver of the time limit for ABAWD recipients based on a high unemployment rate or lack of sufficient number of jobs. FNS estimates a response time of 28 hours for each waiver request based on labor market data, which require detailed analysis of labor markets within the State. FNS projects a total of 1,008 hours, which would be a reduction of 190 hours compared to the 1,198 hours estimated provided in the pending approval.

FNS is proposing a reduction in burden hours since State agencies are no longer able to group areas together for waiver approval. The reduction will burden hours would result in an estimated collective savings of $12,092 for State Agencies. This rule does not require any recordkeeping burden. Reporting detail burden details are provided below.

Respondents: State agencies.

Estimated Number of Respondents: 36.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,008.

OMB No. 0584–0479	Requirement (7 CFR 273.24(f)	Estimated number of respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment
Affected Public: State Agencies									
Reporting burden	Submissions of waiver request based on labor market data.	36	1	36	28	1,008	1,190	−182	0
	7 CFR 273.24(f)—Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	−8	0
Reporting totals	.....	36	.....	.....	.....	1,008	.....	−190	.....

OMB No. 0584–0479	Requirement (7 CFR 273.24(f)	Estimated number of respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment
Total Reporting Burden due to Rulemaking.	.....	.....	.....	.....	.....	1,008	.....	.....	.....

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Able-bodied adults without dependents, Administrative practice and procedures, Employment, Indian reservations, Time limit, U.S. territories, Waivers, Work requirements.

Accordingly, FNS proposes to amend 7 CFR part 273 to read as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C 2011–2036.

■ 2. In § 273.24, revise paragraph (f) to read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(f) *Waivers*—(1) *General.* The State agency may request FNS approval to temporarily waive the time limit for a group of individuals in the State in the area in which the individuals reside. To be considered for approval, the request must be endorsed by the State's governor and supported with corresponding data or evidence demonstrating that the requested area:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Core standards.* FNS will approve waiver requests under (1)(i) and (ii) that are supported by any one of the following:

(i) Data from the Bureau of Labor Statistics (BLS) or a BLS-cooperating agency that shows an area has a recent 12-month average unemployment rate over 10 percent;

(ii) Data from the BLS or a BLS-cooperating agency that shows an area has a 24-month average unemployment rate 20 percent or more above the national rate for a recent 24-month period, but in no case may the 24-month average unemployment rate of the requested area be less than 7 percent. The 24-month period must be no earlier than the same 24-month period used by the Department of Labor's Employment and Training Administration to designate Labor Surplus Areas for the current fiscal year; or

(iii) Evidence that an area qualifies for extended unemployment benefits as determined by the Department of Labor (DOL).

(3) *Other data and evidence.* FNS may approve waiver requests that are supported by data or evidence other than that listed under paragraph (f)(2) of this section if the request demonstrates an exceptional circumstance in an area. In addition, the request must demonstrate that the exceptional circumstance has caused a lack of sufficient number of jobs, such as data from the BLS or a BLS-cooperating agency that shows an area has a most recent three-month average unemployment rate over 10 percent. Supporting unemployment data provided by the State must rely on standard BLS data or methods.

(4) *Restriction on statewide waivers.* FNS will not approve statewide waiver requests if data for the requesting State at the substate level is available from BLS, except for waivers under paragraph (f)(2)(iii) of this section.

(5) *Restricting the combining of data to group substate areas.* The State agency may only combine data from individual areas that are collectively considered to be a Labor Market Area by DOL.

(6) *Duration of waiver approvals.* In general, FNS will approve waivers for one year. FNS may approve waivers for a shorter period at the State agency's request and waivers under paragraph (f)(2)(ii) of this section will not be approved for a period beyond the fiscal year in which the waiver is implemented.

(7) *Areas with limited data or evidence.* Waiver requests for an area for which standard BLS data or a BLS-cooperating agency data is limited or unavailable, such as a reservation area or U.S. Territory, are not required to conform to the criteria for approval under paragraphs (f)(2), (f)(3), (f)(4), (f)(5) and (f)(6) of this section. The supporting data or evidence provided by the State must correspond to the requested area.

(i) FNS may approve waivers for these areas if the requests are supported by sufficient data or evidence, such as:

(A) Estimated unemployment rate based on available data from BLS and Census Bureau's American Community Survey;

(B) A low and declining employment-to-population ratio;

(C) A lack of jobs in declining occupations or industries; or

(D) An academic study or other publication describing the area as lacking a sufficient number of jobs to provide employment for its residents.

(ii) In areas with limited data or evidence, such as reservation areas or U.S. Territories, FNS may allow the State agency to combine data from individual areas to waive a group of areas if the State agency demonstrates that the areas are economically integrated.

* * * * *

■ 3. In § 273.24, revise paragraph (h) to read as follows:

* * * * *

(h) *Adjustments.* FNS will make adjustments as follows:

(1) *Caseload adjustments.* FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(3) of this section during a fiscal year if the number of SNAP recipients in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During each fiscal year, FNS will increase or decrease the number of exemptions allocated to a State agency based on the difference between the number of exemptions used by the State for the preceding fiscal year and the number of exemptions estimated for the State for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section. The increase or decrease will only apply for the fiscal year in which the adjustment is made. For example:

(i) If the State agency uses fewer exemptions in the preceding fiscal year than were estimated for the State agency by FNS for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section, FNS will increase the number of exemptions allocated to the State agency for the current fiscal year by the

difference to determine the adjusted exemption amount.

(ii) If the State agency uses more exemptions in the preceding fiscal year than were estimated for the State agency by FNS for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section, FNS will decrease the number of exemptions allocated to the State agency for the current fiscal year by the difference to determine the adjusted exemption amount.

* * * * *

Dated: December 20, 2018.

Brandon Lipps,

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

[FR Doc. 2018–28059 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM19–2–000]

Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations regarding the horizontal market power analysis required for market-based rate sellers that study certain Regional Transmission Organization (RTO) or Independent System Operator (ISO) markets and submarkets therein. This proposed modification of the Commission's horizontal market power analysis would relieve such sellers of the obligation to submit indicative screens when seeking to obtain or retain market-based rate authority. The Commission's regulations would continue to require market-based rate sellers that study an RTO, ISO, or submarket therein, to submit indicative screens for authorization to make capacity sales at market-based rates in any RTO/ISO market that lacks an RTO/ISO-administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation. For those RTOs and ISOs lacking an RTO/ISO-administered capacity market, we propose that Commission-approved RTO/ISO monitoring and mitigation no longer be presumed sufficient to address any horizontal market power concerns for capacity sales where there are indicative screen failures.

DATES: Comments are due March 18, 2019.

ADDRESSES: Comments, identified by docket number, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Gregory Basheda, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6479, *Gregory.basheda@ferc.gov*.

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SUPPLEMENTARY INFORMATION:

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I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) seeks comment on a proposal to modify the horizontal market power analysis for certain Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets. Specifically, the Commission proposes to relieve market-based rate sellers, *i.e.,* sellers seeking to obtain or retain authorization to make market-based rate sales, of the requirement to submit indicative screens for certain RTO/ISO markets and submarkets.[1] This proposed modification of the Commission's horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. In addition, for RTOs and ISOs that lack an RTO/ISO-administered capacity market, market-based rate sellers would be relieved of the requirement to submit indicative screens if their market-based rate authority is limited to sales of energy and/or ancillary services. We believe that this proposal would reduce the filing burden on market-based rate sellers in RTO/ISO markets without compromising the Commission's ability

[1] For purposes of this NOPR, references to RTO/ISO markets include any submarkets therein.

to prevent the potential exercise of market power in RTO/ISO markets.

2. The Commission's regulations would continue to require RTO/ISO sellers [2] to submit indicative screens for authorization to make capacity sales in any RTO/ISO markets that lack an RTO/ISO-administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation. We also propose to eliminate the rebuttable presumption that Commission-approved RTO/ISO market monitoring and mitigation is sufficient to address any horizontal market power concerns regarding sales of capacity in RTOs/ISOs that do not have an RTO/ISO-administered capacity market.

II. Background

A. The Market-Based Rate Program

3. In Order No. 697,[3] the Commission codified two indicative screens for assessing horizontal market power for market-based rate sellers: The pivotal supplier screen and the wholesale market share screen (with a 20 percent threshold), each of which serves as a cross check on the other to determine whether sellers may have market power and should be further examined.[4] The Commission stated that passage of both indicative screens establishes a rebuttable presumption that the seller does not possess horizontal market power. Sellers that fail either indicative screen are rebuttably presumed to have market power and have the opportunity to present evidence through a delivered price test (DPT) analysis or other evidence demonstrating that, despite a screen failure, they do not have market power.[5] The Commission uses a ''snapshot in time'' approach based on historical data for both the indicative screens and the DPT analysis.[6]

4. With respect to the horizontal market power analysis, in traditional markets (outside RTO/ISO markets) the default relevant geographic market for purposes of the indicative screens is first, the balancing authority area(s) where the seller is physically located, and second, the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority areas).[7] Generally, sellers that are located in and are members of an RTO/ISO may consider the geographic region under the control of the RTO/ISO as the default relevant geographic market for purposes of the indicative screens.[8]

5. In Order No. 697, the Commission created two categories of market-based rate sellers.[9] Category 1 sellers are wholesale power marketers and wholesale power producers that own, control, or are affiliated with 500 megawatts (MW) or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888 [10]); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.[11] Category 1 sellers are not required to file regularly scheduled updated market power analyses. Market-based rate sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses every three years.[12] However, the Commission may require an updated market power analysis from any market-based rate seller at any time, including those sellers that fall within Category 1.[13]

6. Section 35.37 of the Commission's regulations requires market-based rate sellers to submit market power analyses: (1) When seeking market-based rate authority; (2) every three years for Category 2 sellers; and (3) at any other time the Commission requests a seller to submit an analysis. A market power analysis must address a market-based rate seller's potential to exercise horizontal and vertical market power. If a market-based rate seller studying an RTO/ISO market as a relevant geographic market fails the indicative screens for the RTO/ISO market, it can seek to obtain or retain market-based rate authority by relying on Commission-approved RTO/ISO monitoring and mitigation.[14]

B. Order No. 816 [15] *Proposal*

7. On July 19, 2014, the Commission proposed certain changes and clarifications in order to streamline and improve the market-based rate program's processes and procedures.[16] The Commission found that the burdens associated with certain requirements may outweigh the benefits in certain circumstances. For those reasons, the Commission proposed changes to the market-based rate program that the Commission believed would reduce burden, while continuing to ensure that the standards for market-based rate sales result in sales that are just and reasonable.

8. The Commission noted that since the issuance of Order No. 697, it has been the Commission's practice to grant sellers market-based rate authority or allow them to retain market-based rate authority where they have failed indicative screens in an RTO/ISO market but have relied on Commission-approved monitoring and mitigation to mitigate any market power that the

[2] RTO/ISO sellers are market-based rate sellers that have an RTO/ISO market as a relevant geographic market.

[3] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, clarified, 121 FERC ¶ 61,260 (2007) (Clarifying Order), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[4] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

[5] *Id.* P 13; 18 CFR 35.37(c)(3) (2018).

[6] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 17.

[7] The Commission also noted that ''[w]here a generator is interconnecting to a non-affiliate owned or controlled transmission system, there is only one relevant market (*i.e.,* the balancing authority area in which the generator is located).'' *Id.* P 232 n.217.

[8] Where the Commission has made a specific finding that there is a submarket within an RTO/ISO, that submarket becomes a default relevant geographic market for market-based rate sellers located within the submarket for purposes of the horizontal market power analysis. *See id.* PP 15, 231.

[9] *Id.* P 848.

[10] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[11] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849 n.1000; 18 CFR 35.36(a) (2018).

[12] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

[13] *Id.* P 853.

[14] In Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111, the Commission stated that ''to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved [RTO] market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns.''

[15] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, FERC Stats. & Regs. ¶ 31,374 (cross-referenced at 153 FERC ¶ 61,065) (2015), *order on reh'g* Order No. 816–A, FERC Stats. & Regs. ¶ 31,282 (2016).

[16] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, FERC Stats. & Regs. ¶ 32,702 at P 10 (2014) (Order No. 816 NOPR).

sellers may have.[17] The Commission found that the existence of market monitoring and mitigation in an organized market generally results in transparent prices, which discipline forward [18] and bilateral markets by revealing a benchmark price and keeping offers competitive.[19] While the burdens of preparing the indicative screens are not necessarily greater for RTO/ISO sellers than for market-based rate sellers in other markets, in the Order No. 816 NOPR, the Commission noted that the submission of indicative screens yields little practical benefit because it has been the Commission's practice to allow RTO/ISO sellers that fail the indicative screens to rely on RTO/ISO monitoring and mitigation to mitigate any market power that the sellers may have. Thus, for market-based rate sellers in RTO/ISO markets, the Commission stated that ''the burden of submitting indicative screens may not be 'outweighed by the additional information gleaned with respect to a specific seller's market power.' '' [20]

9. Specifically, as relevant for the purposes of the instant NOPR, the Commission proposed in the Order No. 816 NOPR to allow market-based rate sellers in RTO/ISO markets to address horizontal market power issues in a streamlined manner that would not involve the submission of indicative screens if the seller relies on Commission-approved monitoring and mitigation to prevent the exercise of market power.[21] Under that proposal, RTO/ISO sellers would state that they are relying on such monitoring and mitigation to address the potential for market power issues that they might have, provide an asset appendix, and describe their generation and transmission assets. The Commission would retain its ability to require a market power analysis, including indicative screens, from any market-based rate seller at any time.[22]

[17] *See* Order No. 816 NOPR, FERC Stats. & Regs. ¶ 32,702 at P 31. *See, e.g., NRG Power Marketing,* LLC, 150 FERC ¶ 61,011 (2015) (failures in the CAISO and PJM markets); *Entergy Arkansas, Inc.,* 145 FERC ¶ 61,243 (2013) (failures in the MISO market); *PSEG Energy Resources & Trade LLC,* 125 FERC ¶ 61,073, at PP 31–32 (2008) (failures in the PJM-East submarket); *Dominion Energy Marketing, Inc.,* 125 FERC ¶ 61,070, at PP 26–27 (2008) (failures in the Connecticut submarket of ISO New England, Inc.); *Niagara Mohawk Power Corp.,* 123 FERC ¶ 61,175, at P 28 (2008) (failures in the New York City and Long Island submarkets of the New York Independent System Operator, Inc.).

[18] Forward markets are distinct from RTO/ISO-administered capacity markets, as discussed below.

[19] Order No. 816 NOPR, FERC Stats. & Regs. ¶ 32,702 at P 35.

[20] *Id.* P 34 (quoting Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 110).

[21] *See id.* PP 35–36.

[22] *Id.* P 36.

C. Comments on Order No. 816 Proposal

10. The Commission received numerous comments on its proposal to eliminate the need for RTO/ISO sellers to submit indicative screens as part of their market power analyses. As discussed below, some commenters supported the Commission's proposal; [23] other commenters requested that the Commission clarify aspects of its proposal,[24] or extend the proposal to additional circumstances.[25] However, some commenters opposed the Commission's proposal, raising issues regarding the Commission's legal authority to eliminate the requirement to submit indicative screens [26] or the effectiveness of RTO/ISO monitoring and mitigation.[27]

11. Numerous commenters supported the Commission's proposal. AEP urged the Commission to adopt the proposal, stating that ''[t]he nature of the current RTOs, with large markets, transparent pricing and vigorous, independent monitoring and mitigation measures, provides sellers with incentives to offer competitive prices'' and noted that ''[c]ustomers will not be harmed if the current reporting requirements are narrowed as proposed.'' [28] EPSA also agreed that the indicative screen requirement ''yields little practical benefit because, according to current market power screen rules, if a seller in an RTO/ISO market does fail the indicative screens, the Commission has allowed such sellers to rely on Commission-approved market monitoring and mitigation as a default.'' [29] The Commission's proposal was also supported by E.ON, SoCal Edison, Solomon/Arenchild, SunEdison, and NRG.[30]

12. Several other commenters supported the proposal and made additional proposals. For example, Golden Spread supported the proposal but requested that the Commission ''afford RTO/ISO market participants or interested stakeholders that have concerns about market power the opportunity to come forward and present evidence that a specific market participant or market participants in a specific RTO/ISO generally have the ability to exercise generation market power.'' [31] FirstEnergy supported the proposal but also argued that a seller should no longer be required to file a change in status report based on increases in the amount of generating capacity that it owns or controls once it has made an affirmative statement that it is selling electricity in RTO markets with Commission-approved market monitoring and mitigation practices and the Commission has accepted that statement as sufficient to address horizontal market power concerns.[32]

13. In addition, EEI requested that the Commission ''provide the same relief from undertaking the horizontal market power screens *outside* RTOs, to utilities that have accepted FERC-approved market power mitigation measures that are intended to address market power concerns in specific balancing authority areas [. . .], markets, or regions.'' [33] Similarly, El Paso, while not suggesting that third-party market monitoring suffices to eliminate the indicative screen requirement, stated that, where a non-RTO market has third-party market monitoring of a size and scope comparable to that of an RTO (''*i.e.,* with hourly testing of horizontal market power over the price of energy, accompanied by FERC-approved automatic mitigation''), and when public utility sellers with such Commission-approved measures in place are not seeking to rebut the Commission's pre-existing presumption of market power or the associated Commission-approved measures, ''it may be appropriate for the utilities to provide, in their triennial submissions, only the asset appendices and descriptions that would be required for [s]ellers within RTOs, for the sake of comparability.'' [34]

14. NextEra supported the proposal and asked the Commission to clarify

[23] *See, e.g.,* American Electric Power Service Corporation (AEP) at 4–5; Electric Power Supply Association (EPSA) at 3–4; FirstEnergy Service Company (FirstEnergy) at 4–5; Subsidiaries of NRG Energy, Inc. (NRG Companies) at 8–9.

[24] *See, e.g.,* E.ON Climate & Renewables North America LLC (E.ON) at 2–4; Southern California Edison Company (SoCal Edison) at 16; Julie Solomon and Matthew Arenchild (Solomon/Arenchild) at 2; Edison Electric Institute (EEI) at 6; Potomac Economics at 3–4; NextEra Energy, Inc. (NextEra) at 2–3.

[25] *See, e.g.,* FirstEnergy at 6; AEP at 6; EEI at 7; Golden Spread Electric Cooperative, Inc. (Golden Spread) at 6; El Paso Electric Company (El Paso) at 5–6.

[26] American Antitrust Institute (AAI) at 2–7; American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA) at 5–21; Transmission Access Policy Study Group (TAPS) at 1–2, 4–9.

[27] Potomac Economics at 3–4.

[28] AEP at 5.

[29] EPSA at 3–4.

[30] See E.ON at 2–4, SoCal Edison at 16, Solomon/Arenchild at 2, SunEdison at 1, and NRG at 8–10.

[31] Golden Spread at 6.

[32] First Energy at 6.

[33] *Id.* EEI also requested that the Commission ''clarify that change in status reporting is not required as to changes in any information that would have been used only in the market power indicative screens and analyses, to the extent those screens and analyses are no longer required for particular public utilities in particular [balancing authority areas], markets, or regions.'' *Id.* at 7.

[34] El Paso at 5–6.

that the Order No. 816 NOPR did not intend to eliminate the rebuttable presumption regarding Commission-approved RTO monitoring and mitigation that was developed in Order No. 697–A.[35] Potomac Economics agreed with the proposed reforms, but recommended that the Commission ''take steps to ensure that the market mitigation measures for each RTO are complete and effective.'' [36] SoCal Edison sought clarification that entities participating in the California Independent System Operator Corporation (CAISO) Energy Imbalance market must still perform screens for their ''home'' market and that such market has not been expanded to include CAISO.[37]

15. Several commenters opposed the proposal citing legal, economic, or implementation issues. APPA/NRECA contended that the proposal represented a fundamental departure from the market-based rate scheme that the courts have previously upheld [38] and objected on the following grounds: (1) The proposed rule provides no legal or factual analysis showing that RTO mitigation standing alone is legally sufficient to allow market-based pricing; [39] (2) the proposed rule would effectively deregulate public utilities' bilateral sales in RTO regions; [40] and (3) the proposal would unlawfully subdelegate to private entities, *i.e.,* RTOs, the Commission's statutory responsibilities to ensure that wholesale electric rates of public utilities are just and reasonable.[41] APPA/NRECA also argued that recent experience suggests that RTO mitigation has not been adequate to prevent the exercise of individual seller market power.[42]

16. AAI stated that the proposal ''would relinquish perhaps the most important tool the Commission has to *prevent* abusive conduct before it occurs—namely the ability to deny market-based rate authority based on an *ex ante* showing that a generator possesses market power.'' [43] AAI further contended that the Commission has ''largely outsourced the oversight of monitoring and mitigation'' to the RTO market monitors and that the proposal to eliminate the horizontal market power indicative screens ''would seem to compound the Commission's already significant distance from this crucial area of oversight.'' [44] AAI also stated that the information submitted as part of the screens provides information and insight that the Commission can use to improve and refine policies to prevent transmission owners from discriminating against rival generators and that ''[c]easing to collect this critical information would do a disservice to competition and consumers.'' [45]

17. TAPS stated that, even if RTO monitoring and mitigation is effective to mitigate market power today, ''that may not [be] true going forward, and the Commission should not blind itself to the extent of seller market power in a particular RTO'' and that ''[t]he Commission should not and cannot properly rely on Commission-approved market monitoring and mitigation in organized markets or market forces to safeguard against the exercise of market power in bilateral and forward markets.'' [46] TAPS stated that ''Order No. 697–A's pronouncements with respect to bilateral and forward markets are a compelling reason to continue to require the submission of indicative screen data'' and that if the Commission removes the requirement for RTO/ISO sellers to submit indicative screens, ''the Commission will need to revisit Order [No.] 697's treatment of [market-based rates] for forward and bilateral sales in RTO regions in light of the removal of an essential element of the support for that disposition.'' [47]

18. TAPS also stated that it is problematic for the Commission to rely on the ''faulty presumption'' that organized spot markets will discipline forward and bilateral markets by revealing benchmark prices ''given the non-substitutable nature of the products.'' [48] TAPS contended that Order No. 697 relied on the Commission's market power screening combined with Commission-approved monitoring and mitigation to support market-based rates in bilateral markets, pointing to the ability of customers to challenge the RTO mitigation in the context of market-based rate applications and triennial reviews informed by the screen information: ''[t]he NOPR, however, would completely remove this important avenue to assure just and reasonable rates on bilateral contracts that the Commission has sought to promote.'' [49]

19. EPSA filed comments in reply to APPA/NRECA and Potomac Economics. EPSA disagreed with APPA/NCRECA's assertion that relying on mitigation measures under the various RTO tariffs in lieu of market power analyses represents a departure from the market-based rate scheme that the courts have previously upheld, because the Commission adopted the rebuttable presumption in Order No. 697–A, if not earlier.[50] EPSA also takes issue with APPA/NRECA's argument that the proposed rule would effectively deregulate public utilities' bilateral sales in RTO regions, arguing that the Commission in Order No. 697–A explained that RTO/ISO mitigation measures act as a disciplining force even with respect to sales negotiated on a bilateral basis, and further explained

[35] NextEra at 3 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111). NextEra stated that if that is not the case, that the Commission provide a rationale for the change in policy.

[36] Potomac Economics at 3.

[37] SoCal Edison at 16.

[38] APPA/NRECA at 8–10 (citing *Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910; *California ex rel. Lockyer* v. *FERC,* 383 F.3d 1006 (9th Cir. 2004) (*Lockyer*); *Blumenthal* v. *FERC,* 552 F.3d 875,882 (DC Cir. 2009) (*Blumenthal*)).

[39] APPA/NRECA at 10 (''The NOPR does not address the specific mitigation measures of the RTO tariffs where the Commission's proposal would be effective. The NOPR's general statement that RTO market monitoring and mitigation has been 'Commission-approved' does not constitute reasoned decision-making [. . .] [T]he Commission approved RTO mitigation [acts] as an addition to—not a substitute for—the Order No. 697 requirement that sellers pass the indicative screens or otherwise demonstrate that they lack or have mitigated their market power. No appellate court precedent supports the lawfulness of market-based rates where the only check on seller market power is RTO mitigation and the Order No. 697 requirements are eliminated.'' *Id.*at 10–11). *See also id.* at 16–17 (''The adequacy of RTO mitigation of horizontal market power in wholesale electricity is a fact-bound matter. An administrative decision to rely on RTO mitigation of public utility sellers' horizontal market power—even if legally permissible—requires evidence, analysis, and findings of fact and law regarding specific RTO tariffs and markets. But the NOPR provides no such evidence, analysis, or findings.'').

[40] APPA/NRECA at 11–14 (''[T]he NOPR does not state, much less demonstrate, that this supposed indirect incentive [for a seller to offer at a competitive price] will ensure that the resulting rates for bilateral sales are just and reasonable [. . .] The NOPR's claim that RTO markets will discipline market power in bilateral markets is unsubstantiated and illogical.'') *Id.* at 12–13.

[41] APPA/NRECA at 14–16. *See also id.* at 15 (' 'The Commission is the only body that can apply and enforce this statutory standard. The Commission cannot subdelegate this core statutory duty to the regulated public utility itself.' '' (citing *U.S. Telecom Ass'n* v. *FCC,* 359 F.3d 554, 565–566 (DC Cir. 2004)).

[42] *Id.* at 17–21.

[43] AAI at 3.

[44] *Id.* at 4. AAI also stated that there have been several incidents involving the exercise of market power that were in fact not detected or mitigated, citing the proceedings in Docket No. ER14–1409–000, and *New York Independent System Operator, Inc.,* 131 FERC ¶ 61,170 (2010). *Id.* at 5–6.

[45] *Id.* at 6–7.

[46] TAPS at 1–2.

[47] *Id.* at 9.

[48] *Id.* at 8 (citing Order No. 816 NOPR, FERC Stats. & Regs. ¶ 32,702 at P 76 (''it is unrealistic for franchised public utilities to rely extensively on spot market purchases to serve statutory load obligations.'')).

[49] *Id.* at 8–9.

[50] EPSA Reply Comments at 4–5. EPSA stated that ''APPA and NRECA ignore the fact that the Commission already allows sellers to rely on RTO/ISO mitigation, and that, as the Commission observed in the NOPR, its proposal would do no more than 'reflect current practice' in this regard.'' *Id.* at 5.

that ''RTO/ISOs have Commission-approved market mitigation rules that govern behavior and pricing in those short-term markets,'' and that ''the RTO/ISOs have Commission-approved market monitoring, where there is continual oversight to identify market manipulation.'' [51]

20. EPSA also argued that the proposal would not unlawfully subdelegate to private entities, *i.e.,* RTOs, the Commission's statutory responsibilities to ensure that wholesale electric rates of public utilities are just and reasonable, as APPA/NRECA argued, noting that nothing in the proposed rule seeks any change to the Commission's extensive oversight over RTO and ISO markets, and that the Commission will ''continue to evaluate and approve or reject the proposed market rules for each RTO/ISO, monitor RTO/ISO implementation of such rules, and hear challenges regarding the effectiveness of RTO/ISO mitigation measures.'' [52]

21. EPSA disagreed with Potomac Economic's recommendation that the Commission take steps to ensure that the market mitigation measures for each RTO are complete and effective, stating that like APPA and NRECA, ''Potomac Economics appears to miss the point that the rebuttable presumption was adopted years ago in Order No. 697–A, and its objection to that presumption is an impermissible collateral attack on that order.'' [53]

22. When the Commission issued Order No. 816, it stated that it was not prepared at that time to adopt the proposal regarding RTO/ISO sellers, but that it would further consider the issues raised by commenters and transferred the record on that issue to Docket No. AD16–8–000 for possible consideration in the future as the Commission may deem appropriate.[54] We have reviewed and considered that record in preparing the instant proposal.

III. Discussion

23. After reviewing all of the comments received in response to the Order No. 816 NOPR, we believe that it is appropriate to relieve market-based rate sellers of the requirement to submit the indicative screens in certain circumstances. As discussed below, the proposal we make here differs in some material respects from the original proposal in the Order No. 816 NOPR. Specifically, the Commission proposes to relieve market-based rate sellers, *i.e.,* sellers seeking to obtain or retain authorization to make market-based rate sales, of the requirement to submit indicative screens for certain RTO/ISO markets and submarkets. This proposed modification of the Commission's horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. In addition, for RTOs and ISOs that lack an RTO/ISO-administered capacity market, market-based rate sellers would be relieved of the requirement to submit indicative screens if their market-based rate authority is limited to sales of energy and/or ancillary services.

24. Under this proposal, the Commission's regulations would continue to require RTO/ISO sellers [55] to submit indicative screens for authorization to make capacity sales in any RTO/ISO markets that lack an RTO/ISO-administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation. Furthermore, we propose to eliminate the rebuttable presumption that Commission-approved RTO/ISO market monitoring and mitigation is sufficient to address any horizontal market power concerns regarding sales of capacity in RTOs/ISOs that do not have an RTO/ISO-administered capacity market.

25. Although this proposal would eliminate the requirement to submit indicative screens in certain RTO/ISO markets, it would not eliminate other market-based rate regulatory reporting requirements. As discussed below, we believe that the RTO/ISO market power monitoring and mitigation combined with the remaining market-based rate reporting requirements will enable the Commission to adequately address market power concerns in the RTO/ISO markets.

A. Overview of Existing RTO/ISO Market Power Monitoring and Mitigation

26. Both the horizontal market power analysis, including indicative screens, and RTO/ISO market power monitoring and mitigation provisions are designed to protect against the potential exercise of seller market power, and the Commission has found that both ensure just and reasonable rates. The indicative screens provide an up-front snapshot of the seller's market power, using static and historical data aggregated from a specific year, which is part of the basis of the Commission's determination of whether to grant that seller market-based rate authority. RTO/ISO market power mitigation is based on real-time data, and is triggered in response to specific resource offers or system characteristics and tailored to the market rules of each RTO/ISO.

27. Despite these differences, the market power analyses provided in the indicative screens and RTO/ISO market power mitigation both seek to prevent the exercise of seller market power and ensure just and reasonable rates. Given the Commission's previous findings that RTO/ISO monitoring and mitigation adequately mitigate a seller's market power and the availability of other data regarding horizontal market power, the indicative screens provide marginal additional market power protections and these protections will still be available with the proposed changes.[56] This suggests that the burden on sellers to provide indicative screens may outweigh the benefits in certain RTO/ISO markets.

28. RTO/ISO market power mitigation is ongoing and tailored to the specific RTO/ISO and uses more granular operational or market data than the indicative screens. This data is used to specifically tailor the RTO/ISO market power screens to the market interval (and sometimes a few subsequent intervals) for which prices are established.[57] Given the dynamic nature of binding transmission constraints and ever-changing market conditions, the RTO/ISO market power mitigation generally allows for a flexible and ongoing application of market power tests, which more accurately reflect system conditions that exist at the time and are better suited to preventing the exercise of market power in the RTO/ISO markets than the static indicative screens that are in many cases only filed every three years. In the event that a seller in an RTO/ISO market fails the RTO/ISO market power mitigation tests, that seller's offer is mitigated to a reference level or cost-based offer,

[51] *Id.* at 7–8 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 285).

[52] *Id.* at 9 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111).

[53] *Id.* at 10.

[54] Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 27.

[55] RTO/ISO sellers are market-based rate sellers that have an RTO/ISO market as a relevant geographic market.

[56] The Commission can still require a market-based rate seller to file indicative screens in individual cases.

[57] For example, five minutes in the real-time market, one hour in the day-ahead market, and the length of the capacity delivery period for the capacity market. In ISO New England Inc. (ISO–NE), Midcontinent Independent System Operator, Inc. (MISO), and PJM Interconnection, L.L.C. (PJM), the delivery period in the capacity market is one year. In New York Independent System Operator, Inc. (NYISO), the delivery period in the capacity market is one month or six months.

which represents the resource's short-run marginal cost.

29. CAISO and PJM use a structural approach to market power mitigation, imposing mitigation when a resource's offer fails a market power screen that relies on the three pivotal supplier test to measure competition. In contrast, ISO–NE, MISO, NYISO, and Southwest Power Pool, Inc. (SPP) employ a conduct and impact approach to market power mitigation, using a two-part market power screen that includes (1) a conduct test, which compares a resource's offer to its reference level,[58] and (2) an impact test, which examines the extent to which that offer affects clearing prices, mitigating an offer if it fails both tests.

30. Identification of constrained areas is a fundamental aspect of RTO/ISO market power mitigation. For example, the RTO/ISOs with conduct and impact mitigation generally use more stringent conduct and impact tests in areas that are more significantly or frequently constrained. The definition of a constraint, or its treatment as static or dynamic,[59] and the conduct and impact thresholds vary by RTO/ISO. PJM uses a three pivotal supplier test to evaluate whether sellers are likely to be able to exercise market power and applies this test any time a resource is committed from an offline state to relieve a binding transmission constraint. In CAISO, a resource's energy supply offer is subject to market power mitigation if that resource's offer affects a transmission constraint deemed by CAISO to be non-competitive.

31. The Commission also requires the RTO/ISO independent market monitors to evaluate market monitoring and mitigation efforts on an ongoing basis. Market monitors are required to periodically report on the performance of market power mitigation practices, evaluate tariff inadequacies or proposals, and report on the general competitiveness of their respective markets.[60] Market monitors report information on how the competitiveness of the RTO/ISO market or any relevant sub-markets is affected by transmission constraints and report a variety of competition metrics,[61] including the Herfindahl-Hirschman Index (HHI), supply-side and demand-side concentration measurements,[62] pivotal supplier tests,[63] the residual supplier index,[64] and the Lerner index.[65]

32. We summarize below the specific market power mitigation provisions used today by RTO/ISOs to prevent the exercise of market power in energy, ancillary services, and capacity markets.

1. Energy

33. All RTOs/ISOs have mitigation provisions for energy offers, which generally are employed when there are binding constraints on the system.[66] Energy supply offers, which include both financial and physical offer components, are screened for potential market power. Financial offer components are denominated in dollars. The most important financial offer components are the start-up, no-load, and incremental energy offers, all of which are subject to mitigation. Physical offer components are denominated in non-dollar units, such as MW, time, or some combination thereof (*e.g.,* minimum run time, economic minimum operating level, ramp rate). When a resource's offer fails the applicable market power screens, that offer is mitigated.

34. Market power mitigation often involves replacing the seller's offer with an appropriate reference level to determine the locational market price. Reference levels for financial offer components are based on an estimate of a resource's short-run marginal cost, and reference levels for physical offer components are based on an estimate of the physical capability of a resource. Reference levels are determined either by the seller of the resource pursuant to guidelines and review (*e.g.,* SPP) [67] or by the market monitor, potentially after consultation with the seller (*e.g.,* CAISO).[68] In many cases, the market monitors help create the resource-specific reference levels with the seller.

35. In addition to market power mitigation provisions, resource offers in energy markets are subject to an offer cap. Pursuant to Order No. 831,[69] the RTO/ISO or market monitor must verify energy supply offers above $1,000/MWh prior to those offers being used to calculate locational marginal prices (LMPs). Order No. 831 also requires each RTO/ISO to limit energy supply offers to $2,000/MWh (known as the ''hard cap'') when calculating LMPs.[70]

36. Resources with capacity supply obligations in RTOs/ISOs also are subject to must-offer requirements, which are designed to address physical withholding.[71]

2. Ancillary Services

37. Unlike the market-based rate indicative screens, which do not specifically analyze market power for ancillary services, RTO/ISO market power mitigation provisions are designed to address the specific ancillary service products that are sold in the RTO/ISO. The market power mitigation provisions for ancillary services in four RTOs/ISOs (NYISO, PJM, MISO, and SPP) are similar to market power mitigation for energy and employ either conduct and impact screens or structural market power screens to identify and potentially mitigate offers of ancillary services that raise market power concerns.

38. Although CAISO and ISO–NE do not have market power mitigation provisions in place for ancillary services,[72] as noted above, ancillary

[58] A reference level is an approximation of a resource's short-run marginal cost.

[59] RTO/ISO market power mitigation procedures can either identify constraints statically or dynamically. Dynamically identified constraints are designated based on constantly evolving system congestion patterns, whereas statically identified constraints are designated following an ex post review of congestion patterns on an annual or at times less frequent basis.

[60] RTO/ISO market monitors are required to submit to Commission staff an annual state of the market report and less extensive quarterly reports. *See Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281, at P 424 (2008), *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[61] RTO/ISO market monitors include a variety of competition metrics in their reports but these metrics are not used to mitigate prices in RTO/ISO markets. The market reports for each RTO/ISO do not reference the indicative screens.

[62] ISO–NE uses both supply-side and demand side concentration measurements which measure the concentration of the four largest buyers and largest four sellers, expressed as a percentage of market share, similar to the market share screen used in the indicative screens.

[63] The pivotal supplier tests are similar to the ones used in the indicative screens and determine if a supplier is pivotal if demand cannot be met without their supply. CAISO's market monitor reports on one, two, and three pivotal supplier tests.

[64] The residual supply index is the ratio of supply from non-affiliate suppliers to demand.

[65] The Lerner index measures the percentage markup that a firm is able to charge over its marginal cost. The index ranges from a low value of 0 to a high of 1. The higher the value of the Lerner index, the more the firm is able to charge over its marginal cost. The Lerner index measures seller behavior rather than market structure.

[66] RTOs/ISOs use different methods to define constraints, and some RTOs/ISOs define constraints (specifically constrained areas) on an annual basis while others define constraints more dynamically.

[67] SPP Open Access Transmission Tariff, Sixth Revised Volume No. 1, Attachment AF, Section 3.3.

[68] CAISO Open Access Transmission Tariff, section 39.7.1.

[69] *See Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 831, FERC Stats. & Regs. ¶ 31,387, at P 1 (2016), (CROSS-REFERENCED AT 157 FERC ¶ 61,115), *order on reh'g and clarification,* Order No. 831–A, 161 FERC ¶ 61,156 (2017).

[70] Order No. 831, FERC Stats. & Regs. ¶ 31,387, at P 1.

[71] The indicative screens and subsequent granting of market-based rate authority does not place a must-offer requirement on sellers to address physical withholding.

[72] ISO–NE's forward reserve market is not mitigated.

service prices typically are based on the opportunity cost of not generating energy, so concerns about market power in ancillary service offers in these RTOs/ISOs are alleviated through the mitigation of energy offers.[73] In addition, these markets are still monitored by their respective independent market monitors,[74] enabling the CAISO and ISO–NE market monitors to evaluate the competitiveness of their respective ancillary service markets and submit a filing at the Commission to seek changes if they deem them necessary.

39. In addition, Commission staff and third parties retain the right at any time to provide evidence that a particular seller in an RTO/ISO has market power in ancillary services that is not adequately mitigated by the existing market rules. Moreover, unlike the capacity market issues discussed below, remedies for any gaps in ancillary service market mitigation can be addressed more readily because CAISO and ISO–NE currently operate ancillary service markets and thus have the ability to propose market power mitigation provisions for ancillary services should additional mitigation be warranted.

3. Capacity

40. The indicative screens analyze the uncommitted capacity of a market-based rate seller in each RTO/ISO, without regard to a specific offer and do not take specific locational requirements or performance obligations into account. By contrast, ISO–NE, NYISO, PJM and MISO currently operate capacity markets with Commission-approved market power mitigation for a standardized RTO/ISO capacity product that specifies a particular delivery year and capacity supply obligation. Capacity sales in RTO/ISOs that operate capacity markets also are subject to system-wide offer caps. If a seller wants to offer its unit at a price higher than the cap, it must submit its costs to the market monitor and have a reference level developed based on its going-forward cost, which becomes its maximum offer.[75]

41. CAISO and SPP do not operate centralized capacity markets currently; thus, they do not have mitigation in place for capacity sales. We note that the California Public Utilities Commission plays an active role in reviewing the majority of bilateral capacity contracts (*i.e.,* Resource Adequacy contracts) in CAISO because the costs of these contracts are recovered in retail electric rates. Similarly, capacity costs in the SPP footprint are reviewed by state regulators and recovered through cost-of-service rates. As such, the market for capacity as a standalone product in SPP is very small. Although the CAISO and SPP capacity contracts are subject to state oversight, as explained above, at this time we propose that the requirement to submit the indicative screens be retained for market-based rate sellers studying RTO/ISO markets that do not include RTO/ISO-administered capacity markets, including CAISO and SPP, unless the seller is only making energy and/or ancillary service sales and not capacity sales.[76]

B. Proposal Implementation

42. We propose two modifications to § 35.37(c) of the Commission's regulations to exempt certain market-based rate sellers from the requirement to submit the indicative screens as part of their horizontal market power analyses of RTO/ISO markets, whether as part of an initial application for market-based rate authority, a change in status filing, or an updated market power analyses.

43. First, for entities seeking to sell into RTO/ISO-administered energy, ancillary services, and capacity markets, a market-based rate seller could state that it is relying on Commission-approved RTO/ISO market monitoring and mitigation, which is presumed to address any potential horizontal market power that the seller might have in such markets.[77] This modification would apply equally to sellers that study an RTO/ISO market as a first-tier market. A power marketer likewise could represent that it is relying on RTO/ISO market monitoring and mitigation in any RTO/ISO market that is a relevant geographic market for the power marketer.[78] To implement this proposal, we propose to insert a new paragraph in § 35.37(c) specifying that, in lieu of submitting the indicative market power screens, sellers studying RTO/ISO markets that operate RTO/ISO-administered energy, ancillary services, and capacity markets may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power sellers may have in those markets.

44. Second, we also propose that sellers in RTOs and ISOs that lack an RTO/ISO-administered capacity market would be relieved of the requirement to submit the indicative screens if their market-based rate authority is limited to wholesale sales of energy and ancillary services. To implement this proposal, we propose to insert a second new paragraph in § 35.37(c) specifying that, in lieu of submitting the indicative market power screens, sellers studying RTO/ISO markets that operate RTO/ISO-administered energy and ancillary services markets, but not capacity markets, may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power that sellers may have in energy and ancillary services. However, sellers studying such RTOs/ISOs would need to submit indicative market power screens if they wish to obtain market-based rate authority for wholesale sales of capacity in these markets.

45. We believe that these exemptions will reduce the burden on market-based rate sellers while preserving appropriate Commission oversight of its market-based rate program. Since the issuance of Order No. 697 in 2007, the Commission has granted sellers market-based rate authority, or allowed them to retain market-based rate authority, where they have failed the indicative screens in an RTO/ISO but have relied on Commission-approved RTO/ISO

[73] The price for ancillary services that are co-optimized with energy are derived from the LMP for energy. Therefore, mitigation of LMPs indirectly mitigates the price for such ancillary services.

[74] The ISO–NE internal market monitor monitors ancillary services and reports on their performance and competitiveness. The CAISO market monitor routinely reports on the ancillary service markets, including costs, cost drivers, and operational issues. In the 2016 Annual Report, the market monitor did not raise any concerns that ancillary service markets were not competitive. *See* CAISO Department of Market Monitoring, *2016 Annual Report on Market Issues & Performance,* (May 2017) *http://www.caiso.com/Documents/2016AnnualReporton MarketIssuesandPerformance.pdf.* See Chapter 6, Ancillary Services.

[75] Reference levels set according to going-forward costs are generator specific.

[76] Market-based rate sellers are authorized to sell certain ancillary services in CAISO and SPP at market-based rates. We do not propose to modify this authorization in the instant rulemaking.

[77] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111 (''to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved [RTO] market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns.'') For those RTOs and ISOs lacking an RTO/ISO-administered capacity market, Commission-approved RTO/ISO monitoring and mitigation will no longer be presumed sufficient to address horizontal market power concerns for capacity sales where there are indicative screen failures.

[78] Under this proposal, a market-based rate seller participating in the CAISO Energy Imbalance Market but located outside of CAISO would still have to submit indicative screens for its relevant geographic market. The requirement to submit indicative screens is unchanged for market-based rate sellers in all traditional markets.

monitoring and mitigation.[79] Given the Commission's presumption that RTO/ISO market monitoring and mitigation adequately mitigate any potential seller market power, the submission of the indicative screens yields little practical benefit when compared to the associated burden on industry. This burden is not trivial; over the three-year period 2015–2018, market-based rate sellers in RTOs/ISOs filed approximately 130 indicative screens in updated market power studies for RTOs/ISOs on average per year.[80] We provide more detailed information on the burden associated with filing indicative screens for updated market power studies in the Information Collection Statement section below.

46. However, market-based rate sellers still would be required to file initial applications, changes in status, and triennial updates, including all of the information currently required, except the seller would not need to submit indicative screens for any RTO/ISO markets subject to the above-proposed exemptions. Specifically, to address horizontal market power in an RTO/ISO market, a seller's initial application for market-based rate authorization and any subsequent updated market power analyses would include, among other things: (1) A statement that the seller is relying on Commission-approved RTO/ISO market monitoring and mitigation to address any potential market power it might have in that market; (2) identification and description of it and its affiliates' generation and transmission assets and other inputs to electric power production; and (3) an asset appendix as required in 18 CFR 35.37(a)(2).[81] The Commission believes that the continued submission of information, such as the asset appendix and Electric Quarterly Reports (EQR),[82] will help us to maintain effective oversight of RTO/ISO markets. Moreover, under this proposal, the Commission would retain the ability to require an updated market power analysis, including indicative screens, from any market-based rate seller at any time.

47. In addition, the Commission proposes to continue requiring RTO/ISO sellers to submit change in status filings consistent with current requirements. While we received comments from the Order No. 816 NOPR that called for eliminating the change in status requirement for RTO/ISO sellers, we believe the change in status requirement is an important tool that the Commission uses to identify new potential market power concerns, which will assist the Commission in ensuring that rates continue to be just and reasonable. Under this proposal, we would still require an RTO/ISO seller to report any change in status that would reflect a departure from the characteristics that the Commission relied upon in granting it market-based rate authority, as required under § 35.42 of the Commission's regulations. Therefore, consistent with current policy, where the change in status concerns pertinent assets held by that seller or its affiliates, the seller must still submit a new asset appendix.[83]

48. Although market-based rate sellers are not required to provide indicative screens in their horizontal market power analyses when submitting change in status filings,[84] sellers often submit indicative screens in order to determine the effect of the change on their market power, particularly when a change in status filing has created the likelihood that they would fail an indicative screen. We clarify that, with this proposed streamlined approach, an RTO/ISO seller subject to the proposed exemption in this NOPR also would not need to submit indicative screens with its change in status filing even where it may have market power. Instead, the seller may state that it is relying on Commission-approved monitoring and mitigation to mitigate any potential market power it may have.

49. However, in RTOs/ISOs that do not operate an RTO/ISO-administered capacity market with Commission-approved mitigation, we propose to continue to require the submission of the indicative screens for any seller seeking to make market-based sales of capacity. CAISO and SPP currently are the RTO/ISO markets without an RTO/ISO-administered capacity market. Therefore, we propose to require any seller seeking to sell capacity at market-based rates in CAISO or SPP, either as a bundled or unbundled product or on a short-term or long-term basis, to submit the indicative screens.

50. We recognize that there is state regulatory oversight of the capacity costs and/or prices incurred in CAISO and SPP. However, we do not believe that it is appropriate to exempt sellers from filing the indicative screens (*i.e.,* submitting a horizontal market power study) in markets that lack Commission-approved monitoring and mitigation programs. Capacity markets are distinct from energy markets (unlike several ancillary services, capacity is not co-optimized with energy),[85] so monitoring and mitigation of energy prices in day-ahead and real-time markets does not ensure that capacity prices will be just and reasonable. Therefore, we believe that the indicative screens remain an important tool for determining whether a seller has market power in RTO/ISO markets that lack Commission-approved market monitoring and mitigation for capacity sales.

51. Thus, we are proposing that indicative screen failures in RTO/ISO markets that do not have RTO/ISO-administered capacity markets (currently, CAISO and SPP) will no longer be presumed to be adequately addressed by RTO/ISO market monitoring and mitigation. We propose that any market-based rate seller that

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[79] *See Niagara Mohawk Power Corp.,* 123 FERC ¶ 61,175, at P 28 (2008) (failures in the New York City and Long Island submarkets of the New York Independent System Operator, Inc.); *Dominion Energy Marketing, Inc.,* 125 FERC ¶ 61,070, at PP 26–27 (2008) (failures in the Connecticut submarket of ISO New England, Inc.); *PSEG Energy Resources & Trade LLC,* 125 FERC ¶ 61,073, at PP 31–32 (2008) (failures in the PJM-East submarket)). There are also numerous delegated letter orders granting sellers market-based rate authority where the seller relies on Commission-approved monitoring and mitigation in RTO markets. *See, e.g., TransCanada Energy Marketing ULC,* Docket No. ER07–1274–001 (Jan. 23, 2009) (delegated order). Finally, the Commission has not initiated any investigations pursuant to Federal Power Act section 206 for any RTO/ISO sellers failing indicative screens since the issuance of Order No. 697; in all cases where RTO/ISO sellers failed, the Commission relied on the Commission-approved monitoring and mitigation to prevent the seller's ability to exercise any potential market power.

[80] On average per year, approximately 20 indicative screens from this total studied the CAISO and SPP markets.

[81] Market-based rate sellers would also continue to submit other information, such as ownership and affiliate information. *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 181 n.258 (''A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership.''); 18 CFR 35.37(a)(2) (requiring submission of an organizational chart); however, the requirement to submit an organizational chart is currently stayed. *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 47. Sellers also would continue to be required to provide the following additional information: (1) A standard vertical market power analysis; (2) category status representations; (3) a demonstration that sellers continue to lack captive customers in order to support obtaining or retaining a waiver of affiliate restrictions, if requested; and (4) any other information that is required for that particular filing. *See* 18 CFR 35.37.

[82] *See* 18 CFR 35.10b. EQRs are discussed in more detail below.

[83] 18 CFR 35.42(c).

[84] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 506 (''[W]e will not require entities to automatically file an updated market power analysis with their change in status filings . . . . Furthermore, regardless of the seller's representation, if the Commission has concerns with a change in status filing (for example, market shares are below 20 percent, but are relatively high nonetheless), the Commission retains the right to require an updated market power analysis at any time.'').

[85] As discussed above, the price of several ancillary services reflects the opportunity cost of not selling energy, so mitigation of energy prices will affect the price of such ancillary services offered in the day-ahead and real-time markets.

fails the indicative screens in those markets and seeks to rebut the presumption of horizontal market power may submit a DPT or alternative evidence or propose other mitigation for capacity sales in these markets.

52. In contrast, we do not propose to disturb the rebuttable presumption in RTOs/ISOs with RTO/ISO-administered energy, ancillary services, and capacity markets. In addition, we do not propose to disturb the rebuttable presumption for market-based sales of energy and ancillary services in RTO/ISO markets that have monitoring and mitigation for these two services. In those RTOs/ISOs, Commission-approved monitoring and mitigation is currently presumed to adequately address market power concerns presented by indicative screen failures. To the extent that commenters are arguing that it is inappropriate for the Commission to rebuttably presume that market monitoring and mitigation is sufficient to mitigate any market power a seller may have in an RTO/ISO market, we believe that it is a collateral attack on the Commission's creation of the rebuttable presumption in Order No. 697–A.[86]

53. As noted above, we propose to maintain the rebuttable presumption that Commission-approved monitoring and mitigation is currently presumed to adequately address market power concerns. By its terms, the rebuttable presumption established in Order No. 697–A that existing RTO/ISO monitoring and mitigation is sufficient to address market power concerns is not immune to challenge. The Commission and intervenors can rebut this presumption in a particular case using information market-based rate sellers provide in accordance with § 35.37 in their initial applications, change in status filings and triennial updated market power analyses.[87] The challenging party would bear the burden of proof to demonstrate that the seller has market power and that such market power is not addressed by existing Commission-approved RTO/ISO market monitoring and mitigation.

54. We seek comment as to whether CAISO or SPP currently have adequate additional safeguards in place that prevent the exercise of horizontal market power in sales of capacity. Commenters who argue that adequate safeguards are present should explain in detail why the Commission should find the requirement to submit indicative screens to be unnecessary for capacity sales in either of these markets. If either CAISO or SPP adopts an RTO/ISO-administered capacity market with Commission-approved monitoring and mitigation in the future, the Commission could revisit the requirement that sellers of capacity submit the indicative screens.

55. We are not proposing to relieve market-based rate sellers of the requirement to submit the indicative screens in any market outside of an RTO/ISO, even a market that may have an alternative form of mitigation. As explained above, RTO/ISO monitoring and mitigation is comprehensive and specifically tailored to each RTO/ISO market. Such mitigation, particularly the ability to mitigate prices on an ongoing basis, does not exist in any non-RTO/ISO market.

C. Bilateral Transactions

56. Market-based rate sellers may enter into bilateral transactions for energy, capacity, and ancillary services within RTO/ISO footprints. Although such transactions are not monitored or mitigated by RTOs/ISOs, the proposal will not give rise to market power concerns with respect to bilateral transactions, as discussed below.

57. Wholesale buyers and sellers of energy and capacity enter into various types of bilateral financial and physical instruments, including forward contracts that settle on day-ahead and real-time electricity prices. An electricity forward contract represents the obligation to buy or sell a fixed amount of electricity at a pre-specified contract price, *i.e.,* the forward price, at a certain time in the future.[88] Forward contracts involve a transaction between a specific buyer and seller, unlike the day-ahead and real-time RTO/ISO energy markets which are bid- and offer-based markets that are centrally cleared.

58. The price of a forward contract represents the willingness of buyers and sellers to exchange electricity in the future and should largely reflect expectations of future demand and supply conditions in RTO/ISO markets if markets are liquid and competitive. Thus, if RTO/ISO energy (*e.g.,* day-ahead and real-time) markets and capacity markets are competitive, and Commission-approved monitoring and mitigation sufficiently protects against the exercise of market power in these markets, then bilateral markets for the same product should also be competitive. Moreover, the structure of RTO/ISO markets enhances competition in the forward markets because entities that do not have physical assets or load (*e.g.,* marketers) can rely on the RTO/ISO to physically deliver the power while settlement prices in RTO/ISO markets enable financial transactions.[89]

59. RTO/ISO day-ahead and real-time energy markets and capacity markets also can provide an alternative to bilateral sales,[90] thereby helping to discipline prices on bilateral contracts for energy and capacity. For these reasons, the existence of competitive RTO/ISO markets is expected to provide a strong incentive for sellers in bilateral markets to offer at competitive prices.

60. Contrary to some comments received in the Order No. 816 proceeding, we believe that the proposal will retain sufficient Commission oversight of bilateral sales in RTO/ISO markets. As the Commission previously has explained, the existence of market power mitigation in an organized market generally results in a market where prices are transparent, which disciplines forward and bilateral markets by revealing a benchmark price, keeping offers competitive.[91] In addition, as the Commission has previously found, buyers seeking bilateral transactions in RTO/ISO footprints ''have access to centralized, bid-based short-term markets which will discipline a seller's attempt to exercise market power in long-term contracts because the would-be buyer can always purchase from the short-term market if a seller tries to charge an excessive price.'' [92] The Commission also retains the ability to require the submission of indicative screens should evidence of market power in the bilateral markets materialize.

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[86] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111.

[87] We recognize that challenging parties would have to provide evidence that a seller had market power before arguing that RTO/ISO mitigation was insufficient to address the seller's alleged market power. In addition to the information provided by a seller in its market-based rate filings, a challenging party could rely on other sources to present evidence that a seller has market power. Moreover, a challenging party is not limited as to the type of tests or other evidence it submits to make such a demonstration.

[88] Short-term forward contracts (*e.g.,* of daily or weekly duration) typically are standardized contracts, whereas long-term contracts (defined as one year or longer) often are negotiated, tailored contracts between the buyer and seller.

[89] Financial transactions can provide buyers and sellers a hedge against uncertain and volatile day-ahead energy prices and typically are settled against the energy prices published by RTOs/ISOs.

[90] We recognize that RTO/ISO energy and capacity markets are not necessarily a perfect substitute for bilateral sales, particularly if the bilateral sale is made pursuant to a non-standardized, long-term contract. However, RTO/ISO energy and capacity markets provide load-serving entities a means to serve their customers and also provide a benchmark against which to compare prices offered in the bilateral market.

[91] Order No. 816 NOPR, FERC Stats. & Regs. ¶ 32,702 at P 35.

[92] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 285.

D. The Commission Will Continue To Ensure That Market-Based Rates Are Just and Reasonable

SUPRA

61. Notwithstanding concerns raised in response to the Order No. 816 NOPR,[93] we believe that the Commission's market-based rate program and its broader oversight of RTO/ISO markets, including its enforcement authority, is sufficiently robust to check the potential exercise of market power without the need for the indicative screens addressed in this NOPR. As discussed in Order No. 697, ''the Commission's market-based rate program includes many ongoing regulatory protections designed to ensure that rates are just and reasonable and not unduly discriminatory or preferential.'' [94] Exempting sellers from submitting screens for RTO/ISO markets will not eliminate these other requirements set forth in § 35.37 of the Commission's regulations.

62. Such protections include the requirement for sellers with market-based rate authority to submit EQRs, notices of change in status, and the requirement to submit a market power analysis, which would still include an asset appendix, affiliate information, and a demonstration regarding vertical market power.[95] We believe that the asset appendix provides comprehensive information relevant to a determination of a seller's market power, including information on: generators owned or controlled by seller and its affiliates; long-term firm power purchase agreements of seller and its affiliates; and electric transmission assets, natural gas intrastate pipelines, and intrastate natural gas storage facilities owned or controlled by seller and its affiliates.[96] The asset appendix information on generation and power purchase agreements are important parts of any assessment of horizontal market power and the information on electric transmission and intrastate gas facilities support the analysis of vertical market power.[97] Thus, we do not believe that eliminating the requirement that sellers submit indicative screens in certain RTO/ISO markets would mean that the Commission and others would lack information necessary to assess a seller's horizontal market power. In addition, under this proposal, the Commission would continue to reserve the right to require submission of complete horizontal market power analysis, including indicative screens, at any time.[98]

63. Asset and ownership information would also continue to be collected as part of initial applications, as well as change in status filings [99] in which sellers report, among other things, changes with respect to their and their affiliates': (1) Ownership or control of generation capacity or long-term firm purchases of capacity and/or energy that result in a cumulative net increase in 100 MW or more of capacity in any relevant geographic market (including an RTO/ISO market); (2) ownership or control of inputs to electric power production or ownership, operation or control of transmission facilities; and (3) affiliation with any entity that: (a) Owns or controls generation facilities or has long term firm purchases of capacity or energy that results in cumulative net increases of 100 MW or more in a relevant geographic market; (b) owns or controls inputs to electric power production; (c) owns, operates, or controls transmission facilities; or (d) has a franchised service area.

64. In addition, the Commission's regulations require public utilities to file EQRs,[100] which summarize transaction information for cost-based and market-based rate sales and contractual terms and conditions in the public utility's agreements for jurisdictional services.[101] The data collected in EQRs provide information that the Commission needs to perform its regulatory functions and ''provide[s] greater price transparency, promote[s] competition, enhance[s] confidence in the fairness of the markets, and provide[s] a better means to detect and discourage discriminatory practices.'' [102] The EQR also ''strengthens the Commission's ability to identify potential exercises of market power or manipulation and to better evaluate the competitiveness of interstate wholesale electric markets.'' [103] Nothing in the Commission's proposal here affects the EQRs; thus, EQRs would remain available for the Commission and others to use to detect the potential exercise of market power. Indeed, the EQR data is a critical component of the Commission's market oversight activities, which aim, among other things, to identify potential opportunities for the exercise of market power.

65. Furthermore, nothing in this proposal would prevent the Commission or others from initiating a proceeding under Federal Power Act section 206 if concerns are identified about a seller's market power or the ability of RTO/ISO market monitoring and mitigation to address any such market power.

66. Although it is true that the Commission would not receive the indicative screens for market-based rate sellers in certain RTO/ISO markets under this proposal, we do not believe that this would affect the Commission's ability to prevent and deter abusive conduct. In fact, the Commission-approved RTO/ISO market monitoring and mitigation in large part is designed to do just that—prevent the exercise of market power before it happens. As discussed above, the RTOs/ISOs screen for potential market power using either a structural test such as the three pivotal supplier screen or a conduct and impact

[93] *See supra* section II.C.

[94] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 963.

[95] *See* 18 CFR 35.37(a)(2), 35.37(d). While the requirement to submit an organizational chart is currently stayed, market-based rate sellers still must provide information regarding their affiliates and corporate structure or upstream ownership. Sellers seeking to obtain or retain market-based rate authority must trace upstream ownership until all upstream owners are identified. In addition, market-based rate sellers must identify all of their affiliates and, when seeking market-based rate authority, state the business activities of its owners and state whether such owners are in any way involved in the energy industry. *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 181 n.258.

[96] *See* 18 CFR App. A to subpt. H of pt. 35.

[97] Information provided in the indicative screens does not support the analysis of vertical market power. Thus, the screens do not provide insight into the ability of a vertically-integrated company to use its transmission assets to favor its generation assets.

[98] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 301, 304; Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 126.

[99] Change in status filings, which currently do not require the submission of indicative screens, are a useful tool in assessing a seller's ability to exercise market power. We will, therefore, retain this requirement for RTO/ISO sellers.

[100] *See* 18 CFR 35.10b. The EQR requirement also applies to non-public utilities with more than a *de minimis* market presence. *Id.*

[101] *See Electric Market Transparency Provisions of Section 220 of the Federal Power Act,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675, at P3 (2011) (*citing Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 73 FR 65526 (Nov. 4, 2008), 125 FERC ¶ 61,103 (2008)).

[102] *Electric Market Transparency Provisions of Section 220 of the Federal Power Act,* FERC Stats. & Regs. ¶ 32,675 at P3 (citing Order No. 2001, FERC Stats. & Regs. ¶ 61,127 at P 31).

[103] *Electricity Mkt. Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, FERC Stats. & Regs. ¶ 31,336, at P 1 (2012) (cross-referenced at 140 FERC ¶ 61,232), *order on reh'g and clarification,* Order No. 768–A, 143 FERC ¶ 61,054 (2013).

test, which first compares a resource's offer to its reference level and then examines the extent to which the offer affects market clearing prices.

67. RTO/ISO market power mitigation often involves replacing the offer with an appropriate reference level, which is based on an estimate of the resource's short run marginal cost. Thus, RTO/ISO market power mitigation is intended to prevent the exercise of market power before it can occur, and does so using mitigation that is similar to the Commission's default mitigation for sellers that fail the Commission's market power screens—cost-based mitigation.[104]

68. The Commission's market-based rate regulations also provide that a seller that has been found to have horizontal market power ''may propose mitigation tailored to its own particular circumstances to eliminate its ability to exercise market power.'' [105] In many ways, RTO/ISO market monitoring and mitigation is just an alternative method that the Commission has approved to mitigate market power that a seller may have in an RTO/ISO market, and this mitigation functions to prevent an exercise of market power before it occurs.

69. We do not believe that the Commission has subdelegated its responsibility with respect to the RTO/ISO markets; to the contrary, it has approved RTO/ISO proposed rules that help ensure that rates for sales in RTO/ISO markets are just and reasonable.[106] As the Commission has previously explained, ''Commission-approved RTOs and ISOs run real–time energy markets under Commission–approved tariffs. These single price auction markets set clearing prices on economic dispatch principles, to which various safeguards have been added to protect against anomalous bidding.'' [107] Thus, one way in which the Commission ensures just and reasonable rates is through approval of RTO/ISO tariffs.[108]

70. Furthermore, the Commission retains RTO/ISO market oversight through proceedings under Federal Power Act section 206. Specifically, the Commission retains the right to consider whether to institute separate Federal Power Act section 206 proceedings that would be open to all interested entities to investigate whether the existing RTO/ISO mitigation continues to be just and reasonable and, if not, how such mitigation should be revised.[109] In addition, affected parties may argue, in the context of a specific market-based rate application or triennial review, that changed circumstances have rendered such mitigation no longer just, reasonable and not unduly discriminatory. Thus, the Commission takes an ongoing role in ensuring the justness and reasonableness of rates in the RTO/ISO markets.[110]

IV. Information Collection Statement

71. The Paperwork Reduction Act (PRA) [111] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB's regulations [112] require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

72. The revisions proposed in this NOPR would clarify and update the requirements specified above for sellers seeking to obtain or retain market-based rate authority that study certain RTOs, ISOs, or submarkets therein, as discussed above. The Commission anticipates that the revisions, once effective, would reduce regulatory burdens.[113] The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[114]

73. While the Commission expects that the regulatory revisions proposed herein will reduce the burdens on affected entities, the Commission nonetheless solicits public comments regarding the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

74. Section 35.37 of the Commission's regulations currently requires market-based rate sellers to submit a horizontal market power analysis when seeking to obtain or retain market-based rate authority.[115] We propose to implement a streamlined procedure that will eliminate the requirement to file the indicative screens as part of a horizontal market power analysis for any market-based rate seller that studies any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. Market-based rate sellers that study an RTO, ISO, or submarket therein, would continue to be required to submit indicative screens for authorization to make energy, capacity, or ancillary services sales at market-based rates in any RTO/ISO market that lacks an RTO/ISO-administered energy, capacity, or ancillary services market subject to Commission-approved RTO/ISO monitoring and mitigation. Eliminating the requirement for certain sellers to file indicative screens will reduce the burden of filing a horizontal market power analysis for a large

[104] The Commission's default mitigation for sellers that fail market power screens may be found at 18 CFR 35.38. Mitigation for short-term sales—sales of one week or less—is set equal to the seller's incremental cost plus a ten percent adder. This mitigation is very similar to an RTO/ISO seller's reference level price, as discussed above.

[105] 18 CFR 35.38.

[106] The Commission has flexibility in how it ensures that rates are just and reasonable. The Supreme Court has previously found that, while statutes such as the Natural Gas Act, and the Federal Power Act direct that rates be just and reasonable, they do not specify the means by which that is to be attained. *See FPC* v. *Texaco, Inc.,* 417 U.S. 380, at 387 (1974). Furthermore, the Commission has previously found that it is not an impermissible subdelegation of its responsibility to ensure just and reasonable rates when it approves certain RTO/ISO actions as detailed in Commission-approved RTO/ISO tariffs. *See e.g., Midwest Indep. Transmission Sys. Operator, Inc.,* 111 FERC ¶ 61,053, at P 25, *order on reh'g,* 112 FERC ¶ 61,086 (2005); *also Midwest Indep. Transmission Sys. Operator, Inc.,* 136 FERC ¶ 61,100, at P 31 (2011); *San Diego Gas & Elec. Co.* v. *Sellers of Energy & Ancillary Servs.* 127 FERC ¶ 61,269, at P 109 (2009), *order on reh'g,* 131 FERC ¶ 61,144 (2010).

[107] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 963 (footnotes omitted).

[108] The Commission has flexibility in how it ensures that rates and just and reasonable. The Supreme Court has previously found that, while statutes such as the Natural Gas Act, and the Federal Power Act direct that rates be just and reasonable, they do not specify the means by which that is to be attained. *See FPC* v. *Texaco, Inc.,* 417 U.S. 380, at 387 (1974).

[109] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 112.

[110] *See Midwest Indep. Transmission Sys. Operator, Inc.,* 136 FERC ¶ 61,100, at P 31 (2011); *La. Pub. Serv. Comm'n,* 761 F.3d 540, 552 (5th Cir. 2014).

[111] 44 U.S.C. 3507(d).

[112] 5 CFR 1320.

[113] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[114] 44 U.S.C. 3507(d).

[115] 18 CFR 35.37.

portion of market-based rate sellers when filing triennial updated market power analyses, initial applications for market-based rate authority, and notices of change in status.

75. *Burden Estimate:* The estimated burden and cost for the requirements contained in this NOPR follow.[116]

Burden Reductions as Proposed in NOPR in RM19–2–000 [117]

BURDEN REDUCTIONS AS PROPOSED IN NOPR IN RM19–2–000

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Market Power Analysis in New Applications for Market-based Rates for RTO/ISO Sellers	72	1	72	−230 −$21,203	−16,560 −$1,526,666	−$21,203
Triennial Market Power Analysis Updates for RTO/ISO Sellers	33	1	33	−230 −$21,203	−7,590 −$699,722	−$21,203
Total			105		−24,150 −$2,226,388	−$42,406

76. After implementation of the proposed changes, the total estimated annual reduction in cost burden to respondents is $2,226,388 [24,150 hours * $92.19 [118]) = $2,226,388].

Title: Proposed Revisions to Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities (FERC–919).

Action: Revision of Currently Approved Collection of Information.

OMB Control No.: 1902–0234.

Respondents for this Rulemaking: Public utilities, wholesale electricity sellers, businesses, or other for profit and/or not for profit institutions.

Frequency of Responses:

Initial Applications: On occasion.

Updated Market Power Analyses: Updated market power analyses are filed every three years by Category 2 sellers seeking to retain market-based rate authority.

Change in Status Reports: On occasion.

Necessity of the Information:

Initial Applications: In order to retain market-based rate authority, the Commission must first evaluate whether a seller has the ability to exercise market power. Initial applications help inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be just and reasonable.

Updated Market Power Analyses: Triennial updated market power analyses allow the Commission to monitor market-based rate authority to detect changes in market power or potential abuses of market power. The updated market power analysis permits the Commission to determine that continued market-based rate authority will still yield rates that are just and reasonable.

Change in Status Reports: The change in status requirement permits the Commission to ensure that rates and terms of service offered by market-based rate sellers remain just and reasonable.

Internal Review: The Commission has reviewed the reporting requirements and made a determination that revising the reporting requirements will ensure the Commission has the necessary data to carry out its statutory mandates, while eliminating unnecessary burden on industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873]. Please send comments concerning the collection of information and the associated burden estimates to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM14–14, FERC–919, and OMB Control Number 1902–TBD.

V. Environmental Analysis

77. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[119] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[120] The actions proposed here fall within the categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, or do not

[116] Other Sellers in the chart below are market-based rate sellers that do not have an RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets as a relevant geographic market.

[117] Due to the fact that change in status requirements may include the indicative screens in their market power analysis depending on the change reported, but are not necessary, we estimate the change in burden for change in status filings is *de minimis. See* 18 CFR 35.42.

[118] The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at *http://www.bls.gov/oes/current/naics2_22.htm,* plus benefits information at *http://www.bls.gov/news.release/ecec.nr0.htm*). The salaries (plus benefits) for the three occupational categories are:

Economist: $71.98/hour.

Electrical Engineer: $60.90/hour.

Lawyer: $143.68/hour.

The average hourly cost of the three categories is $92.19 [($71.98 + $60.90 + $143.68)/3].

[119] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[120] 18 CFR 380.4.

substantially change the effect of legislation or regulations being amended.[121] In addition, the proposed rule is categorically excluded as an electric rate filing submitted by a public utility under Federal Power Act sections 205 and 206.[122] As explained above, this proposed rule, which addresses the issue of electric rate filings submitted by public utilities for market-based rate authority, is clarifying in nature. Accordingly, no environmental assessment is necessary and none has been prepared in this NOPR.

VI. Regulatory Flexibility Act

78. The Regulatory Flexibility Act of 1980 (RFA) [123] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to perform this sort of analysis if the proposed activities within the NOPR would not have such an effect.

79. Out of the market-based rate filers who are potential respondents subject to the requirements proposed by this NOPR, the Commission estimates approximately 56 percent will be small as defined by SBA regulations.[124]

80. The proposed rule will eliminate some requirements and reduce burden on entities of all sizes (public utilities seeking and currently possessing market-based rate authority). Implementation of the proposed rule is expected to reduce total annual burden by 24,150 hours per year with a related reduced cost of $2,226,388 per year to the industry when filing triennial market power analyses and market power analyses in new applications for market-based rates, and will further reduce burden when filing notices of change in status.

81. As discussed in Order No. 697,[125] current regulations regarding market-based rate sellers under Subpart H to Part 35 of Title 18 of the Code of Federal Regulations exempt many small entities from significant filing requirements by designating them as Category 1 sellers.[126] Category 1 sellers are exempt from triennial updates and may use simplifying assumptions, such as sellers with fully-committed generation may submit an explanation that their generation is fully committed in lieu of submitting indicative screens, that the Commission allows sellers to utilize in submitting their horizontal market power analysis.

82. The proposed rule to no longer require certain RTO/ISO sellers to file indicative screens will reduce the burden on all sellers in RTOs, including small entities in RTOs. The changes to the Commission's regulations for market-based rate sellers are estimated to cause a reduction of 52 percent in total annual burden to market-based rate sellers when filing triennial market power analyses and market power analyses in new applications for market-based rates, including small entities.

83. Accordingly, the Commission certifies that the revised requirements proposed in this NOPR will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required. The Commission finds that the regulations proposed here should not have a significant impact on small businesses.

VII. Comment Procedures

84. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 21, 2019. Comments must refer to Docket No. RM19–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

85. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

86. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426.

87. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

88. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

89. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

90. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner McIntyre is not voting on this order. Commissioner McNamee is voting present.

Issued: December 20, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

[121] 18 CFR 380.4(a)(2)(ii).

[122] 18 CFR 380.4(a)(15).

[123] 5 U.S.C. 601–612.

[124] In 13 CFR 121.201, Subsector 221, the Commission uses the North American Industry Classification System codes 221122 (Electric Power Distribution), 221121 (Electric Bulk Power Transmission and Control), 221113 (Nuclear Electric Power Generation), 221114 (Solar Power Electric Power Generation), and 221115 (Wind Power Electric Generation). The highest threshold among these NAICS codes results in any respondent entities below 1,000 employees being considered as ''small.''

[125] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1126–1129.

[126] Category 1 Sellers are power marketers and power producers that own or control 500 MW or less of generating capacity in aggregate and that are not affiliated with a public utility with a franchised service territory. In addition, Category 1 sellers must not own or control transmission facilities, and must present no other vertical market power issues. 18 CFR 35.36(a)(2).

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 35.37 [Amended]

■ 2. Amend § 35.37 by redesignating paragraph (c)(5) as (c)(7) and adding new paragraphs (c)(5) and (c)(6) to read as follows:

§ 35.37 Market power analysis required.

* * * * *

(c) * * *

(5) In lieu of submitting the indicative market power screens, Sellers studying regional transmission organization (RTO) or independent system operator (ISO) markets that operate RTO/ISO-administered energy, ancillary services, and capacity markets may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power Sellers may have in those markets.

(6) In lieu of submitting the indicative market power screens, Sellers studying RTO or ISO markets that operate RTO/ISO-administered energy and ancillary services markets, but not capacity markets, may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power that Sellers may have in energy and ancillary services. However, Sellers studying such RTOs/ISOs would need to submit indicative market power screens if they wish to obtain market-based rate authority for wholesale sales of capacity in these markets.

* * * * *

[FR Doc. 2019–00459 Filed 1–31–19; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0046]

RIN 0960–AH86

Removing Inability To Communicate in English as an Education Category

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to eliminate the education category ''inability to communicate in English'' when we evaluate disability claims for adults under titles II and XVI of the Social Security Act (Act). Changes in the national workforce since we added this category to our rules in 1978 demonstrate that this education category is no longer a reliable indicator of an individual's educational attainment or the vocational impact of an individual's education. The proposed revisions reflect research and data related to English language proficiency, work, and education; expansion of the international reach of our disability programs; and audit findings by our Office of the Inspector General (OIG). The proposed revisions would help us better assess the vocational impact of education in the disability determination process.

DATES: To ensure that your comments are considered, we must receive them by no later than April 2, 2019.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2017–0046 so that we may associate your comments with the correct regulation. CAUTION: You should be careful to include in your comments only information you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the web page's ''Search'' function to find docket number SSA–2017–0046 and then submit your comment. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments and background documents are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Current Disability Rules for Adults

Title II of the Act provides for the payment of disability insurance benefits to fully insured individuals under the Act. Title II also provides for the payment of child's insurance benefits for individuals who become disabled before attaining age 22, and for the payment of widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals.[1] In addition, title XVI of the Act provides for Supplemental Security Income (SSI) payments to eligible individuals who are aged, blind, or disabled and have limited income and resources.[2]

For adults (including individuals claiming child's insurance benefits based on disability under title II), the Act defines ''disability'' under both titles II and XVI as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[3]

In many cases, the Act requires us to consider an adult claimant's education when we determine whether or not he or she is disabled. The Act states that an adult shall be determined to be under a disability only if his physical or mental impairment(s) are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.[4]

We use a five-step sequential evaluation process to determine whether an adult is disabled based on this statutory definition.[5] If we are unable to find an individual disabled or not disabled at a given step, we proceed

[1] See sections 202(d)(1)(B)(ii), (e)(1)(B)(ii), (f)(1)(B)(ii), 223(a) of the Act, 42 U.S.C. 402(d)(1)(B)(ii), (e)(1)(B)(ii), (f)(1)(B)(ii), 423(a).

[2] Section 1611(a) of the Act, 42 U.S.C. 1382(a).

[3] See sections 223(d)(1)(A), 1614(a)(3)(A) of the Act, 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A).

[4] See sections 223(d)(2)(A), 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

[5] 20 CFR 404.1520(a)(4) and 416.920(a)(4).

to the next step.[6] If we proceed to the fifth and final step, we consider the individual's residual functional capacity (RFC), which is the most the individual can still do despite his or her limitations,[7] together with the individual's vocational factors of age, education, and work experience,[8] to determine if the individual can make an adjustment to perform other work previously not performed.[9] We find individuals to be disabled if they cannot make an adjustment to perform other work.[10] We find individuals not disabled if they can make an adjustment to perform other work.[11] Other work that individuals can adjust to must exist in significant numbers in the national economy.[12] At the final step of our sequential evaluation process, we use the Medical-Vocational Guidelines (grid rules) to administer the Act's definition of disability and direct or guide determinations and decisions about whether individuals are disabled.[13] The education category ''inability to communicate in English'' is administered through the grid rules.

Current Policy for Education as a Vocational Factor

In this NPRM, we propose to eliminate the education category of ''inability to communicate in English'' from step five of the disability sequential evaluation process. Instead, we would consider an individual's education using the other current education categories of high school education and above, marginal education, limited education, and illiteracy.

Our current rules explain how we evaluate the vocational factor of education.[14] Education is primarily used to mean formal schooling or other training that contributes to an individual's ability to meet the vocational requirements of work, such as reasoning ability, communication skills, and arithmetic ability.[15] However, a lack of formal schooling does not necessarily mean that an individual is uneducated or does not have reasoning, communication, and arithmetic abilities. Past work experience and the kind of responsibilities an individual had when they were working, daily activities, hobbies, or results of testing may show that the individual has significant intellectual ability that can be used to work.[16]

Generally, we will use individuals' highest completed numerical grade level to determine the education category.[17] However, we may adjust an individual's education category if there is evidence that his or her educational abilities are higher or lower than the numerical grade level completed in school.[18] We discuss the categories that examine such evidence below.

We currently use five categories of education: High school education and above, marginal education, limited education, illiteracy, and inability to communicate in English.[19] These categories of education are organized into four levels in the grid rules: High school graduate or more; limited or less; marginal or none; and illiterate or unable to communicate in English.

High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above.[20] We generally consider that someone with these educational abilities can do semi-skilled through skilled work. For individuals in this category, we also consider whether there is recently completed education that provides for direct entry into skilled work. If they recently completed education allowing for direct entry into skilled work and are able to perform the work for which they received the education, we do not consider them to be disabled.[21]

Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs.[22] We generally consider an individual with a 7th grade through the 11th grade level of formal education to have a limited education.

Marginal education means ability in reasoning, arithmetic, and language skills needed to do simple, unskilled jobs.[23] We generally consider an individual with formal schooling at a 6th grade level or less to have a marginal education.

Illiteracy means the inability to read or write.[24] We consider an individual illiterate if he or she cannot read or write a simple message, such as instructions or inventory lists, even though the individual can sign his or her name. Generally, we expect an illiterate individual to have little or no formal schooling.

Our rules explain that we consider inability to communicate in English an education category because the ability to speak, read, and understand English is generally learned or increased in school.[25] Our current rules further explain that because English is the dominant language of this country, it may be difficult for someone who does not speak and understand English to do a job, regardless of the amount of education he or she may have in another language.[26] Therefore, under our current rules, we consider an individual's ability to communicate in English when we evaluate what work, if any, he or she can do. We do not consider fluency in other languages.[27]

Based on the organization of education categories in the current grid rules, an individual who is unable to

[6] *Id.* At the first step, we consider the individual's work activity, if any. If the individual is doing substantial gainful activity, we will find the individual not disabled. At the second step, we consider the medical severity of the individual's impairment(s). If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, we will find the individual not disabled. At the third step, we also consider the medical severity of the impairment(s). If the individual has an impairment(s) that meets or equals one of our listings in 20 CFR part 404, subpart P Appendix 1 and meets the duration requirement, we will find the individual is disabled. If the individual is found not disabled at the third step, we consider our assessment of the individual's residual functional capacity and his or her past relevant work at the fourth step. If the individual can still do his or her past relevant work, we will find that the individual is not disabled. At the fifth and last step, we consider our assessment of the individual's residual functional capacity and his or her age, education, and work experience to see if the individual can make an adjustment to other work. If so, we will find that the individual is not disabled. If the individual cannot make an adjustment to other work, we will find the individual disabled. See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[7] See 20 CFR 404.1545 and 416.945.

[8] See 20 CFR 404.1520(g) and 416.920(g).

[9] 20 CFR 404.1520(a)(4)(v) and 416.920(a)(4)(v).

[10] *Id.*

[11] *Id.*

[12] 20 CFR 404.1560(c) and 416.960(c).

[13] 20 CFR 404, Subpart P, Appendix 2.

[14] See 20 CFR 404.1564 and 416.964.

[15] See 20 CFR 404.1564(a) and 416.964(a).

[16] *Id.*

[17] See 20 CFR 404.1564(b) and 416.964(b).

[18] *Id.*

[19] See 20 CFR 404.1564(b)(1)–(5) and 416.964(b)(1)–(5).

[20] See 20 CFR 404.1564(b)(4) and 416.964(b)(4).

[21] See 20 CFR 404, Subpart P Appendix 2, rules 201.00(d) and (g), and Tables No. 1, 2, and 3.

[22] See 20 CFR 404.1564(b)(3) and 416.964(b)(3).

[23] See 20 CFR 404.1564(b)(2) and 416.964(b)(2).

[24] See 20 CFR 404.1564(b)(1) and 416.964(b)(1).

[25] See 20 CFR 404.1564(b)(5) and 416.964(b)(5).

[26] This policy dates to 1978. See 43 FR 55349 (1978) (codified at 20 CFR 404.1507, 416.907 (1979)). Prior to that time, our rules did not specifically address the inability to communicate in English as a vocational factor. See 20 CFR 404.1502(e) and 416.902(e) (1978). Rather, since 1960, 25 FR 8100, 8101 (1960) (codified at 20 CFR 404.1502(e) (1961)), the rules provided that education and training are factors in determining an individual's employment capacity, that a lack of formal schooling was not necessarily proof that an individual is uneducated, and that the kinds of responsibilities an individual had while working may indicate an ability to do more than unskilled work, even though an individual's formal education has been limited.

[27] See 20 CFR 404.1564(b)(5) and 416.964(b)(5).

communicate in English may be considered under the grid rules specifying education level of ''illiterate or unable to communicate in English'' or under the broader category of ''limited or less'' or ''marginal or none,'' depending on the individual's age and RFC.[28]

Under the grid rules, age 45 is the earliest point at which English language proficiency can make a difference in disability determination.[29] In other words, the ''inability to communicate in English'' education category makes no difference as to the outcome of disability determination for individuals under 45 years of age. The grid rules are premised on the idea that for individuals under age 45, the inability to communicate in English does not pose a significant vocational limitation because being younger gives them an advantage in adjusting to other work.[30] Our current rules are also based on the premise that English language proficiency has the least significance for unskilled work because most unskilled jobs involve working with things rather than with data or people.[31]

Why We Are Proposing To Revise Our Rules

In 1978, we promulgated the five-step sequential evaluation process and adopted the grid rules, under which we consider the interaction of the individual's residual functional capacity, age, education, and work experience to determine whether or not an individual is disabled under our rules. We propose to revise the rules for how we consider an individual's education in relation to the inability to communicate in English for several reasons. Central to our proposed revisions is that our current rules do not take into account that claimants who cannot read, write, or speak English often have a formal education that may provide them with a vocational advantage. If a claimant meets the current criterion of ''inability to communicate in English,'' we generally disregard the amount of formal schooling the individual may have and evaluate the claim in the same manner as we do for a claim filed by an illiterate individual. Moreover, since we adopted these rules, the U.S. workforce has become more linguistically diverse and work opportunities have expanded for individuals who lack English proficiency. Further, our current rules treat English language proficiency as a relevant vocational factor even when claimants live in countries outside the U.S. or in U.S. territories where English is not a dominant language, leading to disparate results based on the location of the claimants.

Claimants Who Are Unable To Read, Write, or Speak English Often Have Formal Education That Could Provide a Vocational Advantage

Claimants who report an inability to read, write, or speak English often report having a high school education or more. In fiscal year 2016, approximately 49% of title II claimants and 39% of title XVI claimants who reported an inability to read, write, or speak English,[32] also reported having completed a high school education or more.[33] Further, the claimants who reported an inability to read, write, or speak English and who had at least a high school education had past work experience at higher skill levels, when compared to the claimants with less education.[34] Our claims data indicate that higher levels of education may provide a vocational advantage, even for individuals who are unable to communicate in English.[35]

The U.S. Workforce Has Become More Linguistically Diverse

Since we adopted our current rules in 1978, linguistic diversity in the national economy has increased, which has changed the way the inability to communicate in English affects an individual's ability to work. For purposes of the data analysis in this NPRM, we refer to individuals who self-identified in the U.S. Census Bureau's (Census) American Community Survey as speaking a language other than English at home and speaking English ''well,'' ''not well,'' or ''not at all'' collectively as LEP.[36] We selected this definition consistent with how the Census defines LEP.[37]

In absolute numbers, the working age population (ages 25–64) with LEP increased from approximately 5.4 to 17.8 million between 1980 and 2016, while more than doubling, from 5.1% to 10.5%, as a percentage of the population.[38] Within this group, the number of individuals who spoke no English more than quadrupled from approximately 682,000 to 2.8 million (representing growth from 0.6% to 1.7%, as a percentage of the working age population).[39]

Between 1980 and 2016, the number of non-English speaking workers in the 25–64 age range grew from approximately 373,000 to 1.7 million.[40] During the same period, the labor force participation rate for working age

[28] See 20 CFR 404.1564(b)(5) and 416.964(b)(5).

[29] See 20 CFR 404, Subpart P Appendix 2, Table No. 1.

[30] See 20 CFR 404, Subpart P Appendix, rule 201.00(h)(2).

[31] See 20 CFR 404, Subpart P Appendix 2, rules 201(h)(4)(i) and 202(g).

[32] Under our current rule, these claimants may fall under the ''illiterate'' or ''inability to communicate in English'' category. See 20 CFR 404.1564(b)(1) and (5), and 416.964(b)(1) and (5).

[33] This conclusion is based on our analysis of the initial determination data for all fiscal year 2016 claims in the U.S. Table 1: Self-reported education level of claimants reporting an inability to read, write or speak English, Adult Initial Determinations, FY 2016 (Table 1), available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046. We note that in the fiscal year 2016, we adjudicated over 1.5 million and 1.2 million claims, respectively, under titles II and XVI at the initial level, and approximately 7.7% (118,815) title II claimants and 10.1% (128,084) of the title XVI claimants reported an inability to read, write, or speak English.

[34] This conclusion is based on our analysis of the title II claims allowed under the grid rules 201.17 and 202.09 at the initial level within the U.S. in fiscal year 2017. See Graph 1: Self-reported education and Specific Vocational Preparation (SVP) level of past relevant work by Title II claimants reporting an inability to read, write, or speak English allowed under 201.17 or 202.09, Initial Determinations within U.S. and U.S. territories, FY 2017, available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[35] *Id.*

[36] Our analysis is based on the data published by the Census, which is the primary source of data on languages spoken in the U.S. To obtain data on an individual's ability to speak English, Census has been asking three questions since 1980. The first of the three part-question asks if the respondent speaks a language other than English at home and gives the option to choose ''No, only speaks English'' or ''Yes.'' If the respondent selects ''Yes,'' the second part of the question asks the respondent to identify the language spoken at home. Finally, the third part of the question asks the respondent to rate his or her ability to speak English as ''very well,'' ''well,'' ''not well,'' and ''not at all.'' See Measuring America: The Decennial Censuses From 1790 to 2000, pp. 85, 92, and 101 available at *https://www.census.gov/prod/2002pubs/pol02-ma.pdf.* In this NPRM, we refer to individuals speaking only English at home as individuals speaking ''only English.'' We refer to individuals speaking another language at home and speaking no English as individuals speaking English ''not at all'' or as individuals speaking no English.

[37] The U.S. Census Bureau defines LEP as individuals who speak English less than ''very well.'' U.S. Census Bureau American Community Survey (ACS), What State and Local Governments Need to Know, p. 12, n. 8, February 2009, *https://www.census.gov/content/dam/Census/library/publications/2009/acs/ACSstateLocal.pdf.*

[38] See SSA Office of Research, Evaluation, and Statistics (ORES) analysis of 1980 Census and 2016 American Community Survey: English Proficiency, Table 1: Estimated working-age (25–64) population, by English proficiency and educational attainment, 1980 and 2016 (ORES Table 1). Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[39] *Id.* We note that ORES Tables refer to an individual speaking no English as an individual who ''does not speak English.''

[40] See ORES analysis of 1980 Census and 2016 American Community Survey: English Proficiency, Table 2: Estimated labor force participation of working-age population (25–64), by English proficiency and educational attainment, 1980 and 2016 (ORES Table 2). Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

individuals who speak no English increased from approximately 54.7% to 61.5%.[41] Notably, considering the working age population with ''less than high school diploma,'' the 2016 labor force participation rate for those speaking no English (60.5%) surpassed the labor force participation rate of those speaking ''only English'' (48.9%).[42] In 1980, the reverse was true; working age individuals with less than a high school diploma speaking only English had a 60.7% labor force participation rate that exceeded the 54.5% rate for those speaking no English.[43]

The increase in labor force participation by individuals who lack English proficiency may be in part due to the increase in low-skilled work in the national economy. In 2014, our Office of Research, Evaluation, and Statistics (ORES) prepared an Evidence Synthesis consolidating information from research we commissioned and other available research for the purposes of modernizing our vocational regulations.[44] ORES' literature review on the vocational factor of education indicates that with the introduction of new technology replacing moderately skilled workers, there are fewer moderately skilled jobs and higher numbers of low and high skilled jobs.[45] Indeed, our claims data show that many claimants who may fall within the ''inability to communicate in English'' category have a history of working in occupations requiring lower level skills such as laborer, machine operator, janitor, cook, maintenance, and housekeeping.[46] Consistent with our claims data and ORES' literature review, a Brookings Institution's (Brookings) study of LEP workers in the U.S. found that a lack of English proficiency does not generally prevent low-skilled workers from obtaining employment.[47] Brookings' analysis shows that over 1 million individuals with LEP, including those who speak English ''not at all,'' are represented in each of the following occupations: Building and grounds cleaning and maintenance; production; construction and extraction; food preparation and serving; transportation and material moving; sales and related occupations; and office and administrative support.[48] In the first four of the listed occupations, the workers with LEP make up more than 10% of total workers.[49] In sum, both our claims data and external data indicate that work opportunities have expanded and labor force participation has increased for individuals who may fall within the ''inability to communicate in English'' education category.[50]

The International Reach of Our Title II Disability Program Has Steadily Expanded Since 1978

Since we adopted our current education categories in 1978, we have established a network of bilateral Social Security agreements that coordinate the U.S. Social Security program with the comparable programs of other countries.[51] These international Social Security agreements, often called ''totalization agreements,'' have two main purposes. First, they eliminate dual Social Security taxation, the situation that occurs when a worker from one country works in another country and is required to pay Social Security taxes to both countries on the same earnings. Second, the agreements help fill gaps in benefit protection for workers who have divided their careers between the U.S. and another country.

The international reach of our title II disability program has steadily expanded over the years. In 1978, we had a totalization agreement with only one country.[52] We now have totalization agreements with 28 countries.[53] English is the predominant language in only four of those countries (Canada, United Kingdom, Ireland, and Australia). When an individual files a disability claim based in part on eligibility under a totalization agreement, we use the same five-step sequential evaluation process to determine whether he or she qualifies for disability benefits. Under our current rules, even if individuals applying for disability live in a country with a totalization agreement where English is not a dominant language, we must still classify them in the ''inability to communicate in English'' education category if they cannot speak, read, or write English. In light of the significant expansion of the totalization program since 1978, we believe our proposal to consider individuals' education level would strengthen our international disability program abroad.

OIG Audit Recommendation

Eligibility for the title II disability program benefits extends to U.S. nationals in the U.S. territories, which include Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Marianas Islands, and American Samoa. As we do for individuals in countries with totalization agreements, we currently consider the inability to communicate in English to be a vocationally relevant factor when adjudicating disability claims in all U.S. territories, regardless of whether English is the dominant

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] See the Extraction of SSA's Office of Research, Evaluation, and Statistics, ''Evidence Synthesis: The Use of Vocational Factors in the Disability Determination Process'' (Sept. 2014) (Extraction of Evidence Synthesis), available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046. The Evidence Synthesis in its entirety is available at *https://www.regulations.gov/docket?D=SSA-2014-0081.*

[45] See the Extraction of Evidence Synthesis. See also Acemoglu, Daren, and Autor, David. 2011. ''Chapter 12—Skills, Tasks and Technologies: Implications for Employment and Earnings,'' in Ashenfelter, O, and Card, D, eds. Handbook of Labor Economics, 4(B): 1043–1171 (available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046).

[46] This is based on our analysis of over 2200 title II and XVI claims allowed under grid rules 201.17 and 202.09 in the fiscal year 2017 only within the U.S. States and the District of Columbia. See Table 2: Top 10 past relevant work held by Title II and Title XVI claimants found disabled under the grid rules 201.17 or 202.09, Adult Initial Determinations within U.S., FY 2016 (Table 2). Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[47] Jill H. Wilson, *Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas,* Metropolitan Policy Program, at Brookings Institution (September 2014), p. 10, available at *https://www.brookings.edu/wp-content/uploads/2014/09/Srvy_EnglishSkills_Sep22.pdf.*

[48] See Table 2. Occupations with at Least 1 Million LEP Workers, 2012. *Id.* at 13.

[49] *Id.*

[50] We acknowledge that the definition of LEP we used for purposes of the data analysis in this NPRM is not an exact match for the claimants who may fall within the ''inability to communicate in English'' education category. We also note that the ''inability to communicate in English'' education category is broader than what the ordinary meaning of the phrase ''inability to communicate'' may otherwise suggest and can apply to individuals who have no ability or some ability to communicate in English. Under our current rules, individuals who have some or even high capacity to read and write English may be found unable to communicate in English if they are unable to speak English. Alternatively, individuals who can speak some English but are unable to read English may be found unable to communicate in English. In POMS DI 25015.010 C.1.b we expressly state that an individual is unable to communicate in English when the individual cannot speak, understand, read ''or'' write a simple message in English. This means that even when an individual has some ability to do three out of four, the individual will still be categorized as unable to communicate in English if he or she cannot do all four. (*https://secure.ssa.gov/apps10/poms.NSF/lnx/0425015010*). The population described as LEP for the purposes of the data analysis in this NPRM is comparable to the claimant population who may fall under the ''inability to communicate in English'' education category.

[51] Additional information is available at *https://www.ssa.gov/international/agreements_overview.html.*

[52] *Id.*

[53] *Id.* These countries are Italy, Germany, Switzerland, Belgium, Norway, Canada, the United Kingdom, Sweden, Spain, France, Portugal, Netherlands, Austria, Finland, Ireland, Luxembourg, Greece, South Korea, Chile, Australia, Japan, Denmark, the Czech Republic, Poland, the Slovak Republic, Hungary, Uruguay, and Brazil.

language.[54] In 2015, OIG examined the trends associated with the application of existing grid rules involving the inability to communicate in English in Puerto Rico.[55] OIG's audit of claims in Puerto Rico indicated that the grid rules involving the inability to communicate in English merit a closer examination.

Following the audit, OIG recommended that we evaluate the appropriateness of the grid rules related to the inability to communicate in English when determining eligibility for disability for individuals similar to those evaluated in the audit. In response to the audit, we analyzed the fiscal year 2016 national data for claims adjudicated under the two main grid rules dealing with the inability to communicate in English (*i.e.,* grid rules 201.17 and 202.09). In FY 2016, our analysis revealed that claims from Puerto Rico (31.2%), California (19.2%), New York (11.22%), and Florida (5.8%) accounted for 67.42% (1,677) of all initial title II allowances (2,487) made under these two grid rules.[56] While claims allowed under the two grid rules in Puerto Rico accounted for nearly a third of all initial title II allowances under the two grid rules nationally, claims from Puerto Rico represented 1% of all of the 472,468 of initial title II disability allowances.[57]

Our current policy on the inability to communicate in English explains the seemingly disproportionate number of allowances made under grid rules 201.17 and 202.09 in Puerto Rico. According to U.S. census data, 94.3% of the residents in Puerto Rico speak Spanish.[58] Consistent with this data, in fiscal year 2016, 11,564 (86.8%) claimants in Puerto Rico reported an inability to read, write, or speak English.[59] Among the claimants who reported an inability to read, write, or speak English, 9,167 (79.3%) had an education at high school or more.[60]

A subsequent analysis of our data from the fiscal year 2017 similarly showed that 80.4% of the claimants who reported an inability to read, write, or speak English and were approved for disability under the grid rules 201.17 and 202.09 had high school education or more.[61] Their work histories varied and included many professions requiring high levels of education and skills.[62] These data indicate that an ability to communicate in English is not the most appropriate proxy for determining educational categorization.

ANPRM

On September 14, 2015, we published an Advance Notice of Proposed Rule Making (ANPRM) in the **Federal Register** entitled ''Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process.'' [63] In this ANPRM, we documented our longitudinal vocational factors research efforts from 1998 to 2014, and we solicited public comments and supporting data about how each of these vocational factors affects an individual's ability to adjust to other work.[64] We said that we would consider all relevant public comments we received, but that we would not respond directly to them.[65]

Although we did not specifically ask for comments on the ''inability to communicate in English'' education category, 10 of the 137 public comments submitted in response to the ANPRM, including those submitted after we extended the comment period, addressed that issue.[66] Commenters expressed diverging opinions; these commenters did not present supportive data. For example, one commenter said that in today's economy, literacy in English has much less effect on an individual's ability to work because, in the opinion of the commenter, many non-English speakers are currently working throughout the U.S. economy. Another commenter noted that the inability to communicate in English would further erode an individual's ability to work and that it should be given more weight.

Proposed Revisions

For the reasons stated above, we propose to revise the rules we use to evaluate education as a vocational factor for individuals who communicate in a language other than English when we evaluate disability claims for adults under titles II and XVI of the Act. Specifically, we propose to change how we evaluate education for individuals who communicate in a language other than English by removing the education category ''inability to communicate in English.''

Under the proposed regulations, we would not consider an individual's educational attainment to be at a lower education category than his or her highest numeric grade level solely because the education occurred in a language other than English, the individual participated in an English language learner program, such as an English as a second language class, or the individual is deemed to have LEP under current Federal standards.[67] These proposed rules retain our

[54] Among the U.S. territories, English is dominant language only in the U.S. Virgin Islands. In the U.S. Virgin Islands, 71.6% speak English only, 17.2% speak Spanish or Spanish Creole, 8.6% speak French or French Creole, and 2.5% speak other languages. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPVI_VIDP2&prodType=table.* As for the other territories, in American Samoa, 88.6% speak Samoan, 3.9% speak English only, 2.7% speak Tongan, 3% speak other Pacific Island languages, and 1.4% speak Asian languages. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPAS_ASDP2&prodType=table.* In Guam, 43.6% speak English only, 21.2% speak Philippine languages, 17.8% speak Chamorro, 10% speak other Pacific island languages, and 6.3% Asian languages. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPGU_GUDP2&prodType=table.* In Puerto Rico, 94.3% speak Spanish and 5.5% speak English only. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_DP02PR&prodType=table.* In U.S. Northern Mariana Islands, 32.8% speak Philippine languages, 24.1% speak Chamorro, 17% speak English only, 14.1% speak Asian languages, and 5.1% speak other Pacific Island languages. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPMP_MPDP2&prodType=table.*

[55] *Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English,* available at *https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-13-13062_0.pdf.*

[56] See Table 3: Title II Allowances under grid rules 201.17 or 202.09, Adult Initial Determinations within U.S. and U.S. territories, FY 2016 (Table 3). Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[57] *Id.*

[58] Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_DP02PR&prodType=table.*

[59] See Chart 1: Claimants reporting an inability to read, write, or speak English Adult Initial Determinations, Puerto Rico, FY 2016 (Chart 1). Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[60] See Chart 1.

[61] See Chart 2: Self-reported education level of claimants reporting an inability to read, write or speak English allowed under 201.17 or 202.09, Adult Initial Determinations, Puerto Rico, FY 2017. Available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[62] For example, our fiscal year 2017 data on Puerto Rico showed that work history of the claimants allowed under grid rules 201.17 or 202.09 included jobs in nursing, education, management, community work, financial, and legal fields. See Table 4: Past relevant work of Title II claimants with 1 or more years of college education.

Allowances under 201.17 or 202.09, Adult Initial Allowances, Puerto Rico, FY 2017, available *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[63] 80 FR 55050, available at *https://www.regulations.gov/docket?D=SSA-2014-0081.*

[64] Available at *https://www.regulations.gov/docket?D=SSA-2014-0081.*

[65] 80 FR at 55051.

[66] 80 FR 66843, available at *https://www.regulations.gov/docket?D=SSA-2014-0081.*

[67] Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or LEP, available at *https://www.lep.gov/faqs/faqs.html#OneQ1.* We note that the definition of LEP provided by *LEP.gov* differs from the definition of LEP we used to present data as explained earlier.

longstanding and well-supported recognition that more formal education, work experience, and training improve an individual's ability to adjust to other work.

Instead, we would apply our current rules for determining an individual's education category for all claimants regardless of which language they use to communicate. We will use an individual's numerical grade level to determine the education category of the individual, and we may adjust an individual's education category if there is evidence that his or her attained educational abilities are higher or lower than the highest numerical grade level completed in school.

We propose to make these and other minor conforming revisions in 20 CFR 404.1564 and 416.964. We also propose to make other revisions to these sections to remove references to the English language.

We also propose to revise the grid rules. First, we propose to revise all grid rules referencing an inability to communicate in English. Specifically, we would revise ''Illiterate or unable to communicate in English'' to ''Illiterate'' (201.17, 201.23, 202.09, 202.16) and ''Limited or less—at least literate and able to communicate in English'' to ''Limited or Marginal, but not Illiterate'' (201.18, 201.24, 202.10, 202.17). For clarity and ease of use, we propose to revise ''Marginal or none'' to ''Marginal or Illiterate'' (203.01). Second, we propose to make other conforming changes throughout the grid rules consistent with the revisions discussed above.

How We Would Implement These Proposed Revisions

If we adopt these proposed rules as final rules, we would begin to apply them to new applications, pending claims, and continuing disability reviews (CDR), as appropriate, as of the effective date of the final rules.[68]

Effect on Current Regulatory and Subregulatory Guidance

If we adopt these proposed rules as final rules, we would rescind Acquiescence Ruling (AR) 86–3(5), which applies to claims in the Fifth Circuit, because AR 86–3(5) would be inconsistent with the final rules.[69] We may also rescind or replace other current Social Security Rulings to conform to the final rules. Where necessary, we would also issue updated subregulatory guidance.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and will consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this notice of proposed rulemaking, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.*, grouping and order of sections, use of headings, paragraphing?

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

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

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 13771

Based upon the criteria established in Executive Order 13771, we have identified the anticipated program cost and administrative costs as the following.

Anticipated Costs to Our Programs:

Our Office of the Chief Actuary estimates, based on the best available data, that this proposed rule, assuming it is finalized and implemented for all disability decisions completed after June 2, 2019, would result in a reduction of about 6,500 OASDI beneficiary awards per year and 4,000 SSI recipient awards per year on average over the period FY 2019–28, with a corresponding reduction of $4.6 billion in OASDI benefit payments and $0.8 billion in Federal SSI payments over the same period.

Anticipated Administrative Costs to the Social Security Administration:

The Office of Budget, Finance, and Management estimated administrative costs of $97 million for SSA and $24 million for DDS, totaling $121 million, for the 10-year period from FY 2019 through FY 2028.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These proposed rules contain public reporting requirements in the regulation sections listed below, or will require changes in the forms listed below, which we did not previously clear through an existing Information Collection Request.

[68] We would use the final rules beginning on their effective date. We would apply the final rules to new applications filed on or after the effective date, and to claims that are pending on and after the effective date. This means that we would use the final rules on and after their effective date in any case in which we make a determination or decision, including CDRs, as appropriate. See 20 CFR 404.902 and 416.1402.

[69] AR 86–3(5): Martinez v. Heckler, 735 F.2d 795 (5th Cir. 1984) Disability Program—Individuals Who Are Illiterate and Unable To Communicate in English—Titles II and XVI of the Social Security Act addresses whether the Social Security disability grid rules applicable to individuals who are illiterate or unable to communicate in English are applicable to individuals who are illiterate and unable to communicate in English.

OMB No., Form No., Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden
0960–0072; SSA–454	Continuing Disability Review Report	541,000	1	60	541,000
0960–0579; SSA–3368	Disability Report—Adult	2,258,510	1	95	3,575,974
0960–0681; SSA–3373	Function Report—Adult	1,734,635	1	61	1,763,546
0960–0635; SSA–3380 20 CFR 416.964; 20 CFR 404.1564	Function Report—Adult Third Party	709,700	1	61	721,528
0960–0144; SSA–3441	Disability Report-Appeal	637,431	1	50	531,193
Total		5,881,276			7,133,241

SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until April 2, 2019, which is 60 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

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

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 2, 2019.

Nancy Berryhill,

Acting Commissioner of Social Security.

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

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

Subpart P—Determining Disability and Blindness

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

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

■ 2. Amend § 404.1564 by:

■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);

■ b. Redesignating paragraph (b)(6) as paragraph (c), and

■ c. Revising the first sentence of newly redesignated paragraph (c).

The revision to read as follows:

§ 404.1564 Your education as a vocational factor.

* * * * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations.

* * *

■ 3. Amend Appendix 2 to Subpart P of Part 404 by:

■ a. Revising 201.00(h)(1)(iv);

■ b. Revising the second sentence of 201.00(h)(2);

■ c. Revising In 201.00(h)(4)(i);

■ d. In 201.00 Table No. 1, revise rules 201.17, 201.18, 201.23, and 201.24;

■ e. Revising 202.00(d) and (g)

■ f. In 202.00 Table No 2, revising rules 202.09, 202.10, 202.16, and 202.17; and

■ g. In 203.00 Table No. 3, revising rule 203.01.

The revisions to read as follows:

Appendix 2 to Subpart P of Part 404—

* * * * *

201.00 * * *

(h)(1) * * *

(iv) Are illiterate.

(2) * * * It is usually not a significant factor in limiting such individual's ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are illiterate.

* * *

(4) * * *

(i) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations involve working with things (rather than with data or people). In these work functions, education has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capacity for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44, even if they are illiterate.

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY—MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	* *	*	* *	*
201.17	Younger individual age 45–49.	Illiterate	Unskilled or none	Disabled.
201.18	...do	Limited or Marginal, but not Illiterate.	...do	Not disabled.*
*	* *	*	* *	*
201.23	Younger individual age 18–44.	Illiterate	Unskilled or none	Do.[4]
201.24	...do	Limited or Marginal, but not Illiterate.	...do	Do.[4]
*	* *	*	* *	*

* * * * *

202.00

* * * * *

(d) A finding of disabled is warranted where the same factors in paragraph (c) of this section regarding education and previous work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.,* closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy.

* * * * *

(g) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations relate to working with things (rather than data or people). In these work functions, education has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49), even if they are illiterate.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY—MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	* *	*	* *	*
202.09	Closely approaching advanced age.	Illiterate	Unskilled or none	Disabled.
202.10	...do	Limited or Marginal, but not Illiterate.	...do	Not disabled.
*	* *	*	* *	*
202.16	Younger individual	Illiterate	Unskilled or none	Do.
202.17	...do	Limited or Marginal, but not Illiterate.	...do	Do.
*	* *	*	* *	*

203.00

* * * * *

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY—MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	*	Marginal or Illiterate	*	*
*	* *	*	* *	*

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

Subpart I—Determinnig Disability and Blindness

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

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

■ 9. Amend § 416.964 by
■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);
■ b. Redesignating paragraph (b)(6) as paragraph (c); and
■ c. Revising the first sentence of newly redesignated paragraph (c)

The revision to read as follows:

§ 416.964 Your education as a vocational factor.

* * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations.

* * *

[FR Doc. 2019–00250 Filed 1–31–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104390–18]

RIN 1545–BO54

Guidance Related to Section 951A (Global Intangible Low-Taxed Income); Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to section 951A of the Internal Revenue Code, and added to the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017.

DATES: The public hearing is being held on Wednesday, February 13, 2019, at 10 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Monday, February 11, 2019.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–104390–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–104390–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104390–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jorge Oben (202) 317–6934; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–104390–18) that was published in the **Federal Register** on Wednesday, October 10, 2018 (83 FR 51072).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 26, 2018 must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Monday, February 11, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901(not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–00619 Filed 1–29–19; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115420–18]

RIN 1545–BP03

Investing in Qualified Opportunity Funds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a public hearing on proposed regulations concerning investing in qualified opportunity funds (QOF).

DATES: The public hearing is scheduled for February 14, 2019 at 10 a.m. The public comment period for these regulations expired on December 28, 2018. The notice of proposed rulemaking and notice of hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be discussed. The outlines of topics to be discussed were due by December 28, 2018.

ADDRESSES: The public hearing is being held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Erika Reigle, Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317–7006 (not a toll-free number); concerning information, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, October 29, 2018 (83 FR 54279) announced that

a public hearing was scheduled for January 10, 2019 at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. The subject of the public hearing contains proposed regulations that provide guidance under new section 1400Z–2 of the Internal Revenue Code (Code) relating to gains that may be deferred as a result of a taxpayer's investment in a qualified opportunity fund (QOF).

The public comment period for these regulations expired on December 28, 2018. The notice of proposed rulemaking and notice of hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be discussed. The outlines of topics to be discussed were due by December 28, 2018. Because of the government shutdown the public hearing scheduled for January 10, 2019 at 10:00 a.m. was not held and is rescheduled for February 14, 2019.

Martin V. Franks,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2019–00704 Filed 1–29–19; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0168; FRL–9988–29–Region 1]

Air Plan Approval; Connecticut; Motor Vehicle Inspection and Maintenance Program Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the motor vehicle emissions inspection and maintenance (I/M) program certifications contained in State Implementation Plan (SIP) revisions submitted by the State of Connecticut relating to the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions pertain to the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate ozone nonattainment areas. The intended effect of this action is to propose approval of Connecticut's motor vehicle emissions I/M program certifications. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2016–0168 at *https://www.regulations.gov,* or via email to *hubbard.elizabeth@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov,* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hubbard, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail Code: OEP05–2), Boston, MA 02109–3912; (617) 918–1614; *hubbard.elizabeth@epa.gov.*

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

Table of Contents

I. Background and Purpose
II. Description of State's I/M Program Certifications
III. Evaluation of State's SIP-Approved I/M Program
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background and Purpose

On January 17, 2017, the Connecticut Department of Energy and Environmental Protection (DEEP) submitted a SIP revision regarding the 2008 ozone NAAQS for the Greater Connecticut moderate nonattainment area. On August 8, 2017, Connecticut DEEP submitted a SIP revision for the State's portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) moderate nonattainment area for the 2008 ozone NAAQS. On October 1, 2018, EPA published a final rulemaking (See 83 FR 49297) approving several portions of the January 17, 2017 and August 8, 2017 SIP submittals; the final rule approved reasonable further progress (RFP) demonstrations, motor vehicle emissions budgets (MVEBs), reasonably available control measures (RACM) analyses, and contingency measures for the Greater Connecticut and the Connecticut portion of the NY-NJ-CT moderate ozone nonattainment areas. In this proposed rulemaking action, we are proposing to approve submittals for the motor vehicle emissions inspection and maintenance (I/M) program certifications for the 2008 ozone NAAQS for both the Greater Connecticut and the Connecticut portion of the NY-NJ-CT moderate nonattainment areas. Although Connecticut's January 17, 2017 and August 8, 2017 submittals also included attainment demonstrations for the 2008 ozone standard, we are not addressing those submittals in this proposed rulemaking. Additional background information can be found in our October 1, 2018 final rule (83 FR 49297), the final rule's associated proposed rulemaking on August 3, 2018 (83 FR 38104), and at *https://www.regulations.gov* within the Docket ID No. EPA–R01–OAR–2016–0168.

II. Description of State's I/M Program Certifications

Under the 2008 ozone NAAQS requirements, Connecticut is required to implement a basic I/M program for light-duty motor vehicles. However, due to more stringent nonattainment designations under previous NAAQS and Connecticut's inclusion as part of the Ozone Transport Region (OTR), Connecticut implements an enhanced I/M program. The enhanced I/M program tests gasoline-fueled and diesel-fueled motor vehicles through 10,000 pounds

gross vehicle weight rating (GVWR), requires onboard diagnostic testing on Model Year (MY) 1996 and newer vehicles, and requires more comprehensive tailpipe testing on MY 1995 and older vehicles. The enhanced I/M program also implements an Emissions Control Device Inspection through visual inspection for the presence of catalytic converter(s) and other major emissions control equipment.

III. Evaluation of State's SIP-Approved I/M Program

Connecticut's I/M program was first approved into the SIP on May 21, 1984 (49 FR 10542) and has been modified several times to accommodate the CAA requirements and technological advancements such as on-board diagnostic testing. As part of the OTR, Connecticut is required to implement an enhanced I/M program in specific areas per CAA 184(b)(1). Connecticut exceeds federal requirements by requiring the enhanced I/M program statewide. EPA approved revisions to Connecticut's I/M program into the SIP in 2008 and 2015 (see 73 FR 74019 and 80 FR 13768 respectively). We find that Connecticut's I/M program certifications further strengthen the SIP and meet federal requirements.

IV. Proposed Action

We are proposing to approve the motor vehicle emissions I/M program certifications included in the attainment demonstrations submitted by the State of Connecticut for the 2008 ozone NAAQS for the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate nonattainment areas.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant 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 Clean Air Act; 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 21, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–00656 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0018; FRL–9988–82–Region 4]

Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), with letters dated August 25, 2017, and March 15, 2018. The proposed SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make amendments to Jefferson County's regulation regarding the prevention of significant deterioration (PSD) permitting program. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0018 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: Andres Febres, 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. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017, and March 15, 2018.[1] EPA is proposing to approve portions of these SIP revisions that make changes to the District's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality,* which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA. These revisions are intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements, as promulgated by EPA.[2] The August 25, 2017, and March 15, 2018, SIP revisions update the incorporation by reference (IBR) date found at Regulation 2.05 from July 1, 2010, to July 15, 2017, for the federal PSD permitting regulations at 40 CFR 52.21. By updating the IBR date for 40 CFR 52.21, Jefferson County is making the following changes to their PSD regulations: (1) Adopting ''increments'' for the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS); (2) adopting updated greenhouse gases (GHGs) provisions; (3) incorporating grandfathering provisions for the 2012 primary annual $PM_{2.5}$ NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repeal of grandfathering provisions for the old $PM_{2.5}$ NAAQS; and (4) incorporating a correction to the definition of ''regulated NSR pollutant'' for PSD. These changes are discussed in more detail in the following sections.[3]

II. Background

A. 1997 $PM_{2.5}$ NAAQS Implementation

1. Implementation of NSR for the $PM_{2.5}$ NAAQS and Grandfathering Provisions

On May 16, 2008 (73 FR 28321), EPA published the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the 2008 NSR $PM_{2.5}$ Rule, major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception was a ''grandfathering'' provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement a policy in which PM_{10} served as a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ were approved by EPA, whichever came first.[4]

On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This final action also ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[5] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide and oxides of nitrogen); (3) established $PM_{2.5}$ emission offsets; and (4) required states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits. In addition, the NSR $PM_{2.5}$ Rule gives states the option of allowing interpollutant trading for the purpose of precursor offsets under the $PM_{2.5}$ NNSR program.[6]

[1] EPA notes that the Agency received the SIP revisions on August 29, 2017, and March 18, 2018.

[2] EPA's regulations governing the implementation of New Source Review (NSR) permitting programs are contained in 40 CFR 51.160—51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, nonattainment NSR (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

[3] EPA has not approved, and is not currently proposing to approve into the Jefferson County portion of the Kentucky SIP, the provisions of the Ethanol Rule (May 1, 2007; 72 FR 24060), that seek to exclude facilities that produce ethanol through a natural fermentation process, from the definition of ''chemical process plants'' in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, EPA notes that the PSD provisions found at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(*c*), regarding the Fugitive Emissions Rule (December 19, 2008; 73 FR 77882), were initially stayed for an 18-month period on March 31, 2010, and subsequently stayed indefinitely by the Fugitive Emissions Interim Rule, on March 30, 2011 (76 FR 17548). These fugitive emissions provisions are automatically stayed in the Jefferson County portion of the Kentucky SIP, under the SIP-approved ''automatic rescission clause'' at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn.

[4] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$,'' which allows for the regulation of PM_{10} as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the ''PM_{10} Surrogate Policy''). John S. Seitz, EPA, October 23, 1997.

[5] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

[6] On July 21, 2011, as a result of reconsidering the interpollutant trading (IPT) policy, EPA issued a memorandum indicating that the existing preferred precursor offset ratios associated with the IPT policy and promulgated in the NSR $PM_{2.5}$ Rule were no longer considered approvable. The memorandum stated that any $PM_{2.5}$ precursor offset ratio submitted as part of the NSR SIP for $PM_{2.5}$

Continued

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the repeal of this grandfathering provision as promulgated by EPA on May 18, 2011 (76 FR 28646). However, this grandfathering provision was never incorporated into the Jefferson County portion of the Kentucky SIP, and so this action does not change the SIP for this grandfathering provision. Further details can be found in Section III below, under our analysis of the Commonwealth's submittal.

2. $PM_{2.5}$ Condensables Correction Rule

Among the changes included in the 2008 NSR $PM_{2.5}$ Rule mentioned in Section II.A.1 above, EPA revised the definition of ''regulated NSR pollutant'' for PSD and NNSR to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures'' and that on or after January 1, 2011, ''such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits.'' *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012 (77 FR 65107), EPA took final action to amend the definition, promulgated in the 2008 NSR $PM_{2.5}$ Rule, of ''regulated NSR pollutant'' contained in the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and Appendix S to 40 CFR 51 (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR $PM_{2.5}$ Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of ''particulate matter emissions'' under the PSD program. The term ''particulate matter emissions'' includes only filterable particles that are larger than $PM_{2.5}$ and larger than PM_{10}.

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the $PM_{2.5}$ Condensables Correction Rule promulgated by EPA on October 25, 2012 (77 FR 65107).

3. $PM_{2.5}$ PSD-Increment-SILs-SMC Rule

On October 20, 2010 (75 FR 64863), EPA published a final rulemaking entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' amending the requirements for $PM_{2.5}$ under the federal PSD program (also referred to as the $PM_{2.5}$ PSD-Increments-SILs-SMC Rule). The October 20, 2010, final rulemaking established the following: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) $PM_{2.5}$ Significant Impact Levels (SILs) for PSD and NNSR; and (3) Significant Monitoring Concentration (SMC) for PSD purposes.

Subsequently, in response to a challenge to the $PM_{2.5}$ SILs and SMC provisions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, the D.C. Circuit vacated and remanded to EPA the portions of the rule addressing $PM_{2.5}$ SILs, except for the $PM_{2.5}$ SILs promulgated in EPA's NNSR rules at 40 CFR 51.165(b)(2). *See Sierra Club* v. *EPA,* 705 F.3d 458, 469 (D.C. Cir. 2013). The D.C. Circuit also vacated the parts of the rule establishing a $PM_{2.5}$ SMC for PSD purposes. *Id.* EPA removed these vacated provisions in a December 9, 2013 (78 FR 73698), final rule.

The $PM_{2.5}$ SILs promulgated in EPA's NNSR regulations at 40 CFR 51.165(b)(2) were not vacated by the D.C. Circuit because unlike the SILs promulgated in the PSD regulations (40 CFR 51.166, 52.21), the SILs promulgated in the NNSR regulations at 40 CFR 51.165(b)(2) do not serve to exempt a source from conducting a cumulative air quality analysis. Rather, the SILs promulgated at 40 CFR 51.165(b)(2) establish levels at which a proposed new major source or major modification located in an area designated as attainment or unclassifiable for any NAAQS would be considered to cause or contribute to a violation of a NAAQS in any area. For this reason, the D.C. Circuit left the $PM_{2.5}$ SILs at 40 CFR 51.165(b)(2) in place.

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions incorporate the $PM_{2.5}$ increment and do not incorporate the $PM_{2.5}$ SILs and SMC provisions for PSD permitting that were vacated and remanded elements of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule.

B. Greenhouse Gases and Plantwide Applicability Limits

On January 2, 2011, emissions of GHGs were, for the first time, covered by the PSD and title V operating permit programs.[7] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010 (75 FR 31514), EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the GHG Tailoring Rule). In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources are referred to as ''anyway sources.''

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.''

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012 (77 FR 41051). In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Step 2 of the Tailoring Rule.

In addition, the July 12, 2012 (77 FR 41051), final rule revised EPA regulations under 40 CFR part 52 for establishing plant-wide applicability limits (PALs) for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under EPA's interpretation of the federal PAL

nonattainment areas would need to be accompanied by a technical demonstration exhibiting how the ratios are suitable for that particular nonattainment area. *See* Memorandum from Gina McCarthy to Regional Air Division Directors, ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (July 21, 2011) (available at *https://www3.epa.gov/scram001/guidance/clarification/pm25trade.pdf*).

[7] See the rule entitled ''Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' Final Rule, 75 FR 17004 (April 2, 2010).

provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. EPA revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent (CO_2e) [8] basis as well. EPA finalized these changes in an effort to streamline federal and SIP PSD permitting programs by allowing sources and permitting authorities to address GHGs using PALs in a manner similar to the use of PALs for non-GHG pollutants.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA's regulation of Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purposes of determining whether a source is a major source (or a modification thereof) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). With respect to Step 2 sources, the D.C. Circuit's Judgment vacated EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant, (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' *Id.* at 7–8.

EPA promulgated a final rule on August 19, 2015, entitled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.'' *See* 80 FR 50199 (August 19, 2015). The rule removed from the federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can EPA approve provisions submitted by a state for inclusion in its SIP providing this authority. In addition, on October 3, 2016 (81 FR 68110), EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized.

By revising the IBR date of 40 CFR 52.21, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the GHG Tailoring Rule as of the updated effective date of July 15, 2017.[9]

C. Grandfathering Provisions for the 2012 Primary Annual $PM_{2.5}$ and 2015 Ozone NAAQS

Pursuant to section 165(a)(3)(B) of the CAA and the implementing PSD regulations at 40 CFR 52.21(k)(1) and 51.166(k)(1), EPA requires that PSD permit applications include a demonstration that emissions from the proposed facility will not cause or contribute to a violation of any NAAQS that is in effect on the date the PSD permit is issued. On January 15, 2013 (78 FR 3086), and October 26, 2015 (80 FR 65292), EPA published new primary annual $PM_{2.5}$ NAAQS and 8-hour ozone NAAQS, respectively. In these two revisions to the NAAQS, EPA established limited grandfathering provisions for certain PSD permit applications pending on the effective date of these revised NAAQS. Additionally, the revisions to both standards included the option to allow states and other air agencies that issue PSD permits under SIP-approved PSD programs to adopt a comparable grandfathering provision, as long as the provision is at least as stringent as that added to 40 CFR 51.166.

For the 2012 primary annual $PM_{2.5}$ NAAQS, sources with PSD permit applications that meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 1997 primary annual $PM_{2.5}$ standard instead of the revised 2012 standard: (1) Applications that have been determined to be complete on or before December 14, 2012; or (2) applications for which public notice of a draft permit or preliminary determination has been published as of the effective date of the revised 2012 $PM_{2.5}$ NAAQS (March 18, 2013).

For the 2015 8-hour ozone NAAQS revision, sources with PSD permit applications that meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 2008 8-hour ozone standard, instead of the revised 2015 standard: (1) Applications for which the reviewing authority has formally determined that the application is complete on or before October 1, 2015; or (2) applications for which the reviewing authority has first published a public notice of the draft permit or preliminary determination before the effective date of the revised 2015 8-hour ozone NAAQS (December 28, 2015).

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions incorporate both the 2012 annual $PM_{2.5}$ and 2015 8-hour ozone grandfathering provisions for the PSD program.

III. Analysis of State Submittal

Jefferson County currently has a SIP-approved NSR program for PSD under Regulation 2.05 of the Louisville Metro Air Pollution Control District regulations, which adopts the necessary provisions by way of an IBR of the federal PSD regulations found at 40 CFR 52.21. The current SIP-approved version of Regulation 2.05 is version 10, which contains an IBR date of July 1, 2010. The August 25, 2017, SIP revision requests for EPA to adopt version 12 of Regulation 2.05 into the SIP, which updates the IBR date to July 15, 2016.[10]

[8] CO_2 equivalent (CO_2e) emissions refers to emissions of six recognized GHGs other than CO_2 which are scaled to equivalent CO_2 emissions by relative global warming potential values, then summed with CO_2 to determine a total equivalent emissions value. *See* 40 CFR 51.166(48)(ii) and 52.21(49)(ii).

[9] As noted earlier in footnote #3, Jefferson County has an ''automatic rescission clause'' approved into the SIP at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn from Jefferson County's SIP-approved PSD program at Regulation 2.05.

[10] There is a redline-strikeout for version 11 of Regulation 2.05 in the Docket for this proposed rulemaking. EPA never adopted version 11 of Regulation 2.05 into the SIP. However, version 11 was previously submitted to EPA for adoption on December 21, 2016. In version 11 of Regulation 2.05, Jefferson County proposed to eliminate the IBR date for 40 CFR 52.21, and substitute it with a reference to the specified version of 52.21 found in Regulation 1.15 of the Louisville Metro Air Pollution Control District regulations. However, Regulation 1.15 is not a SIP-approved regulation. To prevent this gap, Jefferson County withdrew version 11 of Regulation 2.05 from EPA consideration. In the cover letter for the August 25, 2017, SIP revision being proposed for approval in this notice, Jefferson County withdrew the request to adopt version 11 from their December 21, 2016, submittal, but specified that the redline strikeout for that version would remain in the submittal for reference purposes.

Subsequently, the March 15, 2018, SIP revision requests for EPA to adopt version 13 of Regulation 2.05 into the SIP, which updates the IBR date to July 15, 2017.

As mentioned in Section I, the effects of changing the IBR date for 40 CFR 52.21, include the following changes: (1) Adopting ''increments'' for the $PM_{2.5}$ NAAQS; (2) adopting updated GHGs provisions; (3) incorporating grandfathering provisions for the 2012 primary annual $PM_{2.5}$ NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repealed grandfathering provisions for the old $PM_{2.5}$ NAAQS; and (4) incorporating a correction to the definition of ''regulated NSR pollutant'' for PSD. These changes are discussed in more detail below.

First, Jefferson County's IBR update adopts PSD provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, in particular the PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS. These provisions include: (1) The $PM_{2.5}$ increments as promulgated at 40 CFR 52.21(c)(1) and (p)(5) (for Class I Variances); and (2) amendments to the terms ''*major source baseline date*'' (at 40 CFR 52.21(b)(14)(i)(c)), ''*minor source baseline date*'' (including establishment of the ''trigger date'') (at section 52.21(b)(14)(ii)(c)) and ''*baseline area*'' (as amended at 52.21(b)(15)(i)). These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in Jefferson County's PSD program.

As mentioned above in Section II.A.3, the $PM_{2.5}$ SILs and SMC portion of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule has since been vacated by the D.C. Circuit's January 22, 2013, decision (*Sierra Club* v. *EPA,* 705 F.3d 458), and EPA subsequently removed the vacated provisions from 40 CFR 52.21 (78 FR 73698). For this reason, Jefferson County's IBR updates simply adopt the increments portion of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule. EPA has made the preliminary determination to approve the aforementioned PSD permitting provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the Jefferson County portion of the Kentucky SIP.

Second, Jefferson County's IBR update adds updated PSD permitting requirements for GHGs. This includes the incorporation of the GHG Step 3 Rule provisions, which will allow GHG-emitting sources to obtain PALs for their GHG emissions on a CO_2e basis. As explained in Section II.B above, a PAL establishes a site-specific plantwide emission level for a pollutant, which allows the source to make changes to individual units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL.

Additionally, the federal GHG PAL regulations include provisions that apply solely to GHG-only, or Step 2, sources. Some of these provisions may no longer be applicable in light of the Supreme Court's decision in *UARG* and the D.C. Circuit's Amended Judgment. Since the Supreme Court has determined that sources and modifications may not be defined as ''major'' solely on the basis of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. EPA has proposed action in an October 3, 2016 (81 FR 68110), proposed rule to clarify the GHG PAL rules. However, PALs for GHGs may still have a role to play in determining whether a source that is already subject to PSD for a pollutant other than GHGs should also be subject to PSD for GHGs.

The existing GHG PALs regulations do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 ton per year GHG level in 40 CFR 52.21(b)(49)(iv). Rather, the PAL provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL.

EPA discussed the effects of PALs in the Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis). The Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6; *see also* 76 FR 49313, 49315 (August 10, 2011). Since this flexibility may still be valuable to sources in at least one context described above, EPA believes that it is appropriate to propose approval of these provisions into the Jefferson County portion of the Kentucky SIP.

Moreover, Jefferson County's IBR update incorporates the Federal PSD provisions as of July 15, 2017, which is after the *UARG* decision, the D.C. Circuit's Amended Judgment, and EPA's August 19, 2015, Good Cause GHG Rule. Therefore, Jefferson County's incorporation includes fixes to the Federal rules to discontinue regulation of GHG-only, or Step 2, sources. EPA has preliminarily concluded that approving the updated effective date into the Jefferson County portion of the Kentucky SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA.

Third, Jefferson County's IBR update incorporates revisions to the PSD permitting requirements for both the 2012 primary annual $PM_{2.5}$ NAAQS, as promulgated on January 15, 2013 (78 FR 3086), and the 2015 ozone 8-hour NAAQS, as promulgated on October 26, 2015 (80 FR 65292). The new incorporation by reference date adds limited grandfathering provisions for both standards that allows sources who are eligible to meet the previous standard for these NAAQS instead of the newly promulgated standards. EPA is proposing to approve these grandfathering provisions of the 2012 primary annual $PM_{2.5}$ and the 2015 8-hour ozone NAAQS, as incorporated by reference. EPA has preliminarily concluded that this change will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The rationale for allowing states to include these grandfathering provisions into their SIPs is discussed in detail at 78 FR 3086 (January 15, 2013) (2012 primary annual $PM_{2.5}$ NAAQS) and 80 FR 65292 (October 26, 2015) (2015 8-hour ozone NAAQS).

In addition, the IBR date change captures the removal of the $PM_{2.5}$ grandfathering provision contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi), as promulgated by EPA on May 18, 2011 (76 FR 28646), which ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits. Although the July 1, 2010, effective date in Jefferson County's current SIP-approved version of Regulation 2.05 (version 10) did capture the original incorporation of this grandfathering provision, EPA's approval of this version was done after the May 18, 2011 repeal of the 1997 PM_{10} Surrogate Policy. *See* 77 FR 62150 (October 12, 2012). Because of this, EPA specified in the October 12, 2012 final rulemaking that it was not taking action to approve this provision. With the IBR date change proposed for approval now, this provision would now be removed from the Jefferson County PSD programs, but because EPA never approved this change into the Jefferson County portion of the Kentucky SIP, no action is needed to remove it from the SIP.

Lastly, Jefferson County's IBR update adopts changes made by EPA in the

$PM_{2.5}$ Condensables Correction Rule as promulgated on October 25, 2012 (77 FR 65107). As explained in Section II.A.2, the Federal rule corrected an inadvertent error in the definition of ''regulated NSR pollutant'' at 40 CFR 52.21(b)(50). In the Condensable Correction Rule, EPA explained that requiring inclusion of condensable PM in measurements of ''particulate matter emissions'' would have little (if any) effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. Therefore, EPA has preliminarily concluded that this change to Jefferson County's portion of the Kentucky SIP is consistent with the current Federal rule, will not interfere with attainment or maintenance of the PM NAAQS, any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA, and is proposing to approve these revisions into the Jefferson County portion of the Kentucky SIP.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County's Regulation 2.05, *Prevention of Significant Deterioration of Air Quality,* version 13, which is intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements and is state effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017, and March 15, 2018, to update the IBR date for the Federal requirements of the PSD program found at 40 CFR 52.21. This SIP revision is intended to make Jefferson County's PSD permitting rule consistent with the Federal requirements, as promulgated by EPA. The August 25, 2017, SIP revision updates the IBR date at Jefferson County's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality,* to July 15, 2016, for the federal PSD permitting regulations at 40 CFR 52.21. Subsequently, the March 15, 2018, SIP revision updates the IBR date at Jefferson County's Regulation 2.05 to July 15, 2017.

VI. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 17, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–00781 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0791; FRL–9988–43–Region 1]

Air Plan Approval; Massachusetts; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Massachusetts regional haze progress report submitted as a State Implementation Plan (SIP) revision on February 9, 2018. This revision addresses the requirements of the Clean Air Act and its implementing regulations that states submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of adequacy of the state's existing regional haze SIP. Massachusetts' progress report notes that Massachusetts has implemented the measures in the regional haze SIP due to be in place by the date of the progress report and that visibility in the federal Class I areas affected by emissions from Massachusetts is improving and has already met the applicable reasonable progress goals for 2018. The EPA is proposing approval of Massachusetts' determination that the Commonwealth's

regional haze SIP is adequate to meet these reasonable progress goals for the first implementation period, which extends through 2018, and requires no substantive revision at this time.

DATES: Written comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0791 at *https://www.regulations.gov,* or via email to *mcwilliams.anne@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1697, email *mcwilliams.anne@epa.gov.*

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

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IV. Statutory and Executive Order Reviews

I. Background and Purpose

States are required to submit a progress report in the form of a SIP revision that evaluates progress towards the reasonable progress goals (RPGs) for each mandatory Class I federal area [1] (Class I area) within the state and in each Class I area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of adequacy of the state's existing regional haze SIP. The progress report SIP for the first planning period is due five years after submittal of the initial regional haze SIP. On December 30, 2011, the Massachusetts Department of Environmental Protection (MassDEP) submitted the Commonwealth's first regional haze SIP in accordance with 40 CFR 51.308.[2] On February 9, 2018, MassDEP submitted, as a revision to its SIP, its progress report which detailed the progress made in the first planning period toward the implementation of the Long Term Strategy (LTS) outlined in the 2011 regional haze submittal, the visibility improvement measured at Class I areas affected by emissions from Massachusetts, and a determination of the adequacy of the Commonwealth's existing regional haze SIP. The EPA is proposing to approve Massachusetts' February 9, 2018 SIP submittal.

II. EPA's Evaluation of Massachusetts' SIP Revision

MassDEP's report on progress made in the first implementation period toward reasonable progress goals for all Class I areas affected by emission from sources in Massachusetts (also known as a regional haze five-year progress report) was submitted to the EPA as a SIP revision. This progress report SIP submittal also included a determination that the Commonwealth's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emission reduction goals for 2018. Massachusetts is a member of the Mid-Atlantic/Northeast Visibility Union (MANE–VU).[3] The MANE–VU area contains seven Class I areas in four States: Moosehorn Wilderness Area, Acadia National Park, and Roosevelt Campobello International Park in Maine; Presidential Range/Dry River Wilderness Area and Great Gulf Wilderness Area in New Hampshire; Brigantine Wilderness Area in New Jersey; and Lye Brook Wilderness Area in Vermont. There are no Class I areas in Massachusetts. Through source apportionment modeling, MANE–VU assisted states in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region and nearby Class I areas outside of MANE–VU. Massachusetts emissions were found to contribute to visibility impairment at each of the MANE–VU Class I areas, with the exception of Brigantine Wilderness Area in New Jersey. *See* 77 FR 30932 (May 24, 2012).

Through the consultation process, Massachusetts agreed to reduce emissions by at least the amount obtained by the measures in the coordinated course of action agreed to by MANE–VU to assure reasonable progress toward preventing any future, and remedying and existing, impairment of visibility in the mandatory Class I areas within the MANE–VU region. These strategies are commonly referred to as the MANE–VU ''ask.'' The MANE–VU ''ask'' includes: A timely implementation of best available retrofit technology (BART) requirements, 90 percent or more reduction in sulfur dioxide (SO_2) at 167 electrical generating units (EGUs) ''stacks'' identified by MANE–VU (or comparable alternative measures), lower sulfur fuel oil (with limits specified for each state) and continued evaluation of other control measures.[4] In summary, Massachusetts is on track to fulfill the

[1] Areas designated as mandatory Class I federal areas consist of national parks exceeding 6, 000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81, subpart D.

[2] On September 19, 2013, EPA approved the Massachusetts regional haze SIP submittal. *See* 78 FR 57487.

[3] MANE–VU is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe and Vermont.

[4] The MANE–VU ''ask'' was structured around the finding that SO_2 emissions were the dominate visibility impairing pollutant at Northeastern Class I areas and electrical generating units comprised the largest SO_2 emission sector. *See* ''Regional Haze and Visibility in the Northeast and Mid-Atlantic States,'' January 31, 2001.

MANE–VU ''ask'' by adopting and implementing an alternative to the BART,[5] reducing SO_2 emissions at identified stacks, and implementing the low sulfur in fuel strategy.

A. Regional Haze Progress Report

This section includes the EPA's analysis of MassDEP's progress report SIP submittal and an explanation of the basis of our proposed approval.

The 2011 Massachusetts regional haze SIP included the following key measures: BART determinations for two municipal waste combustors, an EGU alternative to BART strategy, SO_2 emission reductions from ten targeted EGU stacks, and an adopted regulation which reduces the sulfur content of #2 distillate oil and #4/#6 residual oil. EPA's analysis of the Massachusetts regional haze SIP for the first planning period can be found at 77 FR 30932 (May 24, 2012) and will not be restated here.

Table 3.1 of the Massachusetts progress report details the status of units subject to BART and the alternative to BART. All units have either been retired or have adopted permit revisions to implement BART or Alternative to BART. Table 3.2 of the Massachusetts progress report shows that the actual 2017 SO_2 and NO_X reductions are 99% and 97%, respectively, of the 2018 alternative to BART reduction target. Similarly, Table 3.3 shows a 99% reduction in SO_2 from the targeted EGUs, far surpassing the expected 90% reduction.

Massachusetts also adopted the MANE–VU low sulfur strategy. EPA approved the Massachusetts low sulfur in fuel regulation concurrent with EPA's approval of the Massachusetts regional haze SIP. *See* 78 FR 57487 (September 19, 2013).

EPA is proposing to find that MassDEP has adequately addressed the applicable provisions under 40 CFR 51.308(g) with the demonstrated implementation of measures within Massachusetts, including implementing the alternative to BART.

During the development of the regional haze SIP for the first planning period, MANE–VU and MassDEP determined that SO_2 was the greatest contributor to anthropogenic visibility impairment at nearby Class I areas. Therefore, the bulk of the visibility improvement achieved in the first planning period was expected to be from reductions in SO_2 emissions. Table 4.1 of the 2018 progress report presents data from statewide Massachusetts emission inventories developed for the years 2002, 2011, 2014, and projected inventories for 2018 for SO_2, nitrogen oxides (NO_X), and fine particulates with diameters that are generally less than 2.5 micrometers ($PM_{2.5}$). From 2002 through 2014, the Commonwealth's overall SO_2 emission were reduced from 134,824 tons to 19,882 tons of SO_2, below the 2018 projection of 60,061 tons SO_2. For NO_X, from 2002 to 2014, the Commonwealth achieved an overall 54% reduction in NO_X from 266,098 tons to 120,054 tons. The 2018 NO_X projection for 2018 was 126,510 tons. Finally, from 2002 to 2014, $PM_{2.5}$ emissions were reduced from 53,000 tons to 39,000 tons, once again surpassing the 40,956 tons $PM_{2.5}$ projection for 2018.

EPA finds that Massachusetts has adequately addressed the applicable provisions under 40 CFR 51.308(g). MassDEP compared the most recently updated emissions inventory data available at the time of development of the progress report with the baseline emissions inventory data from its regional haze SIP. The progress report appropriately details the 2014 SO_2, NO_X, and $PM_{2.5}$ reductions achieved, by sector, thus far in the regional haze planning period.

The provisions under 40 CFR 51.308(g) also require that states with Class I areas within their borders to provide information on current visibility conditions and the difference between current visibility conditions and baseline visibility conditions expressed in terms of five-year averages of these annual values. Massachusetts has no Class I areas, but the Class I areas affected by emissions from Massachusetts have visibility conditions better than baseline conditions and conditions predicted for 2018. The Interagency Visual Environmental monitoring program (IMPROVE) provides data on the air pollutants that constitute regional haze. The MassDEP progress report includes data from the IMPROVE sites at Class I areas affected by emissions from Massachusetts. Tables 1 and 2 below show the progress from the baseline 2000–2004 five-year average visibility through the most recent 2012–2016 five-year period for the 20% haziest days and 20% cleanest days.

TABLE 1—20% HAZIEST DAYS BASELINE, REASONABLE PROGRESS GOALS, AND OBSERVED VISIBILITY IN DECIVIEWS (dv)

Class I Area IMPROVE * site	Baseline (2000–2004)	Reasonable progress goal (2018)	5-Year average observed (2012–2016)	Met the 2018 progress goal?
Acadia National Park (ME)	22.9	19.4	17.4	Yes.
Great Gulf Wilderness (NH)	22.8	19.1	16.4	Yes.
Presidential Range-Dry River Wilderness (NH)				
Lye Brook Wilderness (VT)	24.4	20.9	18.0	Yes.
Moosehorn Wilderness (ME)	21.7	19.0	16.3	Yes.
Roosevelt Campobello International Park (ME)				

TABLE 2—20% CLEANEST DAYS BASELINE, REASONABLE PROGRESS GOALS, AND OBSERVED VISIBILITY IN DECIVIEWS (dv)

Class I Area IMPROVE* site	Baseline (2000–2004)	Reasonable progress goal (2018)	5-Year average observed (2012–2016)	Met the 2018 progress goal?
Acadia National Park (ME)	8.78	8.3	6.6	Yes.
Great Gulf Wilderness (NH)	7.7	7.2	6.7	Yes.

[5] The Massachusetts alternative to BART strategy is comprised of a combination of source retirements, emission limits for various EGUs, and sulfur in fuel requirements. For more details see 77 FR 30932 (May 24, 2012).

TABLE 2—20% CLEANEST DAYS BASELINE, REASONABLE PROGRESS GOALS, AND OBSERVED VISIBILITY IN DECIVIEWS (dv)—Continued

Class I Area IMPROVE* site	Baseline (2000–2004)	Reasonable progress goal (2018)	5-Year average observed (2012–2016)	Met the 2018 progress goal?
Presidential Range-Dry River Wilderness (NH)	.....	.....	.....	
Lye Brook Wilderness (VT)	6.4	5.5	5.1	Yes.
Moosehorn Wilderness (ME)	9.2	8.6	6.7	Yes.
Roosevelt Campobello International Park (ME)	.....	.....	.....	

*Data from *Tracking Visibility Progress 2004–2016,* as posted at *http://www.maine.gov/dep/ftp/MVTSC/RH_METRICS_TRENDS/* on January 30, 2018.

EPA notes the substantial improvement in visibility at Class I Areas impacted by Massachusetts emissions. These Class I areas have met the RPGs for the first regional haze planning period.

EPA proposes to find Massachusetts provided the required information regarding visibility conditions to meet the applicable requirements under 40 CFR 51.308(g), specifically providing baseline visibility conditions (2000–2004) and current conditions based on IMPROVE monitoring data (2012–2016), and an assessment of the change in visibility impairment at nearby Class I areas.

In its progress report SIP, MassDEP presents data from statewide emissions inventories developed for the years 2002, 2011, and 2014 with projected inventories for 2018 for SO_2, NO_X, and $PM_{2.5}$. Massachusetts' emission categories include the following source categories: EGU point, non-EGU point, point, area, on-road mobile, and non-road mobile. The 2014 emissions for all pollutants of concern and all source sectors were below the projections for 2018 contained in the regional haze SIP. Reductions achieved by 2014 are 54% for NO_X, 85% for SO_2, and 25% for $PM_{2.5}$.

EPA is proposing to find that MassDEP adequately addressed the provisions of 40 CFR 51.308(g). The progress report compared the most recent updated emission inventory data available at the time of the development of the progress report with baseline emissions used in the modeling for the regional haze SIP.

In its progress report SIP, Massachusetts did not find any significant changes in emissions of SO_2, NO_X, and $PM_{2.5}$ which might impede or limit progress during the first planning period. As noted earlier, haze at Class I areas affected by Massachusetts emissions has improved to levels to meet or exceed the RPG. EPA therefore proposes to approve MassDEP's 2018 SIP submission.

In its progress report SIP, Massachusetts concludes the elements and strategies relied on in its original regional haze SIP are sufficient to enable Massachusetts and neighboring states to meet all established RPGs. As shown in Table 1 above, visibility on the most impaired days from 2000 through 2016 has improved at all Class I areas affected by emissions from Massachusetts (and all RPGs have already been met.)

EPA proposes to agree with MassDEP's conclusion that Massachusetts has adequately addressed the provisions for the first planning period progress report. EPA views this requirement as an assessment that should evaluate emissions and visibility trends and other readily available information. In its progress report, MassDEP described the improving visibility trends using data from the IMPROVE network and the downward emission trends in key pollutants in the Commonwealth. MassDEP determined its regional haze SIP is sufficient to meet the RPGs for the Class I areas impacted by the Commonwealth's emissions.

Massachusetts does not have any Class I areas and is not required to monitor for visibility-impairing pollutants. The Massachusetts visibility monitoring strategy relies upon Class I area participation in the IMPROVE network. EPA proposes to find that Massachusetts has adequately addressed the requirements for a monitoring strategy for regional haze and proposes to determine no further modifications to the monitoring program are necessary.

B. Determination of Adequacy of Existing Regional Haze Plan

In its progress report, MassDEP submitted a negative declaration to EPA regarding the need for additional actions or emission reductions in Massachusetts beyond those already in place and those to be implemented by 2018 according to the Massachusetts regional haze plan.

In the 2018 SIP submittal, MassDEP determined the existing regional haze SIP requires no further substantive revision at this time to achieve the RPGs for the Class I areas affected by the Commonwealth's sources. The basis for the Commonwealth's negative declaration is the finding that visibility has improved at all Class I areas in the MANE–VU region. In addition, SO_2 and $PM_{2.5}$ emissions for the latest emission inventory for Massachusetts have decreased to levels below projections for 2018.

EPA proposes to conclude that MassDEP has adequately addressed the provisions under 40 CFR 51.308(h) because visibility and emission trends indicate that Class I areas impacted by Massachusetts sources are meeting or exceeding the RPGs for 2018.

III. Proposed Action

EPA is proposing to approve Massachusetts' regional haze progress report as meeting the requirements of 40 CFR 51.308(g) and (h). EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant 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 Clean Air Act; 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 21, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–00657 Filed 1–31–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0443; FRL–9988–28-Region 1]

Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of a State Implementation Plan (SIP) submission from Rhode Island that addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). We are also proposing to conditionally approve certain elements of this submittal that relate to requirements for the state's Prevention of Significant Deterioration (PSD) program. In addition, EPA is proposing to disapprove the submission with respect to future SIP revisions. However, a federal implementation plan has been in place for this requirement since 1973. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities with respect to this NAAQS under the CAA.

DATES: Written comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0443 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1684; *simcox.alison@epa.gov.*

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

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V. Statutory and Executive Order Reviews

I. Background and Purpose

A. What Rhode Island SIP submission does this rulemaking address?

This rulemaking addresses a December 6, 2017, submission from the Rhode Island Department of Environmental Management (RI DEM) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ($PM_{2.5}$ [1]) National Ambient Air Quality Standard (NAAQS). The primary, health-based annual standard is set at 12.0 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour standard is set at 35 $\mu g/m^3$. *See* 78 FR 3086. Under sections 110(a)(1) and (2) of the CAA, states are required to provide infrastructure SIP submissions to ensure that state SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS.

B. What is the scope of this rulemaking?

EPA is acting on a SIP submission from RI DEP that addresses the infrastructure requirements of the Act for the 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.'' This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that ''each such plan'' must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (''SSM'' emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rulemaking entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' *See* 79 FR 27241 at 27242–45.

II. What guidance is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 memorandum). EPA has issued additional guidance documents and memoranda, including a September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 memorandum), and a September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).[2]

With respect to the ''Good Neighbor'' or interstate transport requirements for infrastructure SIPs, the most recent relevant EPA guidance is a memorandum published on March 17, 2016, entitled ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum). The 2016 memorandum describes EPA's past approach to addressing interstate transport, and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) ''Good Neighbor'' provision requirements in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. This rulemaking considers information provided in that memorandum.

III. EPA's Review

EPA is soliciting comment on our evaluation of Rhode Island's infrastructure SIP submission in this notice of proposed rulemaking. In Rhode Island's submission, a detailed list of Rhode Island Laws and previously SIP-approved Air Quality Regulations show how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[3] In the context of an infrastructure SIP, EPA is not

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

[2] These memoranda and other referenced guidance documents and memoranda are included in the docket for today's action.

[3] See, for example, EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964, 67034 (November 12, 2008).

evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Rhode Island submittal cites Rhode Island General Laws (RIGL) and RI Air Pollution Control Regulations (APCR) that the state has adopted to control the emissions of criteria pollutants, including $PM_{2.5}$, and $PM_{2.5}$ precursors sulfur dioxide (SO_2) and nitrogen oxides (NO_X).

RIGL § 23–23–5(12), ''Powers and duties of the director,'' authorizes the RI DEM Director ''to make, issue, and amend rules and regulations . . . for the prevention, control, abatement, and limitation of air pollution . . . .'' In addition, this section authorizes the Director to ''prohibit emissions, discharges and/or releases and . . . require specific control technology.'' The Rhode Island submittal cites more than a dozen specific rules that the state has adopted to control the emissions of $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2 and NO_X. A few, with their EPA approval citation are listed here: No. 3—Particulate Emissions from Industrial Processes (81 FR 47708; July 22, 2016); No. 5—Fugitive Dust (46 FR 25446; May 7, 1981); No. 8—Sulfur Content of Fuels (83 FR 39888; August 13, 2018); No. 9—Air Pollution Control Permits (78 FR 63383; October 24, 2013); No. 12—Incinerators (07/22/2016; 81 FR 47708); No. 27—Control of Nitrogen Oxide Emissions (83 FR 39888; August 13, 2018); and No. 45—Rhode Island Diesel Engine Anti-Idling Program (73 FR 16203; March 27, 2008). *See* 40 CFR 52.2070.

EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 $PM_{2.5}$ NAAQS. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM emissions or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

RI DEM operates an air-quality monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for $PM_{2.5}$ on October 25, 2018.[4] Furthermore, RI DEM populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that RI DEM meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160—169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

The Rhode Island General Laws provide the Director of RI DEM with the legal authority to enforce air pollution control requirements. Such enforcement authority is provided by RIGL § 23–23–5, which grants the Director of RI DEM general enforcement power, inspection and investigative authority, and the power to issue administrative orders, among other things. In addition, APCR No. 9, ''Air Pollution Control Permits,'' sets forth requirements for new and modified major and minor stationary sources. Section 9.3 of the regulation contains specific requirements for new and modified minor sources. Section 9.4 of the regulation contains specific new source review requirements applicable to major stationary source or major modifications located in nonattainment areas. Section 9.5 contains specific new source review requirements applicable to major stationary sources or major modifications located in attainment or unclassifiable areas (PSD).

EPA proposes that Rhode Island has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications

PSD applies to new major sources or major modifications for pollutants where the area in which the source is located is in attainment of, or is unclassifiable with regard to, the relevant NAAQS. RI DEM's EPA-approved PSD rules, contained at APCR No. 9, contain provisions that address most applicable infrastructure SIP requirements related to all regulated NSR pollutants.

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone. *See* 70 FR 71679. This requirement is codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_X as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. *See* 70 FR 71683.

Rhode Island has already incorporated several of the changes required by the Phase 2 Rule but has not made the necessary change to the definition of ''major stationary source'' identifying NO_X as a precursor to ozone. The December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with 40 CFR 51.166 regarding identifying NO_X as a precursor to ozone, and on March 26, 2018, Rhode Island submitted a SIP revision to address this deficiency. EPA is currently reviewing this submittal to verify that it satisfies this

[4] *See* EPA approval letter located in the docket for this action.

requirement. Therefore, we are proposing to conditionally approve section 110(a)(2)(C) with respect to this requirement of the Phase 2 Rule for the 2012 $PM_{2.5}$ NAAQS.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5,}$ otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that Volatile Organic Compounds (VOCs) are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to $SO_{2,}$ NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5,}$ the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. *See* 73 FR 28321 at 28341.[5]

On January 18, 2011, Rhode Island submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, with respect to provisions that explicitly identify precursors to $PM_{2.5}$. EPA approved Rhode Island's 2011 SIP revision on April 21, 2015 (80 FR 22106).

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. *See* 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (See 73 FR 28321 at 28341).

Rhode Island's SIP-approved PSD program does not contain the exact language in 40 CFR 51.166(b)(49)(i)(*a*). However, EPA has previously determined that Rhode Island's SIP-approved regulations define $PM_{2.5}$ and PM_{10} such that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and PM_{10}. *See* 78 FR 63383 at 63386 (October 24, 2013). Therefore, we are proposing that Rhode Island meets the requirements of section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS regarding the requirements of the 2008 NSR Rule.

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments,'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ of October 20, 2011, in the definition of ''minor source baseline date.'' These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance (SIL) of 0.3 micrograms per cubic meter ($\mu g/m^3$), annual average, for $PM_{2.5.}$ This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). The December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with the 2010 NSR Rule, and Rhode Island subsequently submitted the March 26, 2018 SIP revision to address these additional elements of $PM_{2.5}$ implementation in PSD permitting. EPA is currently reviewing the March 2018 submittal to verify that it satisfies the requirements of the 2010 NSR Rule. Therefore, we are proposing to conditionally approve this part of sub-element 2 of section 110(a)(2)(C) relating to requirements for state NSR regulations outlined within our 2010 NSR regulation for the 2012 $PM_{2.5}$ NAAQS.

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element (D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Rhode Island has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs, with the exception of the deficiencies described elsewhere in this document.

[5] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (DC Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's action on Rhode Island's infrastructure SIP in regard to Elements (C), D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Envtl. Prot. Agency,* 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

At present, EPA has determined that Rhode Island's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. Rhode Island has, however, removed step 2 from its PSD permitting program and has submitted these changes to EPA in its March 26, 2018 SIP submittal, which EPA is reviewing to verify that it is consistent with the D.C. Circuit's vacated provisions at 40 CFR 51.166(b)(48)(v). Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II), and (J). The SIP contains the PSD requirements for applying the BACT requirement to GHG emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Rhode Island's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

For the purposes of the 2012 $PM_{2.5}$ NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve the majority of Rhode Island's submittal for this sub-element with respect to the 2012 $PM_{2.5}$ NAAQS, but to conditionally approve the submittal regarding the identification of NO_X as a precursor to ozone in the definition of major stationary source and regarding the revisions required by the 2010 NSR Rule, as described above.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA last approved Rhode Island's minor NSR program, on May 7, 1981 (46 FR 25446) as well as updates to that program. Since this date, Rhode Island and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 $PM_{2.5}$ NAAQS.

We are proposing to find that Rhode Island meets the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the state that will contribute significantly to nonattainment or

interfere with maintenance of the NAAQS in any downwind state. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the ''Good Neighbor'' or ''transport'' provisions of the CAA. This rulemaking proposes action on the portion of Rhode Island's December 6, 2017 SIP submission that addresses the prong 1 and 2 requirements with respect to the 2012 $PM_{2.5}$ NAAQS.

EPA has developed a consistent framework for addressing the prong 1 and 2 interstate-transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

EPA's analysis for CSAPR, conducted consistent with the four-step framework, included air-quality modeling that evaluated the impacts of 38 eastern states on identified receptors in the eastern United States. EPA indicated that, for step 2 of the framework, states with impacts on downwind receptors that are below the contribution threshold of 1% of the relevant NAAQS would not be considered to significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS, and would, therefore, not be included in CSAPR. *See* 76 FR 48220. EPA further indicated that such states could rely on EPA's analysis for CSAPR as technical support in order to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport requirements of 110(a)(2)(D)(i)(I) with regard to the relevant NAAQS. *Id.*

In addition, as noted above, on March 17, 2016, EPA released the 2016 memorandum to provide information to states as they develop SIPs addressing the Good Neighbor provision as it pertains to the 2012 $PM_{2.5}$ NAAQS. Consistent with step 1 of the framework, the 2016 memorandum provides projected future-year annual $PM_{2.5}$ design values for monitors throughout the country based on quality-assured and certified ambient-monitoring data and recent air-quality modeling and explains the methodology used to develop these projected design values. The memorandum also describes how the projected values can be used to help determine which monitors should be further evaluated to potentially address if emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at these monitoring sites. The 2016 memorandum explained that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS is 2021, the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data included 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the memorandum suggests approaches states might use to interpolate $PM_{2.5}$ values at sites in 2021.

For all, but one, monitoring sites in the eastern United States, the modeling data provided in the 2016 memorandum showed that monitors were expected to both attain and maintain the 2012 $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results project that this one monitor, the Liberty monitor, (ID number 420030064), located in Allegheny County, Pennsylvania, will be above the 2012 annual $PM_{2.5}$ NAAQS in 2017, but only under the model's maximum projected conditions, which are used in EPA's interstate transport framework to identify maintenance receptors. The Liberty monitor (along with all the other Allegheny County monitors) is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum suggests that under such a condition (again, where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025, but not in 2017), further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (which, again, is the attainment deadline for moderate $PM_{2.5}$ areas). The memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data, should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. This rulemaking considers these analyses for Rhode Island, as well as additional analysis conducted by EPA during review of Rhode Island's submittal.

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for the 2008 Ozone NAAQS. *See* 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.[6] The outputs from these model runs included hourly concentrations of $PM_{2.5}$ that were used in conjunction with measured data to project annual average $PM_{2.5}$ design values for 2017 and 2025. Areas that were designated as moderate $PM_{2.5}$ nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data correspond directly to the future-year attainment deadline for moderate $PM_{2.5}$ nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017 through 2021 period. Assessing downwind $PM_{2.5}$ air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008), that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

Rhode Island's Submission for Prongs 1 and 2

On December 6, 2017, RI DEM submitted an infrastructure SIP for the

[6] *See* 2015 ozone NAAQS RIA at: *www3.epa.gov/ttnecas1/docs/20151001ria.pdf.*

2012 $PM_{2.5}$ NAAQS that addressed prongs 1 and 2. The state's SIP submission relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any downwind area.

EPA analyzed the state's December 2017 submittal to determine whether it fully addressed the prong 1 and 2 transport provisions with respect to the 2012 $PM_{2.5}$ NAAQS. As discussed below, EPA concludes that emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X and SO_2) in Rhode Island will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Analysis of Rhode Island's Submission for the 2012 $PM_{2.5}$ NAAQS

As noted above, the modeling discussed in EPA's 2016 memorandum identified one potential maintenance receptor for the 2012 $PM_{2.5}$ NAAQS at the Liberty monitor (ID number 420030064), located in Allegheny County. The memorandum also identified certain states with incomplete ambient monitoring data as areas that may require further analysis to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

While developing the 2011 CSAPR rulemaking, EPA modeled the impacts of all 38 eastern states in its modeling domain on fine particulate matter concentrations at downwind receptors in other states in the 2012 analysis year in order to evaluate the contribution of upwind states on downwind states with respect to the 1997 and 2006 $PM_{2.5}$. Although the modeling was not conducted for purposes of analyzing upwind states' impacts on downwind receptors with respect to the 2012 $PM_{2.5}$ NAAQS, the contribution analysis for the 1997 and 2006 standards can be informative for evaluating Rhode Island's compliance with the Good Neighbor provision for the 2012 standard.

This CSAPR modeling showed that Rhode Island had no discernable impact (0.000 $\mu g/m^3$) on the Liberty monitor in Allegheny County, which is the only out-of-state monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a specific threshold for evaluating the 2012 $PM_{2.5}$ NAAQS, EPA notes that Rhode Island's impact on the Liberty monitor is far below the threshold of 1% for the annual $PM_{2.5}$ NAAQS (*i.e.,* 0.12 $\mu g/m^3$) that EPA previously used to evaluate the contribution of upwind states to downwind air-quality monitors. (A spreadsheet showing CSAPR contributions for ozone and $PM_{2.5}$ is included in docket EPA–HQ–OAR–2009–0491–4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that Rhode Island will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 $PM_{2.5}$ NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012 $PM_{2.5}$ NAAQS, and expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to measured $PM_{2.5}$ levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2–4 $\mu g/m^3$ higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015 through 2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. *See* proposed approval of the Ohio Infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS (82 FR 57689; December 7, 2017).

In addition to regional emissions reductions and plant closures, additional local reductions to both direct $PM_{2.5}$ and SO_2 emissions are expected to occur and should contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO_2 NAAQS SIP.[7] Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower $PM_{2.5}$ precursor emissions in the immediate future. The Allegheny SO_2 SIP also projects lower SO_2 emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021. *See* proposed approval and final approval of the Ohio Infrastructure SIP (82 FR 57689, December 7, 2017and 83 FR 4845, February 2, 2018).

As noted in the 2016 memorandum, several states have had recent data-quality issues identified as part of the $PM_{2.5}$ designations process. In particular, some ambient $PM_{2.5}$ data for certain time periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those states could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 $PM_{2.5}$ NAAQS determined that Rhode Island's impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of Rhode Island's contributions for purposes of the 2012 $PM_{2.5}$ NAAQS as well. Given this, and the fact, discussed below, that the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 $PM_{2.5}$ NAAQS during the 2007 through 2009 period to the 2013 through 2015 period, EPA concludes that it is highly unlikely that Rhode Island significantly

[7] *www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf.*

contributes to nonattainment or interferes with maintenance of the 2012 $PM_{2.5}$ NAAQS in areas with data-quality issues.[8]

Information in Rhode Island's December 2017 SIP submission corroborates EPA's proposed conclusion that Rhode Island's SIP meets its Good Neighbor obligations. The state's technical analysis in that submission includes 24-hour and annual $PM_{2.5}$ values for 2013 through 2015 for the six official monitors in Rhode Island as well as for monitors in the neighboring states of Massachusetts and Connecticut, a list of Rhode Island's 10 largest point sources of $PM_{2.5,}$ and results of EPA's CSAPR modeling. As mentioned above, the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 $PM_{2.5}$ NAAQS since 2007 through 2009. In addition, the 24-hour and annual design values for all monitors in the neighboring states of Massachusetts and Connecticut also have been below the 2012 $PM_{2.5}$ NAAQS since 2007 through 2009.

At specific monitors in Rhode Island, the highest 24-hour and annual mean values satisfying minimum data completion criteria were 49 µg/m^3 in 1999 and 14.9 µg/m^3 in 2000, respectively, at a monitor in Providence.[9] However, since 2004, all monitors in the state have been below the 2012 $PM_{2.5}$ NAAQS.

Second, Rhode Island's sources are well-controlled. Rhode Island's 2017 submission indicates that the state has many SIP-approved regulations and programs that limit emissions of $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2 and NO_X.[10] Among others, these regulations include APCR No. 3 ''Particulate Emissions from Industrial Processes'' (81 FR 47708; July 22, 2016); APCR No. 8 ''Sulfur Content of Fuels'' (83 FR 39888; August 13, 2018); APCR No. 9 ''Air Pollution Control Permits'' (78 FR 63383; October 24, 2013); APCR No. 13 ''Particulate Emissions from Fossil Fuel Fired Steam or Hot Water Generating Units'' (48 FR 13026; March 29, 1983); and APCR No. 27 ''Control of Nitrogen Oxide Emissions'' (83 FR 39888; August 13, 2018).

It should also be noted that Rhode Island is not in the CSAPR program because EPA analyses show that the state does not emit ozone-season NO_X at a level that contributes significantly to non-attainment or interferes with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state.

For the reasons explained herein, EPA agrees with Rhode Island's conclusions and proposes to determine that Rhode Island will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state. Therefore, EPA proposes to approve the December 2017 infrastructure SIP submission from Rhode Island with regard to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. One way for a state to meet this requirement, specifically with respect to in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA approved Rhode Island's latest NNSR regulations on April 21, 2015 (80 FR 22106). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51.

As noted above and in Element (C), Rhode Island's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules. As stated previously, Rhode Island submitted, on March 26, 2018, a SIP revision to address these deficiencies, and EPA is reviewing this submittal to verify that it satisfies the required provisions. Consequently, we are proposing to conditionally approve Rhode Island's infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS related to section 110(a)(2)(D)(i)(II) Prong 3 for the reasons discussed under Element (C).

Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

Regarding the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009, 2011, and 2013 memoranda recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Rhode Island's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30214). Accordingly, EPA proposes that Rhode Island meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP contain provisions requiring compliance with requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA approved Rhode Island's PSD program, as well as updates to that program, with the most recent approval occurring on April 21, 2015 (80 FR 22106), which includes a provision requiring notice to neighboring states of RI DEM's intention to either issue a draft PSD permit or deny a permit application. *See* APCR No. 9, section 9.12.3(e). Therefore, we propose to approve Rhode Island's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 2012 $PM_{2.5}$ NAAQS. Rhode Island has no obligations under any other provision of section 126.

Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Rhode Island does not have any pending

[8] Rhode Island's $PM_{2.5}$ design values for all ambient monitors are available in the Design Value Reports at *https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html.*

[9] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Rhode Island are available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

[10] SO_2 and NO_X contribute to the formation of $PM_{2.5}$.

obligations under section 115 for the 2012 $PM_{2.5}$ NAAQS. Therefore, EPA is proposing that Rhode Island meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2012 $PM_{2.5}$ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements under CAA section 128 about state boards. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retains responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Rhode Island does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Rhode Island, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Rhode Island cites to RIGL § 23–23–5, which provides the Director of DEM with the legal authority to enforce air pollution control requirements. Additionally, this statute provides the Director with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. RI DEM further cites APCR No. 28, ''Operating Permit Fees,'' which requires that major sources pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies RI DEM's legal authority to implement SIP measures, and Section VII of the 1972 SIP describes the resources and manpower estimates for RI DEM.

EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In Rhode Island, no board or body approves permits or enforcement orders; these are approved by the Director of RI DEM. Thus, with respect to this sub-element, Rhode Island is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). The Rhode Island Code of Ethics (RIGL § 36–14) applies to state employees and public officials and requires disclosure of potential conflicts of interest. It also provides that ''No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities.'' *See* RIGL § 36–14–5(a). RIGL §§ 36–14–1 through –7 were approved by EPA into the Rhode Island SIP on April 20, 2016 (81 FR 23175).

Consequently, EPA proposes that Rhode Island has met the applicable infrastructure SIP requirements for this sub-element for the 2012 $PM_{2.5}$ NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards. Lastly, the reports shall be available at reasonable times for public inspection.

Rhode Island's infrastructure submittal references existing state laws and regulations previously approved by EPA that require sources to monitor emissions and submit reports and that provide for the correlation of emissions data with emission limitations and for the public availability of emission data. For example, Rhode Island's submittal references RIGL § 23–23–5(16), which authorizes RI DEM to require a source to install, maintain, and use air pollution emission monitoring devices and to submit periodic reports on the nature and amounts of emissions. In addition, under RIGL § 23–23–13 and the Rhode Island public records act, *see* RIGL Title 38, emissions data are made available to the public and are not protected as ''trade secret or proprietary information.'' With respect to state regulations, APCR No. 9, ''Air Pollution Control Permits,'' requires emissions testing of permitted processes within 180 days of full operation and specifies that preconstruction permits issued contain an emissions testing section. In addition, APCR No. 6, ''Continuous Emission Monitors,'' requires certain sources to install, calibrate, operate, and maintain a continuous emission monitoring system and to report certain emissions-related data to RI DEM. Finally, APCR No. 14, ''Record Keeping and Reporting,'' requires emission sources to report emissions and other data to RI DEM annually, and provides that information in certain reports obtained pursuant to APCR No. 14 ''will be correlated with applicable emission and other limitations and will be available for public inspection.''

Therefore, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority comparable to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public

health or welfare or the environment'' in the event that ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that a combination of state statutes and regulations discussed in RI DEM's submittal provides for authority comparable to that in CAA section 303. The statutes and regulations are: RIGL §§ 10–20, 23–23–16, 23–23.1–5, 23–23.1–7, 23–23.1–8, 42–17.1–2, and APCR No. 7. In our proposal to approve this requirement for Rhode Island's infrastructure SIP submissions for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS (81 FR 10168; February 29, 2016), we explained how this combination of authorities provides Rhode Island with authority comparable to that in CAA § 303. *See* 81 FR 10168, 10177 (February 29, 2016). These statutes and the regulation apply in the same manner to particulate matter emissions as they do to emissions of the other NAAQS pollutants. Accordingly, for the reasons contained in our proposal to approve this element for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 infrastructure SIPs, we propose to find that this combination of state statutes and regulations provide for authority comparable to that in CAA § 303 for the 2012 $PM_{2.5}$ infrastructure SIP.

Section 110(a)(2)(G) also requires a state to submit for EPA approval a contingency plan (also known as an emergency episode plan) to implement the air agency's emergency episode authority for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* There is only one AQCR in Rhode Island—the Metropolitan Providence Interstate AQCR—and Rhode Island's portion thereof is classified as a Priority I area for PM, SO_X, carbon monoxide, and ozone and as a Priority III area for NO_2. *See* 40 CFR 52.2071. In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes'') for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of $PM_{2.5}$, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any $PM_{2.5}$ NAAQS). *See* 40 CFR 51.150. Consequently, Rhode Island's SIP is not required to contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to the 2012 $PM_{2.5}$ NAAQS.

Although $PM_{2.5}$ is not explicitly included in the contingency plan requirements of 40 CFR subpart H, the EPA 2009 memorandum recommends in the context of the 2006 $PM_{2.5}$ NAAQS that states develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140 $\mu g/m^3$ since 2006. EPA's review of Rhode Island's certified air-quality data in EPA's Air Quality System (AQS) indicates that the highest 24-hour $PM_{2.5}$ concentration since 2006 (*i.e.,* data through 2017) is 92.5 $\mu g/m^3$, which occurred in 2015 at a monitor in Providence. Although not expected, if $PM_{2.5}$ conditions were to change, Rhode Island does have general authority, as noted previously (81 FR 10168; February 29, 2016), to order a source to cease operations if it is determined that emissions from the source pose an immediate danger, or unreasonable and emergency risk, to public health or safety or to the environment. In addition, Rhode Island posts near real-time air-quality data, air-quality predictions and historical data on the RI DEM website. RI DEM's predictions are also displayed daily in the *Providence Journal.* Alerts are sent by email to many affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions. Furthermore, daily forecasted ozone and fine-particle levels are made available on the internet through the EPA AirNow and EnviroFlash systems. Information about these two systems is available on EPA's website at *www.airnow.gov.* Notices are sent to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone or 24-hour $PM_{2.5}$ standard.

EPA proposes that Rhode Island meets the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to the 2012 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision in response to: Changes in the NAAQS, availability of improved methods for attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate. In 1973, it was determined that Rhode Island's original SIP did not fully satisfy section 110(a)(2)(H) and EPA promulgated federal regulations to address the gap in the SIP. *See* 40 CFR 52.2080. Since Rhode Island's December 6, 2017, submittal does not address the gap in the SIP that led to a disapproval in 1973, EPA proposes to find that Rhode Island has not met applicable infrastructure SIP requirements for element (H) with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, EPA proposes to disapprove the state's submittal for element (H). No further action by EPA or the state is required, however, because remedying federal regulations are already in place. Moreover, mandatory sanctions under CAA section 179 are inapplicable, because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

Section 110(a)(2)(J) of the CAA requires that each SIP meet the applicable requirements of section 121 of the CAA (relating to consultation), section 127 of the CAA (relating to public notification), and part C of subchapter I of the CAA (relating to PSD and visibility protection). The evaluation of the submission from Rhode Island with respect to these requirements is described below.

Sub-Element 1: Consultation With Government Officials

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

Rhode Island General Law § 23–23–5, authorizes the RI DEM Director ''[t]o advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies, and with effective groups in industries in furthering the purposes of this chapter.'' EPA approved this statute into Rhode Island's SIP on April 20, 2016. *See* 81 FR 23175. In addition, APCR No. 9,

which is in Rhode Island's SIP, *see* 78 FR 63383 (October 24, 2013), directs RI DEM to notify relevant municipal officials and FLMs, among others, of tentative determinations by RI DEM with respect to permit applications for major stationary sources and major modifications.

EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Public Notification

Pursuant to CAA section 127, states must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Rhode Island's APCR No. 10, ''Air Pollution Episodes,'' specifies criteria for, and measures to be implemented during, air pollution alerts, warnings, and episodes. In addition, the RI DEM website includes near real-time air quality data, air quality predictions and a record of historical data. DEM's predictions are also displayed daily in the *Providence Journal,* a newspaper with statewide circulation. Alerts are sent by email to many affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions. In addition, AQS summaries of the year's air-quality-monitoring results are issued annually. The summaries are sent to a mailing list of interested parties and posted on the RI DEM website. Rhode Island is also an active partner in EPA's AirNow and EnviroFlash air-quality alert programs. EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 3: PSD

State plans must meet applicable requirements of part C of the CAA related to PSD. Rhode Island's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, does not fully satisfy the requirements of EPA's PSD implementation rules. However, the December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with 40 CFR 51.166 regarding $PM_{2.5}$ emissions and identifying NO_X as a precursor to ozone. As stated previously, Rhode Island submitted, on March 26, 2018, a SIP to address these deficiencies, which EPA is currently reviewing to verify that it satisfies the required provisions. Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-Element 4: Visibility Protection

Regarding visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2012 $PM_{2.5}$ NAAQS.

Based on the above analysis, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air-quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published the Guideline on Air Quality Models (''Guideline'') at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. The Guideline is used by EPA, other federal, state, territorial, local, and tribal air quality agencies, and industry to prepare and review new or modified source permits, SIP submittals or revisions, conformity, and other air quality assessments required under the CAA and EPA regulations. EPA has interpreted section 110(a)(2)(K) to require a state submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request. *See* 2013 Memorandum at 55.

Rhode Island state law implicitly authorizes RI DEM to perform air quality modeling and to provide such modeling data to EPA upon request. *See* RIGL §§ 23–23–2, 23–23–5. In addition, Rhode Island APCR No. 9, ''Air Pollution Control Permits,'' requires permit applicants to submit air quality modeling based on applicable air quality models, data bases, and other requirements specified in the Guideline in Appendix W to demonstrate impacts of new and modified major sources. The modeling data are sent to EPA along with the draft major permit.

The state also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA to perform large-scale urban airshed modeling for ozone and PM, if necessary. EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

Section 23–23–5 of the RIGL provides RI DEM with the authority to collect fees for preconstruction permits and operating permits for air emissions sources. In addition, RI DEM's ''Rules and Regulations Governing the Establishment of Various Fees'' sets forth permit fee requirements for air emissions sources and the legal authority to collect those fees. These rules and regulations are promulgated pursuant to RIGL Chapter 23–23 Air Pollution, and Chapter 42–35, Administrative Procedures. Rhode Island's infrastructure SIP submittal also refers to its regulations implementing its operating permit program pursuant to 40 CFR part 70. Rhode Island's title V permitting program, APCR No. 28, ''Operating Permit Fees,'' requires major sources to pay annual operating permit fees. EPA's full approval of Rhode Island's title V program (APCR No. 28) became effective on November 30, 2001. *See* 66 FR 49839 (October 1, 2001). To gain this approval, Rhode Island demonstrated the ability to collect sufficient fees to run the program. The fees collected from title V sources are above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element (M), states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Rhode Island's infrastructure submittals reference RIGL § 23–23–5, which provides for consultation with affected local political subdivisions and authorizes the RI DEM Director ''to advise, consult, and cooperate with the cities and towns and other agencies of the state . . . and other states and interstate agencies . . . in furthering the purposes of'' the state Clean Air Act (*i.e.,* RIGL chapter 23–23). EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 $PM_{2.5}$ NAAQS.

IV. Proposed Action

EPA is proposing to approve the elements of the infrastructure SIP submitted by Rhode Island on December 6, 2017, for the 2012 $PM_{2.5}$ NAAQS, with the exception of certain aspects relating to the state's PSD program, including 110(a)(2)(C)2, (D)2, and (J)3, which we are proposing to conditionally approve, and section 110(a)(2)(H), which we are proposing to disapprove. In regard to section (H), no further action by EPA or the state is required, however, since federal regulations are already in place that address the gap in the state's submittal with respect to element (H).

Specifically, EPA's proposed action regarding each infrastructure SIP requirement is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON RHODE ISLAND'S INFRASTRUCTURE SIP SUBMITTAL FOR THE 2012 $PM_{2.5}$ NAAQS

Element	2012 $PM_{2.5}$ NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	A*
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	A*
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	D
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A*
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
A*	Approve but conditionally approve aspect of PSD program relating to the identification of NO_X as a precursor of ozone and the revisions required by the 2010 NSR rule.
D	Disapprove, but no further action required because federal regulations already in place.
+	Not germane to infrastructure SIPs.
NA	Not applicable.

As noted in Table 1, we are proposing to conditionally approve portions of Rhode Island's infrastructure SIP submittals pertaining to the state's PSD program for the 2012 $PM_{2.5}$ NAAQS. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the deficiencies mentioned above under element (C). If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Rhode Island SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal Implementation Plan

requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant 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 Clean Air Act; 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–00658 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0064; FRL–9988–81–Region 4]

Air Plan Approval; Georgia: Permit Exemption for Fire Fighting Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to approve two revisions to the Georgia State Implementation Plan (SIP), submitted by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD), with two letters dated November 13, 2017, and July 31, 2018. Specifically, EPA is proposing to approve changes that revise existing exemptions for firefighting equipment. EPA is proposing to approve this SIP revision because the Agency believes that it is consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0064 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: Andres Febres, 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. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the Agency proposing?

Through a letter dated November 13, 2017, Georgia EPD submitted a SIP revision for EPA's approval that included several miscellaneous rule amendments.[1] Specifically, the November 13, 2017, SIP revision included changes to Georgia's Air Quality Control Rule 391–3–1–.01—''Definitions,'' Rule 391–3–1–.02(4)—''Ambient Air Standards,'' Rule 391–3–1–.02(7)—''Prevention of Significant Deterioration of Air Quality,'' Rule 391–3–1–.03(6)—''Exemptions,'' Rule 391–3–

[1] EPA notes that the Agency received this submittal on November 29, 2017.

1–.03(8)—''Permit Requirements,'' and Rule 391–3–1–.03(10)—''Title V Operating Permits.''

Through an additional letter dated July 31, 2018, Georgia EPD submitted several SIP revisions that included some miscellaneous rule amendments.[2] Specifically, the July 31, 2018, SIP revisions included changes to Georgia's Air Quality Control Rule 391–3–1–01—''Definitions,'' Rule 391–3–1–.02(2)(c)—''Incinerators,'' Rule 391–3–1–.02(4)—''Ambient Air Standards,'' Rule 391–3–1–.02(12)—''Cross State Air Pollution Rule NO_X Annual Trading Program,'' Rule 391–3–1–.02(13)—''Cross State Air Pollution Rule SO_2 Annual Trading Program,'' Rule 391–3–1–.02(14)—''Cross State Air Pollution Rule NO_X Ozone Season Trading Program,'' Rule 391–3–1–.03(6)—''Exemptions,'' Rule 391–3–1–.03(11)—''Permit by Rule,'' Rule 391–3–1–.03(10)—''Title V Operating Permits,'' Rule 391–3–1–.11—''Small Business Assistance Administration,'' and Rule 391–3–1–.12—''Duties of the Small Business Ombudsman Office.''

Through this proposed rulemaking, EPA is only proposing to approve changes to Rule 391–3–1–.03(6), which addresses exemptions for firefighting equipment from minor new source review (NSR) requirements. EPA is considering and taking action on the other July 31, 2018, SIP revisions involving the remaining changes to Georgia's Air Quality Control Rules through other rulemaking. Additional detail on Georgia's November 13, 2017, and July 31, 2018, SIP revisions and EPA's reasoning for proposing to approve the aforementioned changes is presented below.

II. Analysis of the State's Submittal

In this action, EPA is proposing to approve these revisions by proposing to find that they are consistent with the flexibility traditionally afforded to states in designing their minor NSR programs and are not otherwise prohibited by EPA's federal minor NSR program requirements. Under section 110(a)(2)(C) of the Act—and EPA's implementing regulations at 40 CFR 51.160–164—each SIP must include a program to regulate the construction and modification of stationary sources, including so-called ''minor sources.'' [3] The purpose of this program is to ensure that each SIP sets forth legally enforceable procedures that enable the state to determine whether the construction or modification of a source would result in a violation of applicable portions of the control strategy or would interfere with attainment or maintenance of a National Ambient Air Quality Standard (NAAQS). *See* 40 CFR 51.160(a). However, the federal requirements for minor source programs are considerably less prescriptive than those for major sources, allowing the states flexibility to identify the types and sizes of sources that will be subject to the program's review requirements, and the discretion to exempt certain de minimis sources whose emissions are too insignificant to impact attainment or maintenance of a NAAQS. *See* 40 CFR 51.160(e).

Georgia currently has a SIP-approved program for regulating the construction or modification of minor sources at Rule 391–3–1–.03. The rule also includes exemptions from the minor NSR requirements, found at section (6) of the rule, which includes an exemption for combustion equipment related to training of fire fighters. Specifically, Georgia's current SIP provides an exemption from construction permit requirements for ''Fire fighter or other emergency/safety equipment used to train fire fighters.'' *See* Rule 391–3–1–.03(6)(b)(13).[4] However, the exemption does not allow the source category to avoid any other applicable requirement, as that term is defined in 40 CFR 70.2. *See* Rule 391–3–1–.03(6).

Georgia EPD's November 13, 2017, and July 31, 2018, SIP revisions request that EPA revise the existing exemption for firefighting equipment. First, in its November 13, 2017, revision, Georgia EPD amends the exemption language to explicitly include fire pumps, by revising the language to state: ''Fire fighting equipment including fire pumps or other emergency/safety equipment used to train fire fighters.'' Additionally, in its July 31, 2018, revision, Georgia EPD further revises the exemption to include equipment used for firefighting or training by either firefighters or other emergency personnel. Specifically, the revised exemption states: ''Firefighting equipment, including fire pumps or other emergency/safety equipment, used to fight fires or train firefighters or other emergency personnel.'' Georgia states that these revisions clarify its existing interpretation of the exemption.

As noted above, the Act—as well as EPA's implementing regulations at 40 CFR 51.160–164—provides states flexibility in establishing approvable minor NSR programs, including the discretion to exempt certain de minimis sources whose emissions are too insignificant to impact attainment or maintenance of a NAAQS. In this case, EPA believes the exemption of fire pumps and other emergency/safety equipment used for fighting fires from the minor source construction permit requirements would be de minimis (or insignificant) for the reasons described below and as a result, EPA is proposing to find that the revisions are approvable and consistent with the federal minor source regulations at 40 CFR 51.160–164.

In addition, EPA is proposing to find that, under CAA 110(l), the exclusion of fire pumps and other emergency/safety firefighting equipment from minor NSR permitting will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the Act. Such non-interference is based on EPA's belief that any emissions increases that may result from the exclusion of fire pumps and other emergency/safety firefighting equipment from minor NSR permitting requirements would be de minimis or insignificant. This belief is based upon the nature and use of such equipment. For example, fire pumps are only operated in two time-limited circumstances: (1) For testing and maintenance; and (2) during emergency situations, for the purpose of putting out a fire. While testing and maintenance may be periodic and routine, operation of the pumps during those times would be limited. Similarly, operation of fire pumps during a fire emergency would also be time-limited and would present an even more infrequent, unusual operational circumstance. Furthermore, to the extent a fire pump may be used for emergency firefighting purposes, such use would likely aid in the overall reduction of air pollutant emissions associated with fires, such as particulate matter emissions. Finally, EPA notes that while fire pumps may be excluded from minor source permitting requirements, they remain subject to any other applicable federal requirements.[5]

[2] EPA notes that the Agency received this submittal on August 2, 2018.

[3] A minor source is a source whose potential to emit is lower than the major source applicability threshold for a particular pollutant as defined in the applicable nonattainment major NSR program or Prevention of Significant Deterioration program.

[4] The provision would also exempt these sources from operating permit requirements. Because minor source operating permits are not a required element of a SIP under the Act, however, we do not address that aspect of the proposed change.

[5] EPA notes that fire pumps may be subject to federal New Source Performance Standards at 40 CFR part 60, subpart IIII, and/or National Emissions Standards for Hazardous Air Pollutants at 40 CFR part 63, subpart ZZZZ. These standards restrict the emissions of subject engines based on size and age, and limit non-emergency operation to less than 100 hours per year.

As for the revised exemption language concerning other emergency/safety equipment used to fight fires or train fire fighters or other emergency personnel, EPA believes such use would also be time-limited and any emissions increases associated with its exclusion from minor source permitting requirements would also be insignificant. For these reasons, EPA is proposing to approve these revisions and is proposing to find that they are consistent with the CAA, including 110(l), and with federal regulations.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference a portion of Georgia EPD's Rule 391–3–1–.03—''Permits,'' specifically section (6)—''Exemptions,'' which became state effective July 23, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Georgia EPD's November 13, 2017, and July 31, 2018, SIP revisions. Specifically, EPA is proposing to approve these SIP revisions that modify Georgia's Rule 391–3–1–.03(6). The proposed changes exempt fire pumps and other equipment used by firefighters and other emergency personnel to fight fires from the Act's preconstruction review requirement. EPA believes that any air quality impacts from these activities are de minimis, and will often lead to net emissions reductions by mitigating or eliminating the air quality impacts of uncontrolled fires. EPA is proposing to approve these SIP revisions because the Agency has determined that they are consistent with the CAA, and would not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any other applicable requirement.

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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 17, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–00792 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2018–0837; FRL–9988–95–Region 7]

Approval of State Plans for Designated Facilities and Pollutants; Missouri; Diammonium Phosphate Fertilizer Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to rescind the current state plan and associated regulation and accept the negative declaration submitted by the State of Missouri for Diammonium Phosphate Fertilizer units. This negative declaration submitted by the Missouri Department of Natural Resources (MoDNR) certifies that Diammonium Phosphate Fertilizer (DPF) units subject to section 111(d) of the Clean Air Act (CAA) do not operate within the jurisdiction of the State of Missouri. The EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2018–0837 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental

Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7041 or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' or ''our'' refer to the EPA.

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I. Written Comments
II. Background
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IV. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2018–0837, at *https://www.regulations.gov.* 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

The Clean Air Act (CAA) requires that state regulatory agencies implement emission guidelines and associated compliance times using a state plan developed under sections 111(d) of the CAA.

The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants.

States have options other than submitting a state plan in order to fulfill their obligations under CAA sections 111(d). If a state does not have any existing units for the relevant emission guidelines, a letter can be submitted certifying that no such units exist within the state (*i.e.,* a negative declaration) in lieu of a state plan, in accordance with 40 CFR 60.5010. The negative declaration exempts the state from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d) plan.

On August 6, 1975, the EPA finalized standards of performance for new stationary sources from the phosphate fertilizer industry which included diammonium phosphate fertilizer production plants under the authority of section 111 of the CAA. As required by the CAA 111(d) and 40 CFR part 60, subpart B, each state must adopt and submit a plan for the control of pollutants from existing facilities regulated under section 111(b) New Source Performance Standards following publication of a notice of availability of an applicable emission control guideline unless no such facilities exist within the state. If there are no facilities in the state, the state is required to submit a letter of certifying that fact.

In response to these requirements, the State of Missouri submitted a plan for the control of fluoride emissions from phosphate fertilizer plants on January 3, 1985. The state plan was based on the state regulation 10 CSR 10–3.160 ''Restriction of Emissions from Diammonium Phosphate Fertilizer Plants''. At the time of the submittal there was a single operating phosphate fertilizer plant in the State located in Joplin, Missouri. On March 14, 1986, EPA approved the state plan and associated regulation submitted by the State of Missouri pursuant to CAA section 111(d) and 40 CFR part 60, subpart B. Subsequent to this state plan approval, the single phosphate fertilizer plant operating in Joplin, Missouri ceased fertilizer production and dismantled its fertilizer production equipment in between the years of 2003 and 2004.

On December 3, 2018, MoDNR submitted a negative declaration to EPA, certifying that there are no operating phosphate fertilizer plants in Missouri, and requested that the EPA rescind its previous state plan applicable to phosphate fertilizer production facilities. Additionally, MoDNR notified the EPA that it would rescind its 10 CSR 10–3.160 rule that controlled emissions of fluoride from diammonium phosphate fertilizer plants.

The EPA is proposing to accept MoDNR's negative declaration submission made on December 3, 2018 and rescind the State's plan and associated regulation. This action applies to the state's regulatory requirements for existing facilities and not new sources.

III. What action is the EPA proposing to take?

The EPA proposes to amend 40 CFR part 62 to reflect receipt of MoDNR's negative declaration letter certifying that there are no phosphate fertilizer production facilities operating in Missouri subject to 40 CFR part 60, subpart V, in accordance with section 111(d) of the CAA. Simultaneously, we are proposing to amend 40 CFR part 62, subpart AA, to remove phosphate fertilizer plants from the list of affected source categories found at 40 CFR 62.6350(c)(1).

IV. Statutory and Executive Orders

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve the state's negative declaration as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action does not impose an enforceable duty upon State, local, or tribal governments, and does not reduce or eliminate the amount of authorization of Federal appropriations, and because it contains no regulatory requirements applicable to small governments, this proposed action 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).

This proposed action 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).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action. This action merely proposes to approve a state negative declaration submitted in response to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rulemaking also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it proposes to approve a state submission in response to a Federal standard.

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, phosphate fertilizer plants.

Dated: December 26, 2018.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 62 as set forth below:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri

■ 2. Amend § 62.6350 by adding paragraph (b)(7) and revising paragraph (c) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(7) A revision to Missouri's 111(d) plan for control of fluoride emissions from existing phosphate fertilizer plants was state effective on September 30, 2018 and was submitted to the EPA on December 3, 2018. Submission included a negative declaration, dated December 3, 2018, supporting state documentation, and request for the EPA to withdraw the EPA's prior plan approval for existing Diammonium Phosphate Fertilizer Units.

(c) *Designated facilities.* The plan applies to existing facilities in the following categories of sources:

(1) Primary aluminum reduction plants.

(2) Sulfuric acid production plants.

■ 3. Section 62.6351 is revised to read as follows:

§ 62.6351 Identification of plan—negative declaration.

Letter from the Missouri Department of of Natural Resources, submitted December 3, 2018, certifying that there are no Diammonium Phosphate Ferilizer Units subject to 40 CFR part 60, subpart V. *Effective date:* The effective date of the negative declaration and EPA withdrawal of the prior plan approval is [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

[FR Doc. 2019–00782 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 806

RIN 2900–AQ21

VA Acquisition Regulation: Competition Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in Federal Acquisition Regulation (FAR), to remove procedural guidance that is internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises the VAAR concerning Competition Requirements.

DATES: Comments must be received on or before April 2, 2019 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ21 VA Acquisition Regulation: Competition Requirements.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using

appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in VA Acquisition Manual (VAAM) as internal departmental guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and the VAAM is not yet available on line.

VAAR Part 806—Competition Requirements

This proposed rule would revise the authority citations pertaining to part 806 to include a reference to 41 U.S.C. 1121(c)(3), which is from Title 41, Public Contracts, and speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 806 authorities to add 41 U.S.C. 1303, an updated positive law codification to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA, and to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer.

We also propose to include a reference to 41 U.S.C. 3304 as the basic authority to award contracts by other than full and open competition. Any other proposed changes to authorities or additional authorities are shown under the individual sections as described in the preamble and reflected in the amendatory language. We also propose to remove 38 U.S.C. 501 as it is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR.

We propose to add 806.004–70, Definition, to establish that as used in part 806, ''health-care resource(s)'' has the same definition as that provided in VAAR 873.102. VAAR 873.102 provides that ''health-care resource'' includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space. (38 U.S.C. 8153). A future rule may contain revisions to VAAR part 873 which also might include any updated definition for ''health-care resource.''

We propose to add subpart 806.1—Full and Open Competition, and section 806.102, Use of competitive procedures, to address the application of 38 U.S.C. 8127 to competitive General Services Administration (GSA) and VA Federal Supply Schedules.

We propose to add subpart 806.2—Full and Open Competition After Exclusion of Sources, which would contain two sections: 806.203, Set-asides for small business concerns, which directs attention to subparts 819.5 and 819.70 for VA's policies on set-asides for small business concerns, and 806.270, Set-asides for verified Veteran-owned small businesses.

In 806.270, we propose to set-forth VA's authority under VA's supplement to FAR part 6—VAAR part 806, and the requirement mandated by 38 U.S.C. 8127, to conduct set-asides for Veteran-owned small businesses whenever market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from eligible and verified service-disabled veteran-owned small businesses (SDVOSBs) or veteran-owned small businesses (VOSBs), and award can be made at a fair and reasonable price that offers best value to the Government (VA Rule of Two). This section would also state that the requirement to set aside procurements for Veteran-owned small businesses applies to all contracts under this regulation, including orders under interagency acquisition vehicles such as the Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts. We propose to also include language in paragraph (c) that contracting officers shall utilize the authority in paragraph (a), for set-asides to verified SDVOSBs and VOSBs, over other set-asides authorized in FAR subpart 6.2. The reason is the statutory requirement in 38 U.S.C. 8127–8128 for the VA Rule of Two which provides VA a unique authority for set-asides that includes both categories of Veteran-owned small businesses. While FAR 6.206, Set-asides for service-disabled veteran-owned small business concerns, does provide for an SDVOSB set-aside, SDVOSBs who may receive contract awards under that authority self-represent their status, whereas eligibility for and participation in the VA SDVOSB set-aside program requires verification and inclusion in the VA, Office of Small and Disadvantaged Business Utilization (OSDBU), Center for Verification and Evaluation, Vendor Information Pages (VIP). Additionally, the FAR does not have a specific set-aside program for VOSBs, while VA does, which also requires that in order to be eligible for and to participate in the program, VOSBs must also go through a thorough verification program and be included in VA OSBDU's VIP. This section also proposes to include language that would provide that for Indefinite-Delivery contracts, when a set-aside is restricted to verified SDVOSBs or VOSBs, it satisfies competition requirements.

In subpart 806.3—Other Than Full and Open Competition, we propose to revise the entire subpart to add specific reference to VA's authority for noncompetitive procedures for verified Veteran-owned small businesses and to clarify existing authorities regarding such noncompetitive procedures. The revised subpart would also clarify existing statutory authority for other VA unique authorities and update new Title 41 citations and require other specific citation requirements.

We propose to amend section 806.302, Circumstances permitting other than full and open competition, to add several sections. We propose to revise 806.302–5, Authorized or required by statute, to remove its text and retain the title. The removed text has been revised and moved to 806.302–571.

Under 806.302–5, we propose to add two sections: 806.302–570 and 806.302–571. We propose to add 806.302–570, Noncompetitive procedures for verified Veteran-owned small businesses, to provide coverage of the authority to enter into contracts non-competitively, when specifically authorized under the VA Veterans First Contracting Program in accordance with VAAR 819.7007 or 819.7008. Paragraph (a) provides that justification and approval requirements

of FAR 6.303 and 6.304, and internal agency review and approval thresholds set forth in VA internal procedures apply. Paragraph (b) provides the required updated 41 U.S.C. 3304(a)(5) citation, the specific authority under 38 U.S.C. 8127(b), and states that contracting officers may award a contract to a VIP verified SDVOSB first, then VOSB, using other than full and open competition, for contracts at or below the Simplified Acquisition Threshold (SAT). Paragraph (c) provides the proposed noncompetitive procedures for contracts above the SAT, as well as specific limitations that apply for actions over the SAT: the proposed SDVOSB or VOSB business must be responsible; the anticipated award price of the contract, including options, will exceed the SAT, but will not exceed $5 million; and, contract award can be made at a fair and reasonable price that offers best value to the United States.

We also propose to add 806.302–571, Authorized or required by statute—VA unique authorities, which would contain the statutes previously listed in 806.302–5 and provide policy under the statutes to make awards by other than full and open competition. Paragraph (a) provides the updated Title 41 authority—41 U.S.C. 3304(a)(5), updated from the moved coverage under 806.302–5. Paragraph (b)(1) would provide that full and open competition is not required for the acquisition of prosthetic appliances and services based on the authority under 38 U.S.C. 8123. Paragraph (b)(2) would provide the existing policy for the acquisition of commercial health-care resources, use of medical equipment or space, or research acquired from an institution affiliated with VA under the authority set forth in 38 U.S.C. 8153(a)(3)(A). Paragraph (b)(3) would provide policy for the acquisition of commercial health-care resources, use of medical equipment or space from other than an affiliated institution, but only when conducted in accordance with simplified procedures in VAAR part 873, Simplified Acquisition Procedures for Health-Care Resources, under the authority set forth in 38 U.S.C. 8153(a)(3)(B). Paragraph (b)(4) would provide the authority under 38 U.S.C. 8153(a)(3)(C) for the sole source acquisition of commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution in accordance with paragraph (b)(2). The justification and approval requirements of FAR 6.303 and agency internal review procedures apply.

806.302–571, paragraph (c), would require that contracts awarded using the authority set forth under paragraph (a), with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304, and VA internal agency procedures.

806.302–571, paragraph (d), would incorporate an updated Title 41 citation reference: 41 U.S.C. 3304(a)(5), and would also permit VA to procure certain supplies and services and require contracting officers, pursuant to FAR 6.302–5(c)(2)(ii), to comply with written justification and approval requirements set forth in FAR 6.303 and 6.304, citing 41 U.S.C. 3304(a)(5) and the applicable statute. Specifically, 806.302–571(d) contains authorities previously under 806.302–5 and would continue existing policy to allow VA to continue to enter into contracts for the following:

Scarce medical specialist services through contracts with 1) schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing; 2) clinics; and 3) any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel, in accordance with the authority of 38 U.S.C. 7409. We also propose to remove language that was previously codified that restricted such contracts to institutions affiliated with VA under 38 U.S.C. 7302 as no such restriction is contained in the statute for 38 U.S.C. 7409;

Purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service under the authority of 38 U.S.C. 7802(f);

Contracts or leases for the operation of parking facilities authorized by the Secretary or designee under the authority of 38 U.S.C. 8109(f);

Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions, under the authority of 38 U.S.C. 8122(c), when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources; and

Contracts or agreements with private or public agencies or persons, including contracts for services of translators under the authority of 38 U.S.C. 513.

We propose to remove the authority currently listed in 806.302–5(a)(1), concerning VA ability to procure scarce medical specialist services, as an exception to full and open competition and place this authority in 806.302–571(d)(1) to require a written justification and approval before procuring services using the 38 U.S.C. 7409 authority. While 38 U.S.C. 7409 states that VA may procure scarce medical specialist services from certain persons and institutions identified in the statute, the statute does not contain language which expressly exempts these types of procurements from the competition requirements found in 41 U.S.C. 3301 et. seq. We propose to require that the use of this authority comply with written justification and approval requirements set forth in FAR 6.303 and 6.304 and cite 41 U.S.C. 3304(a)(5) and 38 U.S.C. 7409.We propose to remove 806.302–7, Public interest, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to remove 806.304, Approval of the justification, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to revise subpart 806.5—Competition Advocates, to amend the title to Advocates for Competition to conform to the revised title in FAR part 6.

We propose to revise 806.501, Requirement, to identify the Deputy Senior Procurement Executive as the VA Advocate for Competition.

We propose to remove 806.570, Planning requirements, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or

procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines ''significant regulatory action'' to mean any regulatory action that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is a significant regulatory action under E.O. 12866, because it may create a serious inconsistency or otherwise interfere with an action taken or planned by another agency and raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date.

This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would generally be small business neutral. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA estimates that no cost impact to individual business would result from these rule updates. On this basis, the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

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

List of Subjects in 48 CFR Part 806

Government procurement.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on October 29, 2018, for publication.

Dated: December 21, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA proposes to revise 48 CFR part 806 to read as follows:

PART 806—COMPETITION REQUIREMENTS

Sec.
806.004–70 Definition.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.
806.270 Set-asides for verified Veteran-owned small businesses.

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.
806.302–5 Authorized or required by statute.
806.302–570 Noncompetitive procedures for verified Veteran-owned small businesses.
806.302–571 Authorized or required by statute—VA unique authorities.

Subpart 806.5—Advocates for Competition

806.501 Requirement.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301–1.304.

806.004–70 Definition.

As used in this part—

Health-care resources has the same definition as that provided in VAAR 873.102.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive when awarded in accordance with the procedures specified in FAR part 8 and this part.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

(c) Subpart 819.5 and subpart 819.70 prescribe the policies and procedures

that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

(a) To fulfill the statutory requirements relating to Public Law 109–461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127–8128), contracting officers shall set aside solicitations in accordance with 819.70 and the VA Rule of Two (see 802.101) for Vendor Information Pages (VIP) verified service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) (see 819.7005 and 819.7006). (38 U.S.C. 8127–8128)

(b) This requirement to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts, including Governmentwide acquisition contracts (GWACs). (38 U.S.C. 8127–8128)

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302–5 Authorized or required by statute.

806.302–570 Noncompetitive procedures for verified Veteran-owned small businesses.

(a) Full and open competition need not be provided for when awarding a sole source contract under (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using this authority shall be supported by justification and approval requirements of FAR 6.302–5(c)(2)(ii), 6.303 and 6.304.

(b) *Sole source awards below the Simplified Acquisition Threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under this authority to a VIP verified SDVOSB first, then VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the Simplified Acquisition Threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed $5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

806.302–571 Authorized or required by statute—VA unique authorities.

(a) *Authority.* (1) Citation: 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) below for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when—a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) *Application.* The following products and services are authorized to be acquired from a specified source:

(1) *Prosthetic appliances and services.* Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law as set forth in VA directives governing prosthetic appliances, sensory aids and services supporting the same. (38 U.S.C. 8123)

(2) *Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs.* Contracting activities may procure health care resources, including medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an affiliated institution affiliated with VA in accordance with 38 U.S.C. 7302. Medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions. The justification and approval requirements of FAR 6.303 and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) *Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in (b)(2) of this section.* Contracting activities may procure health care resources from a non-affiliated institution only if the procurement is conducted in accordance with the simplified procedures prescribed in part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) *Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in (b)(2) of this section and to be conducted on a sole source basis.* This authority applies if not acquired from an affiliated institution in accordance with part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(C))

(c) Contracts awarded using this authority, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

(d) When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by FAR 6.303 and 6.304:

(1) *Contracts for scarce medical specialist services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409). Contracting officers may enter into contracts with (1) schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing; (2) clinics; and (3) any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) *Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f)). Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) *Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b).* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f)). Contracts or leases may be entered into

provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) *Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8122(c)). Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) *Contracts or agreements with private or public agencies or persons for translator services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513).

Subpart 806.5—Advocates for Competition

806.501 Requirement.

The Deputy Senior Procurement Executive (DSPE) is designated as the VA Advocate for Competition. The DSPE may further delegate this authority to other VA officials. A complete list of VA procuring activity Advocates for Competition can be found at *https://www.va.gov/oal/business/pps/policy.asp.*

[FR Doc. 2018–28206 Filed 1–31–19; 8:45 am]

BILLING CODE 8320–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1002 and 1312

[Docket No. EP 743]

Water Carrier Tariff Filing Procedures

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board provides notice that comments to this notice of proposed rulemaking due to the Board during the partial Federal government shutdown period will now be due by February 4, 2019.

DATES: Comments on the proposed rule are due by February 4, 2019. Reply comments are due by March 4, 2019.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at *www.stb.gov* at the E–FILING link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 743, 395 E Street SW, Washington, DC 20423–0001. Written comments and replies will be posted on the Board's website and can also be obtained by contacting the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at *RCPA@stb.gov* or (202) 245–0238.

FOR FURTHER INFORMATION CONTACT: Michael Higgins at 202–245–0284. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) served on December 21, 2018, the Board proposed new procedures for water carriers operating in the noncontiguous domestic trade to electronically publish, file, and keep tariffs available for public inspection. Notice of the proposed rulemaking was published in the **Federal Register** on December 26, 2018 (83 FR 66229).

In the NPRM, the Board directed comments to be submitted by January 25, 2019, and reply comments to be submitted by February 25, 2019. During the partial shutdown of the Federal government from December 22, 2018 through January 25, 2019, all deadlines requiring the submission of material to the Board, including the deadlines in this proceeding, were tolled. Comments on the NPRM will be due by February 4, 2019, and reply comments will be due by March 4, 2019.

It is ordered:

1. Comments are due by February 4, 2019. Reply comments are due by March 4, 2019.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: January 29, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–00788 Filed 1–31–19; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 84, No. 22
Friday, February 1, 2019

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 COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Summary of State & Local Government Tax Revenues

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

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

DATES: To ensure consideration, written comments must be submitted on or before April 2, 2019.

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(s) and instructions should be directed to Kristina Pasquino-Frates, Chief, State Finance and Tax Statistics Branch, Government and Trade Management Division, U.S. Census Bureau, Headquarters, 5K071, Washington, DC 20233; telephone: 301.763.5034; email: *Kristina.marie.pasquino.frates@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Quarterly Summary of State and Local Government Tax Revenue, using the F–71 (Quarterly Survey of Property Tax Collections), F–72 (Quarterly Survey of State Tax Collections), and F–73 (Quarterly Survey of Non-Property Taxes) forms. The Quarterly Summary of State and Local Government Tax Revenue provides quarterly estimates of state and local government tax revenue at the national level, as well as detailed tax revenue data for individual states. The information contained in this survey is the most current information available on a nationwide basis for state and local government tax collections.

The Census Bureau needs state and local tax data to publish benchmark statistics on tax revenues, to provide data to the Bureau of Economic Analysis for Gross Domestic Product (GDP) calculations and other economic indicators, and to provide data for economic research and comparative studies of governmental finances. Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various states. Economists and public policy analysts use the data to assess general economic conditions and state and local government financial activities.

The Census Bureau is requesting an extension of the approval of the current forms. No changes to the forms are being requested.

II. Method of Collection

For the Quarterly Survey of Property Tax Collections (Form F–71), the Census Bureau will mail letters quarterly to a sample of approximately 5,500 local tax collection agencies, known to have substantial collections of property tax, requesting their online data submissions.

For the Quarterly Survey of State Tax Collections (Form F–72), the Census Bureau will email letters to each of the 50 state governments and the government of the District of Columbia quarterly requesting their online data submissions or continued coordinated submission through the state government revenue office.

For the Quarterly Survey of Non-Property Taxes (Form F–73), the Census Bureau will mail letters quarterly to a sample of approximately 1,800 local tax collection agencies, known to have substantial collections of local general sales and/or local individual/corporation net income taxes, requesting their online data submissions.

F–71 and F–73 survey data will be collected via the internet. Data for the F–72 survey are collected via email or compilation of data in coordination with the state government revenue office.

In addition to reporting current quarter data, respondents may report data for the previous eight quarters or submit revisions to their previously submitted data. In the event that a respondent cannot report online, they may request a form as a last resort.

In those instances, when the Census Bureau is not able to obtain a response, follow-up operations will be conducted using email and phone calls. Nonresponse weighting adjustments are used to adjust for any unreported units in the sample from the latest available data.

III. Data

OMB Control Number: 0607–0112.
Form Number(s): F–71, F–72, F–73.
Type of Review: Regular submission.
Affected Public: State and local governments and the government of the District of Columbia.
Estimated Number of Respondents: 7,351.
Estimated Time per Response: F–71 = 15 minutes, F–72 = 30 minutes, F–73 = 20 minutes.
Estimated Total Annual Burden Hours: 8,002 hours.
Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., Sections 161 and 182.

IV. Request for Comments

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

on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Department of Commerce.

[FR Doc. 2019–00783 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review in the matter of Certain Uncoated Groundwood Paper From Canada: Final Affirmative Countervailing Duty Determination (Secretariat File Number: USA–CDA–2018–1904–06).

SUMMARY: The U.S. Section of the NAFTA Secretariat has received motions filed on behalf of the Government of Canada; the U.S. Department of Commerce; North Pacific Paper Company (''NORPAC''); the Government of Alberta; the Government of British Columbia; the Government of Newfoundland and Labrador; the Government of Ontario; the Government of Quebec; Alberta Newsprint Company; Catalyst Paper Corporation, Catalyst Pulp and Paper Sales Inc. and Catalyst Paper (USA) Inc.; Gannett Supply Corporation; Kruger TroisRivieres L.P., Corner Brook Pulp and Paper Limited, Kruger Publication Papers Inc. and Kruger Brampton L.P.; Resolute FP Canada Inc. and Resolute FP US Inc.; and Rayonier A.M. Canada (successor to Tembec Inc.) requesting the termination of panel review in the matter of Certain Uncoated Groundwood Paper From Canada: Final Affirmative Countervailing Duty Determination (Groundwood Paper CVD) NAFTA dispute.

Given all the participants have filed motions requesting termination and pursuant to Rule 71(2) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules),* the NAFTA Groundwood Paper CVD dispute has been terminated.

As a result, and in accordance with Rule 78(a), notice is hereby given that panel review of the NAFTA Groundwood Paper CVD dispute has been completed effective November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules,* which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules,* please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

Dated: January 29, 2019.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2019–00775 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd. (TMM) did not have reviewable entries during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449.

Background

On April 3, 2018, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from China for the POR.[1] On June 6, 2018, in response to a timely request from the petitioner,[2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on magnesium metal from China with respect to TMI and TMM.[3]

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [4] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 13949 (April 3, 2018).

[2] *See* letter from US Magnesium LLC (the petitioner), ''Magnesium Metal from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 26258 (June 6, 2018).

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [5]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Preliminary Determination of No Shipments

We received timely submissions from TMI and TMM certifying that they did not have sales, shipments, or exports of subject merchandise to the United States during the POR.[7] On August 13, 2018, we requested the U.S. Customs and Border Protection (CBP) data file of entries of subject merchandise imported into the United States during the POR, and exported by TMM and/or TMI. This query returned no entries during the POR.[8] Additionally, in order to examine TMM's and TMI's claims, we sent an inquiry to CBP requesting that any CBP officer alert Commerce if he/she had information contrary to these no-shipments claims.[9] On August 16, 2018, we received notification from CBP of no information contrary to the no shipment claims.[10]

Because we have not received information to the contrary from CBP, consistent with our practice, we preliminarily determine that TMI and TMM had no shipments and, therefore, no reviewable entries during the POR. In addition, we find it is not appropriate to rescind the review with respect to these companies but, rather, to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice in non-market economy (NME) cases.[11]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**.[12] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the date for filing case briefs.[13] Parties who submit arguments are requested to submit with each argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[14] Parties submitting briefs should do so pursuant to Commerce's electronic filing system: Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[15] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the date of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Unless extended, we intend to issue the final results of this administrative review, including our analysis of all issues raised in any written brief, within 120 days of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] We intend to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to Commerce's practice in NME cases, if we continue to determine in the final results that TMI and TMM had no shipments of subject merchandise, any suspended entries of subject merchandise during the POR from these companies will be liquidated at the China-wide rate.[17]

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 entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2)

[5] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[7] *See* letter from TMI, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium International, Ltd.,'' dated July 5, 2018, at 1. *See* letter from TMM, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 5, 2018, at 1.

[8] *See* memorandum, ''2017–2018 Administrative Review of Magnesium Metal from the People's Republic of China, U.S. Customs and Border Protection Data'' dated August 24, 2018, at Attachment 1.

[9] *Id.* at Attachment 2.

[10] *Id.* at Attachment 3.

[11] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2014–2015,* 81 FR 72567 (October 20, 2016) and the ''Assessment Rates'' section, below.

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1)(2).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

[15] *See* 19 CFR 351.303 (for general filing requirements).

[16] *See* 19 CFR 351.212(b)(1).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be separate from China-wide entity), the cash deposit rate will be China-wide rate of 141.49 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 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 also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 21, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–00756 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–5A004]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by DFA of California (''DFA''), Application No. 14–5A004.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review (Certificate) from DFA. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2018) (the ''Regulations''). OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 14–5A004.''

Summary of the Application

Applicant: DFA of California.

Contact: Matthew Krehe, (916) 646–6464.

Application No.: 14–5A004.

Date Deemed Submitted: December 18, 2018.

Proposed Amendment: DFA seeks to amend its Certificate as follows:

1. Add the following new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

- The DeRousi Group LLC—DBA DeRousi Nut
- Santa Clara Nut Company

DFA's proposed amendment of its Export Trade Certificate of Review results in the following Membership list:

1. Alpine Pacific Nut Company, Hughson, CA
2. Andersen & Sons Shelling, Vina, CA
3. Avanti Nut Company, Inc., Stockton, CA
4. Berberian Nut Company, LLC, Chico, CA
5. Carriere Family Farms, Inc., Glenn, CA
6. California Almond Packers and Exporters, Inc. (CAPEX), Corning CA
7. California Walnut Company, Inc., Los Molinos, CA
8. Chico Nut Company, Chico, CA
9. Continente Nut LLC, Oakley, CA
10. C. R. Crain & Sons, Inc., Los Molinos, CA
11. Crain Walnut Shelling, Inc., Los Molinos, CA
12. Diamond Foods, LLC, Stockton, CA
13. Empire Nut Company, Colusa, CA
14. Fig Garden Packing, Inc., Fresno, CA
15. Gold River Orchards, Inc., Escalon, CA
16. Grower Direct Nut Company, Hughson, CA
17. Guerra Nut Shelling Company, Hollister, CA
18. Hill View Packing Company Inc., Gustine, CA
19. John B. SanFilippo & Son, Inc.
20. Mariani Nut Company, Winters, CA
21. Mariani Packing Company, Inc., Vacaville, CA
22. Mid Valley Nut Company Inc., Hughson, CA
23. Morada Nut Company, LP, Stockton, CA
24. National Raisin Company, Fowler, CA
25. O–G Nut Company, Stockton, CA
26. Omega Walnut, Inc., Orland, CA
27. Pearl Crop, Inc., Stockton, CA
28. Poindexter Nut Company, Selma, CA

29. Prima Noce Packing, Linden, CA
30. RPC Packing Inc., Porterville, CA
31. Sacramento Packing, Inc., Yuba City, CA
32. Sacramento Valley Walnut Growers, Inc., Yuba City, CA
33. San Joaquin Figs, Inc., Fresno, CA
34. Santa Clara Nut Company, San Jose, CA
35. Shoei Foods USA Inc., Olivehurst, CA
36. Stapleton-Spence Packing, Gridley, CA
37. Sun-Maid Growers of California, Kingsburg, CA
38. Sunsweet Growers Inc., Yuba City, CA
39. Taylor Brothers Farms, Inc., Yuba City, CA
40. The DeRousi Group LLC—DBA DeRousi Nut, Escalon, CA
41. T.M. Duche Nut Company, Inc., Orland, CA
42. Wilbur Packing Company, Inc., Live Oak, CA
43. Valley Fig Growers, Fresno, CA

Dated: January 28, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–00576 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Preliminary Results of Countervailing Duty Expedited Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an expedited review of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada for the producers/exporters that requested a review. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Nicholas Czajkowski, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2018, Commerce published the CVD order on softwood lumber from Canada.[1] On March 1, 2018, in accordance with 19 CFR 351.214(k), Commerce initiated an expedited review of the *Order* for 34 companies that requested a review.[2] Subsequently, 25 companies withdrew their requests for a review, and Commerce published a notice of partial rescission of this expedited review on March 21, 2018.[3] For a listing of the companies for which a review is being conducted, *see* the ''Preliminary Results of Review'' section of this notice below. The period of review is January 1, 2015, through December 31, 2015.

For a complete description of the events that followed the initiation of this expedited review, *see* the Preliminary Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by this *Order* is certain softwood lumber from Canada. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this expedited review in accordance with 19 CFR 351.214(k). For each subsidy program found countervailable, we preliminarily find that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying the preliminary conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice. We calculated a CVD rate for each producer/exporter of the subject merchandise that requested an expedited review.

Preliminary Results of Review

We preliminarily determine that the following estimated net countervailable subsidy rates exist for the following producers/exporters for which this expedited review is being conducted:

Producer/exporter	Subsidy rate (percent)
Fontaine Inc. and its cross-owned affiliates[6]	1.28
Les Produits Forestiers D&G Ltée and its cross-owned affiliates[7]	*0.21
Marcel Lauzon Inc. and its cross-owned affiliates[8]	*0.42
Mobilier Rustique (Beauce) Inc. and its cross-owned affiliates[9]	1.99
North American Forest Products Ltd. and its cross-owned affiliates[10]	*0.26
Produits Matra Inc. and Sechoirs de Beauce Inc. and their cross-owned affiliate[11]	5.80
Roland Boulanger & Cie Ltée and its cross-owned affiliates[12]	*0.31
Scierie Alexandre Lemay & Fils Inc. and its cross-owned affiliates[13]	*0.05

* *De minimis subsidy rate.*

Cash Deposit Instructions

Pursuant to section 19 CFR 351.214(k)(3)(iii), the final results of this

[1] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (*Order*).

[2] *See Certain Softwood Lumber Products from Canada: Initiation of Expedited Review of the Countervailing Duty Order*, 83 FR 9833 (March 8, 2018) (*Initiation Notice*).

[3] *See Certain Softwood Lumber Products from Canada: Partial Rescission of Expedited Review of the Countervailing Duty Order*, 83 FR 23424 (May 21, 2018).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Expedited Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Tariff Act of 1930, as amended (the Act) regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] Commerce preliminarily finds the following companies to be cross-owned with Fontaine Inc.: Gestion Natanis Inc., Les Placements Jean-Paul Fontaine Ltee, and Placements Nicolas Fontaine Inc.

[7] Commerce preliminarily finds the following companies to be cross-owned with Les Produits Forestiers D&G Ltée: Le Groupe Gesco-Star Ltée, Les Produits Forestiers Portbec Ltée, and Les Produits Forestiers Startrees Ltée.

[8] Commerce preliminarily finds the following companies to be cross-owned with Marcel Lauzon Inc.: Placements Marcel Lauzon Ltee and Investissements LRC Inc.

Continued

expedited review will not be the basis for the assessment of countervailing duties. Upon issuing the final results, Commerce intends to instruct Customs and Border Protection to collect cash deposits of estimated countervailing duties for the companies subject to this expedited review, at the rates shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this expedited review. These cash deposit requirements, when imposed, shall remain in effect until further notice. Pursuant to 19 CFR 351.214(k)(3)(iv), however, if a company has a final net countervailable subsidy rate of zero or *de minimis*, it will be excluded from the *Order.*

Disclosure and Public Comment

Commerce will disclose to the parties in this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice.[14] Interested parties may submit written arguments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[15] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) Statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Interested parties who wish to request a hearing must submit a written request within 30 days after the date of publication of this notice.[16] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If Commerce receives a request for a hearing, we will inform parties of the scheduled date for the hearing, which will be held at the main Department of Commerce building at a time and location to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing. Briefs and hearing requests are to be filed electronically using ACCESS and must be received successfully in their entirety by 5:00 pm Eastern Time on the due date.

Unless the deadline is extended pursuant to 19 CFR 351.214(h), Commerce intends to issue the final results of this expedited review, including the results of its analysis of the issues raised in any written briefs, within 90 days after the date on which these preliminary results are issued.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214(k).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation
V. Analysis of Programs
VI. Conclusion

[FR Doc. 2019–00745 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–DS–P

[9] Commerce preliminarily finds the following companies to be cross-owned with Mobilier Rustique (Beauce) Inc.: J.F.S.R. Inc., Gestion C.A. Rancourt Inc., Gestion J.F. Rancourt Inc., Gestion Suzie Rancourt Inc., Gestion P.H.Q. Inc., 9331–3419 Quebec Inc., 9331–3468 Quebec Inc., and SPQ Inc.

[10] Commerce preliminarily finds the following companies to be cross-owned with North American Forest Products Ltd.: Parent-Violette Gestion Ltée and Le Groupe Parent Ltée.

[11] Commerce preliminarily finds Bois Ouvre de Beauceville (1992), Inc. to be cross-owned with Produits Matra, Inc. and Sechoirs de Beauce Inc. Produits Matra Inc. and Sechoirs de Beauce Inc. submitted separate requests for the expedited review; however, based on record evidence, we found them to be cross-owned, and therefore are calculating a single countervailing duty rate for both.

[12] Commerce preliminarily finds the following companies to be cross-owned with Roland Boulanger & Cie Ltée: Industries Daveluyville, Inc. and Les Manufacturiers Warwick Ltée.

[13] Commerce preliminarily finds the following companies to be cross-owned with Scierie Alexandre Lemay & Fils Inc.: Bois Lemay Inc. and Industrie Lemay Inc.

[14] *See* 19 CFR 351.224(b).

[15] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Stainless Steel Butt-Weld Pipe Fittings From Malaysia: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Superinox Max Fittings Industries Sdn. Bhd. (Superinox) made sales of subject merchandise at less than normal value during the period of review (POR), February 1, 2017, through January 31, 2018.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Madeline R. Heeren or Preston Cox, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9179 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2018, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings (pipe fittings) from Malaysia.[1] The administrative review covers one manufacturer/exporter of the subject merchandise, Superinox. We provided interested parties an opportunity to comment on the *Preliminary Results.* We received no comments. As such, these final results are unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

For purposes of the order, the product covered is butt-weld fittings. Butt-weld fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the order are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.,* DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of

[1] *See Stainless Steel Butt-Weld Pipe Fittings from Malaysia: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 83 FR 53604 (October 24, 2018) (*Preliminary Results*) and accompanying memorandum, ''Decision Memorandum for Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Malaysia'' (Preliminary Decision Memorandum).

seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the order.

The order does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the order are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of the Administrative Review

We determine that a weighted-average dumping margin of 60.10 percent exists for Superinox for the period of February 1, 2017, through January 31, 2018.

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act, 19 CFR 351.212(b)(1) and the *Final Modification,*[2] Commerce will instruct U.S. Customs and Border Protection (CBP) to liquidate all appropriate entries for Superinox without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Superinox for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[3] We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirement

The following cash deposit requirements will be effective upon publication of the notice of the final results of administrative review for all shipments of pipe fittings from Malaysia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Superinox will be 60.10 percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.51 percent *ad valorem,* the all-others rate established in the less-than-fair value investigation.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding 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 violation subject to sanction.

Notification to Interested Parties

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2019–00748 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 13, 2018, the United States Court of International Trade (the Court) sustained the second remand redetermination pertaining to the 2013–2014 antidumping duty (AD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China). The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the AD administrative review of solar cells from China and that Commerce is amending the final results with respect to AD margins assigned, as detailed below.

DATES: Applicable December 23, 2018.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance—International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2016, Commerce published its Final Results of the 2013–2014 AD administrative review of solar cells from China.[1] On October 18, 2017, the Court remanded the Final Results to Commerce to further explain or reconsider its determination to value

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2013–2014, 81 FR 39905 (June 20, 2016) and accompanying Issues & Decision Memorandum (IDM) (collectively Final Results).

Yingli Green Energy Holding Co., Ltd.'s [2] tempered glass inputs with import data from Thailand, in light of evidence that Hong Kong import data has a disproportionate impact on the Thai surrogate value.[3] In addition, the Court remanded for further explanation or consideration Commerce's determination to value Changzhou Trina Solar Energy Co. Ltd.'s [4] broken and scrapped polysilicon cells and modules using Thai import data under Harmonized Tariff Schedule (HTS) subheading 8548.10.[5] The Court requested Commerce explain why its selection is reasonable given that Thai HTS subheading 8549.10 is not specific to solar cells or modules and results in a value for the scrapped cell and module byproduct that is higher than the value of the input itself.[6]

In its First Remand Redetermination, Commerce continued to value Yingli's tempered glass inputs using Thai import data, again determining that the import data, in the aggregate, are not aberrational.[7] Commerce also continued to value scrapped solar cells and modules using Thai HTS subheading 8528.10 (which covers scrap primary cells and batteries), finding that the subheading represents the best available information on the record with which to value scrapped solar cells and modules, given the similarity in manufacturing processes and raw materials.[8]

On May 18, 2018, the Court remanded both issues to Commerce a second time.[9] The Court found that Commerce failed to explain why it is reasonable to value tempered glass using Thai import data when imports of tempered glass from Hong Kong have a disproportionate impact on the overall average unit value (AUV) of tempered glass.[10] With regard to Commerce's valuation of Trina's scrapped solar cells and modules, the Court held that Commerce's determination remained unsupported by substantial evidence, finding that Commerce had not provided an adequate explanation as to why the selection of a category covering scrapped electrical batteries accurately values the respondent's scrapped solar cells and modules byproduct.[11]

In its Second Remand Redetermination, pursuant to the Court's holding in *SolarWorld II,* Commerce determined, under protest, to value Yingli's tempered glass inputs using import data from Bulgaria, avoiding the data-quality concerns regarding the Thai import data.[12] With regard to valuing scrapped solar cells and modules, under protest, Commerce reconsidered its selection and decided to use Thai HTS subheading 2804, which covers silicon of less than 99.9 percent purity.[13] On December 13, 2018, the Court sustained the Second Remand Redetermination.[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades,*[16] the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 13, 2018 final judgment sustaining Commerce's Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's Final Results. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending its Final Results. Commerce finds that the revised AD dumping margin for the respondents are as follows:

Exporter	Weighted-average dumping margin (percent)
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd	0.00
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd	6.55
BYD (Shangluo) Industrial Co., Ltd	3.96
Canadian Solar International Limited	3.96
Canadian Solar Manufacturing (Changshu) Inc	3.96
Canadian Solar Manufacturing (Luoyang) Inc	3.96
Dongguan Sunworth Solar Energy Co., Ltd	3.96
ERA Solar Co., Ltd	3.96
ET Solar Energy Limited	3.96
JA Solar Technology Yangzhou Co., Ltd	3.96

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[2] In the *Final Results* Commerce determined to treat the mandatory respondent Yingli Energy (China) Company Limited and the following eight companies as a single entity: (1) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; (2) Tianjin Yingli New Energy Resources Co., Ltd.; (3) Hengshui Yingli New Energy Resources Co., Ltd.; (4) Lixian Yingli New Energy Resources Co., Ltd.; (5) Baoding Jiasheng Photovoltaic Technology Co., Ltd.; (6) Beijing Tianneng Yingli New Energy Resources Co., Ltd.; (7) Hainan Yingli New Energy Resources Co., Ltd.; (8) Shenzhen Yingli New Energy Resources Co., Ltd. (collectively Yingli).

[3] *SolarWorld Americas, Inc., et al.* v. *United States,* 273 F. Supp. 3d 1254, 1261–65 (CIT 2017) (*SolarWorld I*).

[4] In the Final Results Commerce determined to treat the mandatory respondent Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. and the following four companies as a single entity: (1) Yancheng Trina Solar Energy Technology Co., Ltd.; (2) Changzhou Trina Solar Yabang Energy Co., Ltd.; (3) Turpan Trina Solar Energy Co., Ltd.; (4) Hubei Trina Solar Energy Co., Ltd. (collectively Trina).

[5] *Id.* at 1267–1268.

[6] *Id.* at 1268.

[7] *See* Final Results of Redetermination: *SolarWorld Americas, Inc.* v. *United States,* Court No. 16–00134, Slip. Op. 17–143 (Court of International Trade October 18, 2017), dated January 18, 2018 (First Remand Redetermination).

[8] *See* First Remand Redetermination at 53–64.

[9] *SolarWorld Americas, Inc.* v. *United States,* 320 F. Supp. 3d 1341 (CIT 2018) (*SolarWorld II*).

[10] *Id.* at.1350–55.

[11] *Id.* at 1355–58.

[12] *See* Results of Second Remand Redetermination Pursuant to Court Order: *SolarWorld Americas, Inc.* v. *United States,* Court No. 16–00134, Slip. Op. 18–53 (Court of International Trade June 18, 2017), dated July 31, 2018 (Second Remand Redetermination).

[13] *Id.*

[14] *See SolarWorld Americas, Inc. et al.* v. *United States,* 2018 WL 6584942, (CIT December 13, 2018) (*SolarWorld III*).

[15] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990)

[16] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010)

Exporter	Weighted-average dumping margin (percent)
Jiangsu High Hope Int'l Group [17]	3.96
JingAo Solar Co., Ltd	3.96
Ningbo Qixin Solar Electrical Appliance Co., Ltd	3.96
Shanghai BYD Co., Ltd	3.96
Shenzhen Glory Industries Co., Ltd	3.96
Shenzhen Topray Solar Co., Ltd	3.96
Wuxi Suntech Power Co., Ltd./Luoyang Suntech Power Co., Ltd	3.96

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the respondents using the assessment rates calculated by Commerce listed above.

Cash Deposit Requirements

Because cash deposit rate for all of the respondents listed above, with the exception of BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., and Shenzhen Glory Industries Co., Ltd., have been superseded by cash deposit rates calculated in intervening administrative reviews of the AD order on solar cells from China, we will not alter the cash deposit rate currently in effect for these respondents based on these amended final results. Effective December 23, 2018, the cash deposit rate applicable to entries of subject merchandise exported by BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., and Shenzhen Glory Industries Co., Ltd. is 3.96 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

[17] In the fourth administrative review, Commerce determined that Jiangsu High Hope Int'l Group failed to demonstrate its entitlement to a separate rate. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016,* 83 FR 1018 (January 9, 2018), unchanged at final, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 35616 (July 27, 2019). The cash deposit rate applicable to this firm was revised accordingly. *See* cash deposit instruction message number 8214308.

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2019–00753 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–075]

Certain Plastic Decorative Ribbon From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this investigation made sales of subject merchandise at less than normal value.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Nancy Decker, Lauren Caserta, or Caitlin Monks, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0196, (202) 482–4737, or (202) 482–2670, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* of this investigation in the **Federal Register** on August 8, 2018.[1] Subsequently, Commerce postponed the deadline for the final determination to December 21, 2018.[2] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3] A list of topics included in the Issues and Decision Memorandum is included at Appendix II 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 at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is April 1, 2017, through September 30, 2017.

Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.[4] Commerce has reviewed the scope briefs submitted by interested parties, considered the arguments therein, and has made

[1] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 39058 (August 8, 2018) (*Preliminary Determination*).

[2] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value,* 83 FR 40226 (August 14, 2018).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Plastic Decorative Ribbon from China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments Preliminary Decision Memorandum'' (Preliminary Scope Decision Memorandum), dated July 30, 2018.

changes to the scope of the investigation, including incorporating additional exclusions and clarifying language. For a summary of the scope comments and scope rebuttal responses submitted to the record for this final determination, along with the accompanying discussion and analysis of all scope comments timely received, *see* the Issues and Decision Memorandum.

Verification

In August 2018, we conducted verifications of the questionnaire responses submitted by mandatory respondents Dongguan Ricai Plastic Technology Co., Ltd. and Ricai Film Artwork Materials Co., Ltd. (collectively, Ricai), and Ningbo Junlong Craft Gift Co., Ltd. (Junlong) in accordance with section 782(i) of the Act. On August 1, 2018, the other mandatory respondent, Dongguan Mei Song (Mei Song), requested a one-month extension to the company's agreed-upon verification schedule.[5] On August 8, 2018, Commerce granted Mei Song a two-week extension to the start of verification.[6] Despite the additional time, in a subsequent letter, Mei Song reiterated that it still was not possible to conduct verification, and requested a full exemption from verification,[7] which Commerce denied because verification is required by statute in investigations.[8] Because Mei Song did not allow Commerce to conduct verification of its questionnaire responses, the information Mei Song submitted in this investigation is unverified.[9] Therefore, because Mei Song prevented us from conducting verification of its questionnaire responses, including its claim that it is not under *de facto* or *de jure* government control, we find that Mei Song has failed to demonstrate its eligibility for separate rate status. Thus, for purposes of this final determination, Mei Song will be considered part of the China-wide entity. We issued verification reports for Junlong and Ricai on September 24, 2018, and October 9, 2018, respectively.[10] We used standard verification procedures, including an examination of relevant accounting and financial records, and original source documents provided by Ricai and Junlong.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs that were submitted by interested parties are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Use of Adverse Facts Available (AFA)

For the final determination we find, in accordance with sections 776(a)(1), (a)(2)(A), (C) and (D) and 776(b) of the Act, that partial AFA is warranted in calculating the weighted-average dumping margin for Junlong.

No interested parties commented on our preliminary determinations that, in accordance with sections 776(a)(1) and (a)(2)(A)–(C) and 776(b) of the Act, application of AFA is warranted with respect to the China-wide entity. As a result, we continue to rely on AFA in determining the rate for the China-wide entity and, as AFA, have continued to apply the highest petition margin.

Changes Since the *Preliminary Determination*

Based on our review and analysis of the comments received from parties, along with corrections presented at verification, we made certain changes to the margin calculations for Junglong and Ricai since the *Preliminary Determination* and have found that Mei Song should be treated as part of the China-wide entity for the final determination. *See* full discussion in Issues and Decision Memorandum.

Combination Rates

Consistent with the *Preliminary Determination* and Policy Bulletin 05.1,[11] Commerce calculated combination rates for the respondents that are eligible for a separate rate in this investigation.

Final Determination

The final weighted-average antidumping margins are as follows:

Exporter	Producer	Weighted-average dumping margin (percent)
Ningbo Junlong Craft Gift Co., Ltd	Ningbo Junlong Craft Gift Co., Ltd	54.21
Ricai Film Artwork Materials Co., Ltd	Dongguan Ricai Plastic Technology Co., Ltd	62.04
Sun Rich (Asia) Ltd	Kai Feng Decoration (Hui Zhou) Co., Ltd	58.13
Sun Rich (Asia) Ltd	Sheng Yi Decoration (Dong Guan) Co., Ltd	58.13
Joynice Gifts & Crafts Co., Ltd	Joynice Gifts & Crafts Co., Ltd	58.13
Chiapton Gifts Decorative Limited	Nan Mei (Huizhou) Ribbon Art Factory Ltd	58.13
Chiapton Gifts Decorative Limited	Shantou Longhu YingXin Art Craft Factory Co. Ltd	58.13
Colorart Plastic Ribbon Productions Limited	Colorart Industrial Limited	58.13
Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd	Santa's Collection Shaoxing Co. Ltd	58.13
Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd	Zheijang Shaoxing Royal Arts & Crafts Co., Ltd	58.13
Wingo Gift & Crafts (Shenzhen) Co., Ltd	Wingo Gift & Crafts (Shenzhen) Co., Ltd	58.13
Seng San Enterprises Co., Ltd	Xin Seng San Handicraft (ShenZhen) Co., Ltd	58.13

[5] *See* Mei Song's Letter, ''Certain Plastic Decorative Ribbon from the People's Republic of China—Extension of Time Request for Mei Song's On-Site Verification,'' dated August 1, 2018.

[6] *See* Commerce Letter, ''Certain Plastic Decorative Ribbon from the People's Republic of China—Revised Dates for Verification,'' dated August 8, 2018.

[7] *See* Letter from Mei Song, ''Certain Plastic Decorative Ribbon from the People's Republic of China—Response to Department Letter regarding Verification,'' dated August 9, 2018.

[8] *See* Letter from Commerce, ''Less-Than-Fair-Value Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Mei Song's Request for Exemption from Verification,'' dated August 17, 2018.

[9] *Id.*

[10] *See* Memorandum to the File, ''Verification of the Questionnaire Responses of Ningbo Junlong Craft Gift Co., Ltd. (Junlong) in the Antidumping Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China (China),'' dated September 24, 2018; and Memorandum to the File, ''Verification of the Questionnaire Responses of Dongguan Ricai Plastic Technology Co., Ltd., Ricai Film Artwork Materials Co., Ltd., Dongguan Hengsheng Artwork Co., Ltd., and Dongguan Changsheng Packing Materials Co., Ltd. in the Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China,'' dated October 9, 2018.

[11] *See* Enforcement and Compliance's Policy Bulletin No. 05.1 regarding ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[12] The China-wide entity includes Dongguan Mei Song Plastic Industry Co., Ltd. *See* Issues and Decision Memorandum. The China-wide entity also continues to include companies to whom we issued quantity and value (Q&V) questionnaires and did not provide timely Q&V questionnaire responses or separate rate applications. *See* the Preliminary Issues and Decision Memorandum for a full discussion; *see* also Appendix III for a list of the other companies that are considered part of the China-wide entity.

Exporter	Producer	Weighted-average dumping margin (percent)
Xiangxin Decoration Factory	Xiangxin Decoration Factory	58.13
Xinghui Packaging Co., Ltd	Xinghui Packaging Co., Ltd	58.13
Shenzhen SHS Technology R&D Co., Ltd	Shenzhen SHS Technology R&D Co., Ltd	58.13
China-Wide Entity [12]		370.04 *

* Determined on the basis of total adverse facts available.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of plastic ribbon from China, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after August 8, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third country exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the United States International Trade Commission (ITC) of our final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of common alloy sheet, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon. Subject merchandise includes but is not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and

ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; (9) cords, *i.e.,* multiple strands of materials that have been braided, gimped or twisted together; and (10) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of the investigation excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

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V. TREATMENT OF MEI SONG
VI. CHINA-WIDE RATE AND USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES
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VIII. RECOMMENDATION

Appendix III—Unresponsive Companies

1. Best Craftwork Products Co., Ltd.
2. Billion Trend International Ltd.
3. Dongguan Xinghui Packaging Co., Ltd.
4. Fangtai Webbing Co.
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6. Hangzhou Jiefa Materials Co., Ltd.
7. Hangzhou Owner Party Co., Ltd.
8. Jiaxing Kaiya Textile Co., Ltd.
9. Long Fine Gift & Bags Factory
10. Nan Mei Decorative Ribbons Co., Ltd.
11. Ningbo Qianyi Color Ribbon Co., Ltd.
12. Ningbo Sellers Union Co., Ltd.
13. Qingdao Hileaders Co., Ltd.
14. Shanghai Foreign Trade Enterprises Pudong Co., Ltd.
15. Shenzhen Ao Wei Gift Co., Ltd.
16. Shenzhen Gary Gifts Packing Co., Ltd.
17. Shenzhen Guangyunda Technology Co., Ltd.
18. True Color Gift Packing Co., Ltd.
19. Wellmark Gift (Shenzhen) Co Ltd
20. Wello Gift Co., Ltd.
21. Xiamen Golden Grand Lucky Ribbon & Bow Co., Ltd.
22. Xiamen Meisida Decorations Co., Ltd.
23. Yangzhou Bestpak Gifts & Crafts Co., Ltd.
24. Yiwu Eco-Tondo Artware Co., Ltd.
25. Yongjiaxin Gifts & Crafts Factory

[FR Doc. 2019–00755 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Welded Large Diameter Line Pipe From Japan: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty order on welded large diameter line pipe (line pipe) from Japan would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: John McGowan, 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) 482–3019.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2018, Commerce published the notice of initiation of the third sunset review of the antidumping duty order on line pipe from Japan, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[1] On September 17, 2018, Commerce received a notice of intent to participate in this review from American Cast Iron Pipe Company, Berg Steel Pipe Corporation, Berg Spiral Pipe Corporation, Dura-Bond Industries, and Stupp Corporation, members of the American Line Pipe Producers Association (ALPPA), and JSW Steel (USA) Inc. (JSW Steel), (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[2] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

On October 1, 2018, we received a complete substantive response for this review from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any other interested parties, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the order.

Scope of the Order

The product covered by this order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30. 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.
- In API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more.
- In API grades XI00 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more.
- An API grade X–80 having an outside diameter of 21 inches and wall thickness of 0.625 inch or more.

[1] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 45887 (September 11, 2018).

[2] We note that American Cast Iron Pipe Company, Berg Steel Pipe Corp., and Stupp Corporation were petitioners in the original antidumping duty investigation.

Analysis of Comments Received

All issues raised in this review, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins of dumping likely to prevail if the order were revoked, are addressed in the accompanying Issues and Decision Memorandum dated concurrently with, and hereby adopted by, 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 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 signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on line pipe from Japan would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be up to 30.80 percent.

Notification to Interested Parties

This notice serves as the only reminder to interested parties subject to an 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. 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. We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins of Dumping Likely To Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2019–00747 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

1-Hydroxyethylidene-1,1-Diphoshonic Acid From the People's Republic of China: Rescission of 2016–2018 Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on 1-Hydroxyethylidene-1,1-Diphoshonic Acid (HEDP) from the People's Republic of China (China) for the period of review (POR), November 14, 2016, through April 30, 2018.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone 202.482.0250

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on HEDP from China for the POR.[1] On April 2, 2018, Commerce received a timely request for review by Compass Chemical International LLC (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b), to conduct an administrative review of this CVD order.[2] On July 12, 2018, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty order on HEDP from China, covering the POR.[3] On October 19, 2018, the petitioner timely withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, the petitioner withdrew its request for review by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the CVD order on HEDP from China covering the period November 14, 2016, through April 30, 2018.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice serves as the only 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(a)(3). 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 sanctionable violation. This notice is issued and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 19047 (May 1, 2018).

[2] See letter from the petitioner regarding, ''Request for Administrative Review: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,'' dated May 30, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018).

[4] *See* letter from the petitioner regarding, ''1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,'' dated October 19, 2018.

Dated: December 20, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–00750 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863]

Certain Corrosion-Resistant Steel Products From India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that exporters of certain corrosion-resistant steel products (CORE) sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR), July 1, 2017, through June 30, 2018. We invite all interested parties to comment on these preliminary results.

DATES: Effective February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2018, Commerce initiated the antidumping administrative review on certain-corrosion resistant steel products from India.[1] This administrative review covers: Atlantis International Services Company Ltd., Uttam Galva Steels (BVI) Limited, Uttam Galva Steels Limited, Uttam Galva Steels, Netherlands B.V., Uttam Value Steels Limited (collectively, Uttam Galva); and JSW Coated Products Ltd. and JSW Steel Ltd. (collectively, JSW), producers/exporters of subject merchandise.

Scope of the Order

The products covered by this review are CORE from India. For a full description of the scope, see the Preliminary Decision Memorandum dated concurrently with, and hereby adopted by, this notice.[2]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (a)(2) of the Tariff Act of 1930, as amended (the Act).[3] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

On September 21, 2018, JSW timely filed a certification stating it had no shipments, exports, sales, or entries of subject merchandise into the United States during the POR.[4] Subsequently, Commerce received confirmation from U.S. Customs and Border Protection (CBP) of JSW's no shipment claims.[5] Based on JSW's certification and CBP's confirmation, Commerce preliminarily determines that JSW had no shipments during the POR. For additional information regarding this determination, see the Preliminary Decision Memorandum. Consistent with our practice, Commerce is not rescinding this administrative review with respect to JSW at this time, but intends to complete the review and issue appropriate instructions to CBP based on the final results of this review.[6]

Adverse Facts Available

Commerce issued the antidumping (AD) questionnaire on September 10, 2018, to Uttam Galva.[7] Uttam Galva failed to provide requested information and failed to cooperate by not acting to the best of its ability to comply with a request for information from Commerce in this review. As a result, we preliminarily determine to apply facts otherwise available with an adverse inference (AFA) to this respondent, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For further discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, for the period of July 1, 2017, through June 30, 2018, the following weighted-average dumping margin applies:

Exporter/producer	Weighted-average dumping margin (percent)
Uttam Galva Steels Limited[8]	71.09

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days after the date of any public announcement, in accordance with 19 CFR 351.224(b). However, there are no calculations to disclose in connection with these preliminary results because,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45597 (September 10, 2018).

[2] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review'' (dated concurrently with this notice) (Preliminary Decision Memorandum).

[3] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Order*).

[4] *See* JSW's Letter, ''No Shipment Certification,'' dated September 21, 2018.

[5] *See* Memorandum, ''No Shipment Certification,'' dated October 3, 2018.

[6] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments;* 2012–2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[7] The AD questionnaire was issued to Atlantis International Services Company Ltd.; Uttam Galva Steels (BVI) Limited; Uttam Galva Steels Limited; Uttam Value Steels Limited; and Uttam Galva Steels, Netherlands B.V., collectively, based on Commerce's finding in the investigation that these companies were a single entity. *See Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329, 35330 (June 2, 2016).

[8] This rate also applies to: Atlantis International Services Company Ltd., Uttam Galva Steels (BVI) Limited, Uttam Galva Steels, Netherlands B.V., and Uttam Value Steels Limited.

in accordance with section 776 of the Act, Commerce preliminarily applied AFA to Uttam Galva, the mandatory respondent, and Commerce has preliminarily determined as the AFA rate a dumping margin applied in a prior segment of this proceeding.

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.[13]

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[15] We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Uttam Galva will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.00 percent, the all-others rate established in the investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

The preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 21, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Available and Adverse Inferences
  A. Legal Authority
  B. Application of Facts Available to Uttam Galva
  C. Use of Adverse Inference
  D. Selection and Corroboration of AFA Rate
V. Preliminary Determination of No Shipments
VI. Conclusion

[FR Doc. 2019–00746 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–098, C–533–886]

Polyester Textured Yarn From India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Dowling at (202) 482–1646 (China); Janae Martin at (202) 482–0238 (India), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2018, the Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of polyester textured yarn from India and the People's Republic of China (China).[1] Currently, the preliminary determinations are due no later than January 11, 2018.

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.310(c).

[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[14] *See* 19 CFR 351.212(b).

[15] *See* section 751(a)(2)(C) of the Act.

[16] *See Order*, 81 FR at 48393.

[1] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 83 FR 58232 (November 19, 2018).

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioners [2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioners must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On December 10, 2018, the petitioners submitted timely requests that Commerce postpone the preliminary CVD determinations.[3] The petitioners stated that they request postponement of the preliminary determinations because Commerce requires additional time to select mandatory respondents and collect and analyze the questionnaire responses.[4] Furthermore, additional time will permit the petitioners to review the data submitted by the mandatory respondents selected, as well as the Governments of China and India, and for Commerce to issue supplemental questionnaires and gather additional or clarifying information, as necessary.[5]

In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.,* to March 18, 2019.[6] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2019–00751 Filed 1–31–19; 8:45 am]

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[2] The petitioners are Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America.

[3] *See* the petitioners' letter, ''Countervailing Duty Investigation of Polyester Textured Yarn from China—Petitioners' Request to Postpone Preliminary Determination,'' dated December 10, 2018 (China Postponement Letter); and the petitioners' letter, ''Countervailing Duty Investigation of Polyester Textured Yarn from India—Petitioners' Request to Postpone Preliminary Determination,'' dated December 10, 2018 (India Postponement Letter).

[4] *See* China Postponement Letter at 2; India Postponement Letter at 2.

[5] *Id.*

[6] Postponing the preliminary determinations to 130 days after the date of initiation of these investigations would place the deadline on Sunday, March 17, 2019. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of* ''*Next Business Day*'' *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review in the matter of Uncoated Groundwood Paper From Canada: Injury Determination (Secretariat File Number: USA–CDA–2018–1904–07).

SUMMARY: The U.S. Section of the NAFTA Secretariat received Requests for Panel Review filed on behalf of Resolute FP Canada Inc. and Resolute FP US Inc. (collectively, ''Resolute'') on October 26, 2018, and on behalf of the Government of Quebec on October 29, 2018, pursuant to NAFTA Article 1904. Panel Review was requested of the U.S. International Trade Commission's final injury determination involving imports of Uncoated Groundwood Paper from Canada. Pursuant to Rule 39(1) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules),* an interested person shall file a Complaint within 30 days after the filing of a first Request for Panel Review. Given that no Complaint has been filed in a timely manner, the panel review has been terminated pursuant to Rule 71(3), and notice is hereby given that panel review of the NAFTA Groundwood Paper Injury dispute has been completed effective November 27, 2018.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules,* which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules,* please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

Dated: January 29, 2019.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2019–00774 Filed 1–31–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–082]

Steel Wheels From the People's Republic of China: Postponement of Final Determination of Sales at Less-Than-Fair-Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of certain steel wheels from the People's Republic of China (China) until February 11, 2019.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

Commerce published an *Initiation Notice* on April 24, 2018 and a

Preliminary Determination on October 30, 2018.[1] The period of this investigation is July 1, 2017, through December 31, 2017.

Postponement of Final Determination

Section 735(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Section 735(a)(2) of the Act and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

On August 15, 2018 and October 23, 2018, Xiamen Sunrise Wheel Group Co., Ltd. (Sunrise), a mandatory respondent that accounts for a ''significant portion'' of subject merchandise in the LTFV investigation, requested that Commerce postpone the final determination by 60 days and to extend the application of the provisional measures from a four-month period to a period of not more than six months.[2] On October 29, 2018, Accuride Corporation and Maxion Wheels Akron LLC (collectively, the petitioners) urged Commerce to limit Sunrise's requested extension to no more than 45 days.[3]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination was affirmative; (2) the request was made by exporters who account for a significant proportion of exports of the subject merchandise from the country at issue; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination of the investigation until no later than 102 days after the date of the publication of the relevant preliminary determination, and extending the provisional measures from a four-month period to a period of not more than six months.[4] Accordingly, Commerce will issue its final determination in the LTFV investigation no later than February 11, 2019.[5]

This notice is issued and published pursuant to 19 CFR 351.210(g).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2019–00752 Filed 1–31–19; 8:45 am]

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[1] *See Certain Steel Wheels from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 17798 (April 24, 2018) (*Initiation Notice*) and *Certain Steel Wheels from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value,* 83 FR 54568 (October 30, 2018) (*Preliminary Determination*).

[2] *See* Sunrise's August 15 and October 23, 2018 letters re: Request to Extend Final Determination.

[3] *See* the petitioners' October 29, 2018 letter re: Extension of Final Determination.

[4] The respondents selected for individual examination by Commerce have withdrawn from participation in this investigation, reducing the need for a full extension. *See e.g., Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil,* 64 FR 9474 (February 26, 1999). The provisional measures of CVD investigation started on August 31, 2018.

[5] The date of the preliminary determination is October 23, 2018 and the date of the publication of the preliminary determination is October 30, 2018. The final determination of the accompanying countervailing duty (CVD) investigation has been previously aligned with this investigation. Thus, the deadline for issuing the final determination of the CVD investigation is also February 11, 2019. *See Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 83 FR 44573 (August 31, 2018). Postponing the final determinations to 102 days after the date of the publication of the preliminary determination would place the deadline on Saturday, February 9, 2019. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of* ''*Next Business Day*'' *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–076]

Certain Plastic Decorative Ribbon From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and exporters of certain plastic decorative ribbon from the People's Republic of China (China) received countervailable subsidies for the period of investigation (POI) January 1, 2016, through December 31, 2016.

DATES: Applicable February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz or Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4880 or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* of this investigation in the **Federal Register** on June 22, 2018.[1] Subsequently, Commerce postponed the deadline for the final determination to December 21, 2018.[2] A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3] A list of topics included in the Issues and Decision Memorandum is included as Appendix II 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 at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is January 1, 2016, through December 31, 2016.

[1] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Determination with Final Antidumping Duty Determination*, 83 FR 29096 (June 22, 2018) (*Preliminary Determination*).

[2] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value*, 83 FR 40226 (August 14, 2018).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Plastic Ribbon from the People's Republic of China,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

We invited parties to comment on Commerce's Scope Comments Preliminary Decision Memorandum.[4] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation, including additional exclusions and clarifying language. For a summary of the scope comments and rebuttal responses submitted to the record for this final determination, along with the accompanying discussion and analysis of all comments timely received, *see* the Issues and Decision Memorandum.

Verification

In June 2018, Commerce conducted verifications of the questionnaire responses submitted by mandatory respondents Seng San Enterprises Co., Ltd. and its affiliated producer Xin Seng San Handicraft (ShenZhen) Co., Ltd. (collectively, Seng San), and Joynice Gifts and Crafts Co., Ltd. (Joynice) in accordance with section 782(i) of the Act. We issued verification reports for Seng San and Joynice on July 18, 2018.[5] We used standard verification procedures, including an examination of relevant accounting and financial records, and original source documents provided by Seng San and Joynice.

Analysis of Subsidy Programs and Comments Received

The issues raised in the case and rebuttal briefs that were submitted by interested parties are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

[4] *See* Memorandum, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments Preliminary Decision Memorandum'' (Preliminary Scope Decision Memorandum), dated July 30, 2018.

[5] *See* Memorandum, ''Verification of the Questionnaire Responses of Seng San Enterprises Co., Ltd. in the Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China,'' dated July 18, 2018; and Memorandum, ''Verification of the Questionnaire Responses of Joynice Gifts and Crafts Co., Ltd. in the Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China,'' dated July 18, 2018.

Use of Adverse Facts Available (AFA)

Commerce relied on ''facts otherwise available,'' including AFA, for several findings in the *Preliminary Determination.* For the final determination, we are basing the countervailing duty (CVD) rates for Santa's Collection Shaoxing Co., Ltd. (Santa's Collection), Seng San, and Joynice on facts otherwise available, pursuant to sections 776(a)(2)(A)–(C) and 776(b) of the Act. For a full discussion of AFA, *see* the Issues and Decision Memorandum.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received from parties and the minor corrections presented, we made certain changes to the respondents'' subsidy rate calculations set forth in the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.[6]

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce calculated a countervailable subsidy rate for the individually investigated exporters/producers of the subject merchandise. Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, Commerce also calculated an estimated ''all-others'' rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act provides that the ''all-others'' rate shall be an amount equal to the weighted-average of the countervailable subsidy rates established for individually investigated exporters and producers, excluding any rates that are zero or *de minimis* or any rates determined entirely under section 776 of the Act. In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Seng San and Joynice that are not zero, *de minimis*, or based entirely on facts otherwise available. Because we do not have publicly ranged data from all company respondents with which to calculate the all-others rate using a weighted-average of the individual estimated subsidy rates, we calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established individual estimated countervailable subsidy rates for Seng San Enterprises Co., Ltd., and their cross-owned entities, Joynice Gifts & Crafts Co., Ltd, and Santa's Collection Shaoxing Co., Ltd.

Company	Subsidy rate (percent)
Seng San Enterprises Co., Ltd	18.03
Joynice Gifts & Crafts Co., Ltd	14.27
Santa's Collection Shaoxing Co., Ltd	94.67
All-Others	16.15

[6] *See* Issues and Decision Memorandum.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after June 22, 2018, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 20, 2018, but to continue the suspension of liquidation of all entries from June 22, 2018, as the case may be, through October 19, 2018.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of

the final affirmative determination of countervailable subsidies. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain plastic ribbon from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: December 21, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon. Subject merchandise includes but is not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; (9) cords, *i.e.,* multiple strands of materials that have been braided, gimped or twisted together; and (10) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of the investigation excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into

mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: Man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
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IX. Discussion of the Issues
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X. Conclusion

[FR Doc. 2019–00754 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review in the matter of Certain Uncoated Groundwood Paper From Canada: Final Determination of Sales at Less Than Fair Value (Secretariat File Number: USA–CDA–2018–1904–05).

SUMMARY: The U.S. Section of the NAFTA Secretariat has received motions filed on behalf of the Government of Canada; the U.S. Department of Commerce; North Pacific Paper Company (''NORPAC''); Alberta Newsprint Company; Catalyst Paper Corporation, Catalyst Pulp and Paper Sales Inc. and Catalyst Paper (USA) Inc.; Gannett Supply Corporation; Kruger Trois-Rivieres L.P., Corner Brook Pulp and Paper Limited, Kruger Publication Papers Inc. and Kruger Brampton L.P.; Resolute FP Canada Inc. and Resolute FP U.S. Inc.; and Rayonier A.M. Canada (successor to Tembec Inc.) requesting the termination of panel review in the matter of Certain Uncoated Groundwood Paper From Canada: Final Determination of Sales at Less Than Fair Value (Groundwood Paper AD) NAFTA dispute.

Given all the participants have filed motions requesting termination and pursuant to Rule 71(2) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules),* the NAFTA Groundwood Paper AD dispute has been terminated.

As a result, and in accordance with Rule 78(a), notice is hereby given that panel review of the NAFTA Groundwood Paper AD dispute has been completed effective November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules,* which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules,* please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

Dated: January 29, 2019.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2019–00780 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG717

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Monitoring Service Providers

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

ACTION: Notice of approved monitoring service providers.

SUMMARY: NMFS has approved four companies to provide Northeast multispecies sector at-sea monitoring services in fishing years 2019 and 2020. Regulations implementing the Northeast Multispecies Fishery Management Plan require at-sea monitoring companies to apply to, and be approved by, NMFS in order to be eligible to provide at-sea monitoring services to sectors. This action will allow sectors to contract at-sea monitoring services with any of the

approved providers for fishing years 2019 and 2020.

ADDRESSES: The list of NMFS-approved sector monitoring service providers is available at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/,* or by sending a written request to: 55 Great Republic Drive, Gloucester, MA 01930, Attn: Kyle Molton.

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281–9236, email *Kyle.Molton@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) includes a requirement for industry-funded monitoring of catch by sector vessels. Sectors must contract with independent third-party service providers to provide at-sea monitoring services to their vessels. In order to provide at-sea monitoring services to sectors, monitoring companies must apply to, and be approved by, NMFS. Once approved, service providers must meet specified performance requirements outlined in 50 CFR 648.87(b)(4), including required coverage levels, in order to maintain eligibility.

At-Sea Monitoring Service Provider Approval Process

Applications approved this year will cover both fishing year 2019 and fishing year 2020 (May 1, 2019, through April 30, 2021). There will be an opportunity in 2019 for additional monitoring companies to apply for approval to provide services in fishing year 2020.

The regulations at § 648.87(b)(4) describe the criteria for approval of at-sea monitoring service providers. We approve service providers based on: (1) Completeness and sufficiency of applications; and (2) determination of the applicant's ability to meet the performance requirements of a sector monitoring service provider. We must notify service providers, in writing, if approval is withdrawn for any reason.

Approved Monitoring Service Providers

We received complete applications from four companies: A.I.S., Inc.; East West Technical Services, LLC; Fathom Research, LLC; and MRAG Americas, Inc. These four companies were previously approved for fishing years 2017 and 2018. In fishing year 2018, a number of sectors have realized at-sea monitoring coverage levels below the target coverage level. We are working with the approved providers and sectors to increase coverage levels, and we have scheduled additional at-sea monitor certification trainings to increase monitor staffing levels.

We approved all four companies to provide at-sea monitoring services in fishing years 2019 and 2020 because they have met the application requirements, documented their ability to comply with service provider standards, and have a sufficient track record of providing at-sea monitoring services. We expect providers will have adequate staff and resources to fulfill performance requirements during the approval term. We will closely monitor the performance of approved providers, and we will be prepared to withdraw approval during the current approval term, or disapprove a provider in future fishing years if we determine performance standards are not being met.

TABLE 1—APPROVED PROVIDERS FOR FISHING YEARS 2019 AND 2020

Provider	Address	Phone	Fax	Website
A.I.S., Inc	14 Barnabas Rd., P.O. Box 1009, Marion, MA 02738.	508–990–9054	508–990–9055	*www.aisobservers.com.*
East West Technical Services, LLC	1415 Corona Ln., Vero Beach, FL 32963.	860–910–4957	860–223–6005	*www.ewts.com.*
Fathom Research, LLC	855 Aquidneck Ave., Unit 9, Middletown, RI 02842.	508–990–0997	508–991–7372	*www.fathomresearchllc.com.*
MRAG Americas, Inc	8950 Martin Luther King Jr. Street N., Suite 202, Saint Petersburg, FL 33702.	978–768–3880	978–768–3878	*www.mragamericas.com.*

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

Dated: January 29, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–00720 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Assessment (EA) for the Proposed New Space Lease for the Geophysical Fluid Dynamics Laboratory in Princeton, NJ

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent to prepare an EA; request for comments.

SUMMARY: This notice announces its intention to prepare an EA in accordance with the National Environmental Policy Act of 1969, for a new space lease to be occupied by the NOAA/OAR Geophysical Fluid Dynamics Laboratory.

DATES: Comments are due by March 4, 2019.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Stephen F. Mayle, Administrative Officer, NOAA/OAR/GFDL, 201 Forrestal Road, Princeton, NJ 08540. Comments may also be submitted via facsimile to 609–452–5395 or by email to *Steve.Mayle@noaa.gov.*

SUPPLEMENTARY INFORMATION: The proposed action would involve a lease for space for the offices, seminar rooms, meeting rooms, etc. and computing facilities used by the Geophysical Fluid Dynamics Laboratory (GFDL). The current facilities, located in the Princeton, New Jersey area, are part of NOAA's Office of Oceanic and Atmospheric Research (OAR). Research conducted at this laboratory includes development and use of mathematical models and computer simulations to improve the understanding and prediction of the behavior of the atmosphere and the oceans. GFDL scientists focus on model-building relevant for society, such as hurricane research, weather and ocean prediction, and forecasting on the continuum of time and space scales. GFDL also collaborates with visiting scientists and students from academic and non-profit institutions with whom NOAA has partnered to further its mission goals.

The current physical space for GFDL consists of two buildings that together provide office space, teaching/seminar space, high performance computing space, a command/control center, and mechanical and electrical plants. The current GFDL facilities are approximately 68,675 square feet. Current space can house up to 215 staff, including full-time employees, visiting scientists and students, and contract employees.

The current facilities are in need of repairs and renovations in order to continue to be effectively and safely occupied by GFDL. The existing space is also insufficient to accommodate visiting scientists and students, for example approximately 40 such staff utilize nearby overflow space, and to effectively store and stage necessary equipment for current levels of effort. It also does not allow space to expand to continue to meet NOAA's mission in collaboration with our institutional partners. During 2018, NOAA contracted with an architectural and engineering firm to develop a space programming and planning study, or a Program of Requirements, that identifies the full scope of GFDL's space needs. The Program of Requirements is available upon request to Mr. Mayle.

The purpose of the public scoping process for this EA is to determine relevant issues that will influence the scope of the environmental analysis, including potential alternatives, and the extent to which those issues and impacts will be analyzed in the EA. Federal, state, and local agencies, along with other stakeholders that may be interested in or affected by NOAA's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by NOAA to participate as a cooperating agency.

Dated: December 12, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–00633 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG694–X

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

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

ACTION: Notice; receipt of application and request for Letters of Authorization extension; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) to amend NMFS' Marine Mammal Protection Act (MMPA) regulations authorizing the take of marine mammals incidental to Navy training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area from November 2018 to November 2023 to cover seven years of the Navy's activities, instead of five. Section 316 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (2019 NDAA), signed into law on August 13, 2018, amended the MMPA to extend the maximum period for MMPA incidental take regulations under section 101(a)(5)(A) from five to seven years for military readiness activities. The Navy's activities qualify as military readiness activities pursuant to the MMPA, as amended by the NDAA for Fiscal Year 2004. The Navy proposes no changes to their specified activities, mitigation measures, monitoring, or reporting and requests that NMFS amend the final rule issued on November 14, 2018, to authorize incidental take of marine mammals for the two additional years now allowed under the statute. NMFS invites the public to provide information, suggestions, and comments on the Navy's application.

DATES: Comments and information must be received no later than March 4, 2019.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Piniak@noaa.gov.*

Instructions: NMFS is not responsible for information or comments sent by any other method, to any other address or individual, or received after the end of the comment period. Information and comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All information and comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the Navy's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* 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 incidental take authorization 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 2004 NDAA (Pub. L. 108–136) amended the MMPA to remove the ''small numbers'' and ''specified geographical region'' limitations for military readiness activities. It also amended the definition of ''harassment'' as it applies to military readiness activities 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).

On August 13, 2018, the 2019 NDAA (Pub. L. 115–232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years.

Summary of Request

On November 16, 2018, NMFS received an adequate and complete application from the Navy requesting an amendment of the regulations published on November 14, 2018, that authorize the take of marine mammals incidental to the Navy's training and testing activities in the AFTT Study Area (83 FR 57076). On January 18, 2019, NMFS received a revised application. Specifically, the activities include training and testing (all categorized as military readiness activities) including the use of active acoustic sonar systems and other transducers, in-water detonations, air guns, construction activities involving pile removal and installation, and the operation of a fleet of vessels throughout the AFTT Study Area. These activities may result in the incidental take of marine mammals in the form of Level B harassment (behavioral disruption or temporary hearing impairment), Level A harassment (permanent hearing impairment or tissue damage), or serious injury or mortality in a very small number of cases. The requested amendment would change the expiration date of the regulations from November 13, 2023 to November 13, 2025, allowing for seven total years of validity, as allowed under the MMPA as recently amended by the 2019 NDAA.

Description of Amendment

The Navy proposes that NMFS amend the existing AFTT regulations and associated Letters of Authorization (LOAs) such that they would cover incidental take caused by seven years of training and testing activities instead of five, extending the expiration date from November 13, 2023 to November 13, 2025. The amendment would be conducted through a proposed and final rulemaking, consistent with the requirements of section 101(a)(5)(A). The Navy has not proposed any changes to the nature of the specified activities and, therefore, the boundaries of the AFTT Study Area, the training and testing activities (*e.g.,* equipment and sources used, exercises conducted), and the mitigation, monitoring, and reporting measures are identical to those described and analyzed in the existing AFTT regulations published on November 14, 2018 (83 FR 57076).

The only changes contemplated in the extension of the regulations are those necessary to identify the appropriate type and amount of incidental take to authorize in the two additional years that the amended regulations would cover, and determine whether the incidental take would have a negligible impact on the affected species and stocks.

The current AFTT rule authorizes three serious injuries or mortalities from vessel strike. The Navy's request for an amendment includes a revised vessel strike analysis encompassing seven years of activities versus the five years addressed in the analysis supporting the mortality estimate in the current LOAs. Based on the revised analysis, the Navy requests one additional large whale mortality bringing the total from three vessel strikes over five years to four vessel strikes over seven years. The large whale stocks that are proposed to be lethally taken by vessel strike are the same as those included in the current AFTT rule. Please see Chapter 6, Section 6.2 of the Navy's application for a full description of the incidental take by vessel strike.

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, etc., of different activities and events) in a given year. In the existing AFTT rule, the Navy bases their take estimates across the five-year rule on conducting three years of a nominal (average) level of activity and two years of a maximum level of activity. For the amended seven year rule, the Navy proposes to add one additional nominal year and one additional maximum year to determine the predicted take numbers. Specifically, as in the current rule, the Navy proposes to use the maximum annual level to calculate annual takes (which will remain identical to the current rule), and the sum of all years (four nominal and three maximum, in the case of the new amended rule) to calculate the seven-year totals. Please see Chapter 6, Section 6.1 of the Navy's application for a description of the proposed take from acoustic and explosive sources.

As noted above, the proposed amendment of the rule would include mitigation, monitoring, and reporting measures that are identical to those included in the current final rule (83 FR 57076, November 14, 2018). In summary, mitigation would include: (1) The use of Lookouts to observe for biological resources and communicate the need for mitigation implementation; (2) powerdowns, shutdowns, and delay of starts to avoid exposure of marine mammals to high levels of sound or explosive blasts more likely to result in injury or more serious behavioral disruption; (3) limiting the use of active sonar or explosives in certain biologically important areas to reduce the probability or severity of impacts when they are more likely to contribute to fitness impacts, and (4) broadcasting awareness notification messages to all of the vessels in an area to reduce the likelihood of vessel strike. Please see Chapter 11 of the Navy's application for a full description of the proposed mitigation, which is identical to that required under the existing rule.

The Navy proposes to continue forward the implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process outlined in the current regulations. The Navy's monitoring strategy, currently required by the AFTT regulations, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the proposed amended regulations would include identical adaptive management provisions and reporting requirements as the existing regulations. Please refer to Chapter 13 of the Navy's application

for full details on the monitoring and reporting proposed by the Navy.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: January 29, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–00632 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG642

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

ACTION: Notice of revised referendum voting period.

SUMMARY: On December 3, 2018, NMFS issued a notice to announce the voting period for the proposed second fishing capacity reduction program loan in the Southeast Alaska Purse Seine Salmon Fishery and inform persons of their eligibility to vote. This notice informs the public of the revised referendum voting period due to the lapse in appropriations. The referendum, if approved, will result in a loan of $10.1 million and permanently retire an additional 36 permits from the fishery.

DATES: The referendum voting period will now start on February 4, 2018 and end on March 6, 2019. Any votes not received by NMFS by 5 p.m. on March 6, 2019, will not be counted.

ADDRESSES: Send questions about this notice to Michael A. Sturtevant, Acting Chief, Financial Services Division, NMFS, Attn: SE Alaska Purse Seine Salmon Buyback, 1315 East-West Highway, Silver Spring, MD 20910 (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Elaine Saiz at (301) 427–8752, fax (301) 713–1306, or *elaine.saiz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC). Congress authorized a $23.5 million loan to finance a fishing capacity reduction program in the Southeast Alaska purse seine salmon fishery. NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61986), to implement the reduction program. Interested persons should review these documents for further program details.

In 2012, NMFS conducted a referendum to determine the remaining fishermen's willingness to repay a $13.1 million fishing capacity reduction loan to remove 64 permits. After a majority of permit holders approved the loan, NMFS disbursed payments to the successful bidders and began collecting fees to repay the loan. Since only $13.1 million was expended from the total loan amount, $10.4 million remains available. This referendum, if approved, will result in a loan of $10.1 million and permanently retire an additional 36 permits from the fishery.

In June, 2018, the Southeast Revitalization Association submitted a capacity reduction plan to NMFS and NMFS approved the plan in November, 2018. As of November 16, 2018, there are 315 permits in the fishery designated as S01A by CFEC. In accordance with the final regulations, NMFS published the notice on December 3, 2018 (83 FR 62302). The original voting period was to start January 15, 2019 and end on February 14, 2019. Due to the lapse in appropriations we have revised voting period to the new dates.

II. Referendum Voting Period

The referendum voting period will start February 4, 2019, and end on March 6, 2019. Any votes not received by NMFS by 5 p.m. on March 6, 2019, will not be counted.

Dated: January 29, 2019.

Brian T. Pawlak,

CFO/Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2019–00679 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; ''International Work Sharing''

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office, Commerce.

Title: International Work Sharing.

OMB Control Number: 0651–0079.

Form Number(s):

- PTO/SB/437
- PTO/SB/CSP Survey 1

Type of Request: Regular.

Number of Respondents: 300 responses per year.

Average Hours per Response: The USPTO estimates that it will take the public approximately between 5 minutes (0.08 hours) and 3 hours to complete the information in this collection, including the time to gather the necessary information, prepare the forms or documents, and submit the completed request to the USPTO.

Burden Hours: 462 hours per year.

Cost Burden: $0 per year.

Needs and Uses: The public who uses this information collection are applicants who file applications in the USPTO, JPO, and KIPO. They do so in order to participate in the International Work Sharing Program. The Program enables its participants to engage in the exchange of IP documents between the United States, Japan, and Korea to facilitate efficient worldwide patent examinations.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publically available in electronic format through *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0079 copy request'' in the subject line of the message.
- *Mail:* Marcie Lovett, Records and Information Governance Division

Director, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 4, 2019 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Administrative Officer.

[FR Doc. 2019–00610 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patents External Quality Survey

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.

DATES: Written comments must be submitted on or before April 2, 2019.

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

- *Email: InformationCollection@uspto.gov.* Include '0651–0057 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 Administrative 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 David Fitzpatrick, Management Analyst, Office of Patent Quality Assurance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–0525; or by email to *David.Fitzpatrick@USPTO.GOV,* with ''0651–0057 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The USPTO developed the Patents External Quality Survey in 2006 as part of its quality improvement efforts. This survey gauges customer satisfaction with respect to examination quality. It uses a longitudinal, rotating panel design to assess changes in customer perceptions, identify areas for improvement, and pinpoint key areas for additional examiner training. Participants of this survey include patent agents, attorneys, and other individuals from large domestic corporations (including those with 500+ employees), small and medium-size businesses, and universities and other non-profit research organizations. The USPTO also plans to survey independent inventors. The USPTO does not survey foreign entities.

From the Patent Application and Location Management (PALM) database, the USPTO draws a random sample of firms and entities that have filed more than 6 patent applications in a 12-month period. These firms and entities typically represent 95% of total domestic patent applications filed over the same period. The Patents External Quality Survey uses a rotating panel design in order to measure changes in the quality of USPTO's work over time. Customers participate in two consecutive data collection periods (waves) before rotating out of the panel. Each wave is conducted over a two month period. One wave occurs during the months of January and February and the other wave occurs during July and August. The rotating panel design means that for each wave, 50 percent of the panel have participated in a prior wave and 50 percent are being surveyed for the first time. At the next panel rotation, the 50 percent of customers who have participated in two consecutive waves will be dropped, and the panel will be refreshed.

Respondents receive the Patents External Quality Survey by mail and can respond either by mail or electronically on the USPTO website. A survey packet containing the questionnaire, a separate cover letter prepared by the Deputy Commissioner for Patent Quality, a postage-paid, pre-addressed return envelope, and instructions for completing the survey electronically are mailed to all respondents. A pre-notification letter, reminder/thank you postcards, and telephone calls are used to encourage a response.

This is a voluntary survey and all responses remain confidential. The collected data is not linked to the respondent, and contact information that is used for sampling purposes is maintained in a separate file from the quantitative data. Respondents are not required to provide any identifying information such as their name, address, or Social Security Number. Instead, in order to access and complete the online survey, respondents must use the username, password, and survey ID number provided by the USPTO.

II. Method of Collection

Electronically via email; by postal mail, facsimile, or hand delivery in paper form.

III. Data

OMB Number: 0651–0057.

IC Instruments and Forms: No forms.

Type of Review: Extension of an existing information collection.

Affected Public: Individuals or households; businesses or other for-profits; and non-profit institutions.

Estimated Number of Respondents: 2,500 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public 10 minutes (.17 hours) to respond to the survey, including the time to gather the necessary information along with completing and submitting the survey. The time per response, estimated annual responses, and estimated annual hour burden associated with each instrument in this collection are shown in the table below.

Estimated Total Annual Respondent Burden Hours: 416.67 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $182,501.46. The USPTO expects that attorneys will complete these applications. 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 $182,501.46 per year.

IC No.	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) = (a) × (b)	Rate ($/hr) (d)	Total cost (e) = (c) × (d)
1	Patents External Quality Survey	0.17	325	54.17	$438.00	$23,726.46
2	Electronic Patents External Quality Survey.	0.17	2,175	362.50	438.00	158,775.00
Total			2,500	416.67		182,501.46

Estimated Total Annual (Non-hour) Respondent Cost Burden: $0. There are no annual (non-hour) costs associated with this information collection. Respondents do not need to submit filing fees with these surveys. The USPTO covers the costs of all survey materials and provides postage-paid, pre-addressed return envelopes for the completed mail surveys so there are no postage costs associated with this information collection.

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

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.

Marcie Lovett,

Director, Records and Information Governance Division, Office of the Chief Administrative Officer, USPTO.

[FR Doc. 2019–00611 Filed 1–31–19; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: Comments must be received on or before: March 3, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN—Product Name: 8465–00–NIB–0263—Airborne Rucksack, Modular Lightweight Load-Carrying Equipment (MOLLE), OCP2015
Mandatory Sources of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC, Peckham Vocational Industries, Inc., Lansing, MI
Mandatory for: 20,000 units annually for the requirement for the U.S. Army
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK

Services

Service Type: Administrative Service
Mandatory for: US Army Corps of Engineers, Huntsville Engineering and Support Center, Huntsville, AL
Mandatory Source of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: DEPT OF THE ARMY, W2V6 USA ENG SPT CTR HUNTSVIL
Service Type: Facilities Management and Related Services
Mandatory for: US Army, Eastern ARNG Aviation Training Site, Fort Indiantown Gap, Annville, PA
Mandatory Source of Supply: Opportunity Center, Incorporated, Wilmington, DE
Contracting Activity: DEPT OF THE ARMY, W7NX USPFO ACTIVITY PA ARNG

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN—Product Name: MR 893—Ergo Grater
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
NSNs—Product Names:
MR 443—Candle, Soy, Cucumber Melon Scented, 8.5oz
MR 445—Candle, Soy, Thai Lemon Scented, 8.5oz
MR 447—Candle, Soy, Venetian Nights Scented, 8.5oz
MR 410—Bag, Shopping Tote, Laminated, Small, Summer
MR 411—Bag, Shopping Tote, Laminated, Large, Summer
MR 412—Grocery Shopping Tote Bag, Laminated, Seasonal, Fall, Small
MR 422—Grocery Shopping Tote Bag, Laminated, Breast Cancer, Small
MR 459—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Gift
MR 460—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Small
MR 461—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Large
MR 466—Grocery Shopping Tote Bag, Laminated, Easter, Orange Eggs, Gift
MR 468—Grocery Shopping Tote Bag, Laminated, Easter, Orange Eggs, Large
MR 11011—Grocery Shopping Tote Bag, Laminated, Commissary 150th Anniversary, Exterior Scene
MR 11050—Grocery Shopping Tote Bag, Laminated, Spring, Purple, Small
MR 11084—Grocery Shopping Tote Bag, Laminated, Heart Smart, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
NSN—Product Name: MR 11301—Cooler, Styrofoam, Handled, 12 Qt.
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Defense Commissary Agency
NSN—Product Name: 8010–00–935–7079—Enamel, Lacquer, Acrylic, Flat Black
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
NSN—Product Name: 8345–00–673–9992—Streamer, Warning, Aircraft, Red, 24″ x 3″
Mandatory Source of Supply: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC
Contracting Activity: Defense Logistics Agency Troop Support
NSN—Product Name: 1005–00–659–1031—Cover, Spare Barrel
Mandatory Source of Supply: The Douglas Center, Skokie, IL
Contracting Activity: Defense Logistics Agency Land and Maritime
NSN—Product Name:
6645–01–492–9821—Clock, Wall, Atomic, Bronze, Custom Logo, 12¾″ Diameter
6645–01–491–9830—Clock, Wall, Atomic, White, Custom Logo, 9¼″ Diameter
6645–01–491–9805—Clock, Wall, Atomic, White, 9¼″ Diameter
6645–01–421–6905—Clock, Wall, Slimline, Stone Gray, 9¼″ Quartz
6645–01–456–6031—Clock, Wall, 24 Hour, Slimline, Bronze, Custom Logo, 9¼″ Quartz
Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL
NSN—Product Name: 7530–01–600–2019—Notebook, Spiral Bound, Biobased Bagasse Paper, 8x10½″, 70 sheets, College Rule, White
Mandatory Sources of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC, The Arkansas Lighthouse for the Blind, Little Rock, AR
NSNs—Product Names:
7510–01–624–8697—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Black Ink, 0.7mm
7510–01–624–8698—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Blue Ink, 0.5mm
7510–01–624–8699—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Black Ink, 0.5mm
7510–01–624–8700—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Blue Ink, 0.7mm
Mandatory Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
NSN—Product Name: 7530–01–515–7901—Paper, Printer, Ink Jet, Photo Quality, Matte, Letter, 89 Bright White
Mandatory Source of Supply: Wiscraft, Inc., Milwaukee, WI
NSN—Product Name: 7510–01–483–9402—Log Book, Voice Mail, White, 50 pages
Mandatory Source of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2), NEW YORK, NY

Services

Service Type: Switchboard Operation
Mandatory for: Veterans Affairs Medical Center, Nashville, TN, Temporary Medical Record Filing, Alvin C. York VA Medical Center, Murfreesboro, TN, Temporary Medical Record Filing, VA Medical Center, Nashville, TN
Mandatory Source of Supply: Ed Lindsey Industries f/t Blind, Inc., Nashville, TN
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Janitorial/Custodial
Mandatory for: Armed Forces Reserve Center: 1702 Tahoma Avenue Yakima, WA
Mandatory Source of Supply: Yakima Specialties, Inc., Yakima, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 815 Airport Way, U.S. Department of Justice, INS Seattle, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: FEDERAL PRISON SYSTEM, TERMINAL ISLAND, FCI
Service Type: Janitorial/Custodial
Mandatory for: U.S. Customs House: 220 NE 8th Avenue Portland, OR
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: DEPARTMENT OF THE TREASURY
Service Type: Custodial Services
Mandatory for: Army Reserve Contracting Center: 1605 Coraopolis Heights Road Coraopolis Satellite Office/PA178 West Pointe Corp Coraopolis, PA
Mandatory Source of Supply: Hancock County Sheltered Workshop, Inc., Weirton, WV
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 511 NW Broadway Portland, OR
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS
Service Type: Custodial Services
Mandatory for: Edward Hines Jr. VA Hospital: Hines Campus 5th Avenue Hines, IL, Edward Hines Jr. VA Hospital: Hines Campus Roosevelt Road Hines, IL
Mandatory Source of Supply: Jewish Vocational Service and Employment Center, Chicago, IL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Food Service
Mandatory for: Illinois National Guard, Lincoln's Challenge Academy: 205 W Dodge, Building 303 Rantoul, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: DEPT OF DEFENSE, DOD/OFF OF SECRETARY OF DEF (EXC MIL DEPTS)
Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Corps of Engineers: Saylorville Lake Project Saylorville Lake, IA
Mandatory Source of Supply: Goodwill Solutions, Inc., Johnston, IA
Contracting Activity: DEPT OF THE ARMY, W07V ENDIST ROCK ISLAND
Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center—Windsor Locks: 700 South Quaker Lane West Hartford, CT U.S. Army Reserve Center—BG J.W. Middleton: 22 Phelps Road, West Hartford, CT
Mandatory Source of Supply: Allied Community Services, Inc., Enfield, CT
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT DIX (RC–E)
Service Type: Administrative Services
Mandatory for: Fort Sam Houston: Directorate of Public Works Fort Sam Houston, TX
Mandatory Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Janitorial/Custodial
Mandatory for: Naval Reserve Readiness Center, Seattle, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND
Service Type: Administrative Services
Mandatory for: Delaware Valley Office: GSA Region3 402 E State Street Trenton, NJ
Mandatory Source of Supply: Elwyn, Aston, PA
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS/R03 NORTH SERVICE CENTER
Service Type: JWOD Staffing Services
Mandatory for: GSA, Nationwide, Washington, DC
Mandatory Source of Supply: Ed Lindsey Industries f/t Blind, Inc., Nashville, TN
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building—Everett 3002 Colby Avenue Everett, WA
Mandatory Source of Supply: AtWork!, Bellevue, WA
Service Type: Recycling Service
Mandatory for: Federal Center/Battle Creek: Buildings 1, 1A, 1B, 2, 2A, and 2C 74 North Washington, Battle Creek, MI
Mandatory Source of Supply: Navigations, Incorporated, Battle Creek, MI
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Post Office 18th & K Streets Merced, CA
Service Type: Administrative Services
Mandatory for: GSA, Regional Emergency Management Control Center: GSA Complex, Auburn, WA
Mandatory Source of Supply: Relay Resources, Portland, OR
Service Type: Administrative Services
Mandatory for: Federal Supply Service: 1500 E Bannister Road Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Service Type: Janitorial/Custodial
Mandatory for: Denver Federal Center: Building 85 Denver, CO
Mandatory Source of Supply: North Metro Community Services for Developmentally Disabled, Westminster, CO
Service Type: Administrative Service
Mandatory for: GSA, Pacific Rim Region PBS: 450 Golden Gate Avenue San Francisco, CA
Mandatory Source of Supply: Toolworks, Inc., San Francisco, CA
Service Type: Operation of GSA Access Store
Mandatory for: U.S. Federal Building and

Courthouse: 450 Golden Gate Avenue, Phillip Burton, San Francisco, CA
Mandatory Source of Supply: Pacific Coast Community Services, Richmond, CA
Contracting Activity: GENERAL SERVICES ADMINISTRATION
Service Type: Shelf Stocking & Custodial
Mandatory for: Meridian Naval Air Station Meridian, MS
Mandatory Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL
Service Type: Shelf Stocking & Custodial
Mandatory for: Fort Gillem, GA
Mandatory Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Service Type: Shelf Stocking & Custodial
Mandatory for: Homestead Air Reserve Base, FL
Mandatory Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Service Type: Shelf Stocking, Custodial & Warehousing
Mandatory for: Travis Air Force Base, CA
Mandatory Source of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA)

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–00736 Filed 1–31–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* March 3, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/25/2018 (83 FR 102), 11/16/2018 (83 FR 222), and 12/21/2018 (83 FR 245), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSNs—Product Names:
4010–01–250–5428—Assembly, Chain, Single Leg, HEMTT, 12′ L
4010–01–224–9207—Assembly, Chain, Single Leg
Mandatory Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Mandatory for: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Land and Maritime

NSNs—Product Names:
6135–01–616–5152—Battery, Non-Rechargeable, AA, 1.5V, Alkaline, NEDA 15A, PG/8
6135–01–308–5688—Battery, Non-Rechargeable, BR–2/3A, 3V, Lithium, EA/1
6135–01–435–5558—Battery, Non-Rechargeable, Cylindrical, 3.6V, Lithium, EA/1
Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Mandatory for: Total Government Requirement
Contracting Activity: Defense Logistics Agency Land and Maritime

NSNs—Product Names:
6135–01–447–0950—Battery, Non-Rechargeable, AA, 1.5V, Alkaline, NEDA 15A, PG/4
6135–01–446–8307—Battery, Non-Rechargeable, C, 1.5V, Alkaline, NEDA 14A, PG/4
6135–01–446–8308—Battery, Non-Rechargeable, AAA, 1.5V, Alkaline, NEDA 24A, PG/4
Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Mandatory for: Total Government Requirement
Contracting Activity: Federal Acquisition Service, GSA/FSS Greater Southwest Acquisition CTR (7FCO)

Deletions

On 11/16/2018 (83 FR 222), 11/30/2018 (83 FR 231), 12/10/2018 (83 FR 236), and 12/14/2108 (83 FR 240), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Product(s)

NSN—Product Name: MR 10663—Pouf Balls, Bath, Toddler
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
NSN—Product Name: MR 546—Sponge, All-Purpose, Nylon Mesh, Large
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Defense Commissary

Agency

NSN—Product Name: 7520–00–286–1724—File, Sorter, Letter, 1–31, Blue

Mandatory Source of Supply: Exceptional Children's Foundation, Culver City, CA

Contracting Activity: GSA/FAS Admin SVCS Acquisition BR(2), New York, NY

NSN—Product Name: 7510–01–600–8037—Dated 2018 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″

Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS Furniture Systems MGT DIV, Philadelphia, PA

NSN—Product Name: 8305–00–205–3558—Cheesecloth, Remnants, White, 50 lbs

Mandatory Source of Supply: Lions Services, Inc., Charlotte, NC

Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–00737 Filed 1–31–19; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0026]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 4, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Employee Travel Files; OMB Control Number 0702–0131.

Type of Request: Extension.

Number of Respondents: 350.

Responses per Respondent: 1.

Annual Responses: 350.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 262.5.

Needs and Uses: The information collection requirement is necessary to process official travel requests for civilian employees of the Army and Air Force Exchange Service; to determine eligibility of the individual's dependents to travel; to obtain the necessary clearance where foreign travel is involved, including assisting individuals in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries and danger zones.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 28, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–00575 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with applicable laws and regulations, announcement is made of the intent to grant an exclusive within a field of use, royalty-bearing, revocable biological materials license.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Michaels, Office of Research & Technology Applications, (301) 619–4145.

SUPPLEMENTARY INFORMATION: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive within a field of use, royalty-bearing, revocable biological materials license to MP–12, a live attenuated Rift Valley Fever virus vaccine candidate, to Sabin Vaccine Institute, having its principal place of business at 2175 K Street NW, Suite 400, Washington, DC 20037.

Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–00698 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0025]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 4, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Sex Offender

Information; Department of the Army Form 190–45–SG (Army Law Enforcement Reporting and Tracking System (ALERTS)); OMB Control Number 0702–0128.

Type of Request: Extension.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 40.

Needs and Uses: The information collection requirement is necessary to obtain and record the sex offender registration information of those sex offenders who live, work, or go to school on Army installations. Respondents are any convicted sex offender required to register pursuant to any DoD, Army, State government, law, regulation, or policy where they are employed, reside, or are a student. The information collected is used by Army law enforcement to ensure that the sex offender is compliant with any court order restrictions.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 28, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–00577 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–17]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–17 with attached Policy Justification.

Dated: January 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 1 8 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 18-17, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Turkey for defense articles and services estimated to cost $3.5 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d) Certification

Transmittal No. 18–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Turkey.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.9 billion
Other	$1.6 billion
Total	$3.5 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Four (4) AN/MPQ–65 Radar Sets

Four (4) AN/MSQ–132 Engagement Control Stations

Ten (10) Antenna Mast Groups

Twenty (20) M903 Launching Stations

Eighty (80) Patriot MIM–104E Guidance Enhanced Missile (GEM–T) with canisters

Sixty (60) Patriot Advanced Capability-3 (PAC–3) Missile Segment Enhancement (MSE) Missiles

Five (5) Electrical Power Plants (EPP) III

Non-MDE includes:

Also included with this request are communications equipment, tools and

test equipment, range and test programs, support equipment, prime movers, generators, publications and technical documentation, training equipment, spare and repair parts, personnel training, Technical Assistance Field Team (TAFT), U.S. Government and contractor technical, engineering, and logistics support services, Systems Integration and Checkout (SICO), field office support, and other related elements of logistics and program support.

(iv) *Military Department:* Army

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* December 18, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey—Patriot Missile System and Related Support and Equipment

Turkey has requested the possible sale of four (4) AN/MPQ–65 Radar Sets, four (4) Engagement Control Stations, ten (10) Antenna Mast Groups (AMGs), twenty (20) M903 Launching Stations, eighty (80) Patriot MIM–104E Guidance Enhanced Missiles (GEM–T) missiles with canisters, sixty (60) PAC–3 Missile Segment Enhancement (MSE) missiles, and five (5) Electrical Power Plant (EPP) III. Also included with this request are communications equipment, tools and test equipment, range and test programs, support equipment, prime movers, generators, publications and technical documentation, training equipment, spare and repair parts, personnel training, Technical Assistance Field Team (TAFT), U.S. Government and contractor technical, engineering, and logistics support services, Systems Integration and Checkout (SICO), field office support, and other related elements of logistics and program support. The total estimated program cost is $3.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a key NATO Ally on the front lines of the fight against terrorism. Turkey is a member of and critical enabling platform for the Defeat-ISIS campaign and continues to be an essential element of our National Security Strategy and National Defense Strategy efforts to compete against great powers in both Europe and the Middle East. The TPY–2 radar site that Turkey hosts is important to the European Phased Adaptive Approach and to efforts to protect Allies and partners against growing Iranian ballistic missile threats. This sale is consistent with U.S. initiatives to provide key allies with modern systems capable of being networked to defend against regional instability. The proposed sale will enhance Turkey's interoperability with the United States and NATO, making it a more valuable partner in an increasingly important area of the world.

Turkey will use Patriot to improve its missile defense capability, defend its territorial integrity, and deter regional threats. The proposed sale will increase the defensive capabilities of the Turkey military to guard against hostile aggression and shield NATO Allies who might train and operate within Turkey's borders. Turkey should have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon Corporation in Andover, Massachusetts, and Lockheed-Martin in Dallas, Texas. The purchaser requested offsets. At this time offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale will require approximately 25 U.S. Government and 40 contractor representatives to travel to Turkey for an extended period for equipment de-processing/fielding, system checkout, training, and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 18–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Patriot Air Defense System contains classified CONFIDENTIAL hardware components, SECRET tactical software and CRITICAL/SENSITIVE technology. Patriot ground support equipment and Patriot missile hardware contain CONFIDENTIAL components and the associated launcher hardware is UNCLASSIFIED. The items requested represent significant technological advances for Sweden Patriot. The Patriot Air Defense System continues to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The Patriot sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to certain components. The list of components is classified CONFIDENTIAL.

3. Information on system performance capabilities, effectiveness, survivability, missile seeker capabilities, select software/software documentation and test data are classified up to and including SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to Turkey.

[FR Doc. 2019–00609 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0003]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice of a New System of Records.

SUMMARY: The Defense Information Systems Agency (DISA) proposes to establish a new system of records entitled ''Electronic Security System (ESS), K890.28'' to control physical access to DISA Headquarters. DISA, as a classified collateral open storage area, has security responsibilities mandated by DoD Manual 5200.01, volume 3, DoD Information Security Program: Protection of Classified Information. This includes the use of an integrated electronic access control system. The system identifies and verifies

individuals through the use of data registered into the access control system from an individual's Common Access Card (CAC). The system tracks the entry/exit times of personnel who enter/exit the DISA Headquarters Complex and some rooms within the complex.

DATES: Comments will be accepted on or before March 4, 2019. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking 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 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanette M. Weathers-Jenkins, DISA Privacy Officer, 6914 Cooper Ave., Fort Meade, MD 20755–7090, or by phone at (301) 225–8158.

SUPPLEMENTARY INFORMATION: DISA's security responsibilities include identifying or verifying individuals through the use of matching PKI (Public Key Infrastructure) information on the CAC to the information registered into the ESS (from the CAC), to retrieve CACs upon separation, to maintain visitor statistics, collect information to adjudicate access to facility, and track the entry/exit times of personnel for purposes of verifying times of entry and exit. For entry into building, the guards have the ability to match picture on CAC to person holding CAC and the picture on file in system.

The DISA notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://defense.gov/privacy.*

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 5, 2018, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: January 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER

Electronic Security System (ESS), K890.28

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), 6910 Cooper Ave., Ft. Meade, MD 20755–7090.

SYSTEM MANAGER(S):

Chief, Security Division, Workforce Services Directorate (WSD)/MP61, Defense Information Systems Agency, 6910 Cooper Ave., Ft. Meade, MD 20755–7090, (301) 225–1235.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 193 and 10 U.S.C. 142; Department of Defense Directive 5105.19, Defense Information Systems Agency (DISA); Department of Defense Directive 5200.08, Security of DoD Installations and Resources and the DoD Physical Security Review Board (PSRB) and HSPD–12, Policy for a Common Identification Standard for Federal Employees and Contractors.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to control physical access to DISA Headquarters controlled information. DISA's security responsibilities include identifying or verifying individuals through the use of matching PKI (Public Key Infrastructure) information on the CAC to the information registered into the ESS (from the CAC). For entry into building guards also have ability to match picture on CAC to person holding CAC and the picture on file in system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DISA military and civilian employees and contractors, and others with issued common access card and authorized (regular or frequent) entry to DISA facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, DoD ID Number or credential barcode, photograph of person, information that reflects time of entry/exit from facility or secure location, and identification expiration dates.

RECORD SOURCE CATEGORIES:

Individuals; Defense Enrollment Eligibility Reporting Systems, Department of Defense, other Federal Departments and Agencies, Department of Army, Department of the Air Force, Department of Navy, and U.S. Marine Corps security offices; system managers; computer facility managers; commercial businesses whose employees require access to the facilities or locations; and automated interfaces for user codes on file at Department of Defense sites.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 44 U.S.C. 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or has confirmed that there has been a breach of the system of records; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These electronic records are stored on secure servers with access controlled, access restricted by the use of logon, password, and/or card swipe protocols.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by name and DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data elements housed in the agency identity management system are destroyed 6 years after terminating an employee or contractor's employment, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal Government personnel. Data is protected by repository and interfaces, including, but not limited to multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the e-App system integrity and the data confidentiality. Access to computerized data is restricted by Common Access Card (CAC).

Access is provided on a need-to-know basis only. The office space in which the servers are located is locked outside of official working hours. Computer terminals are located in supervised areas. The electronic security system utilized to safeguard is password protected. Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, the access control system, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Access is restricted to only authorized persons who are properly screened.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Defense Information Systems Agency (DISA), Workforce Services Directorate (WSD)/MP61, 6910 Cooper Ave., Ft. Meade, MD 20755–7090.

Signed, written requests should include the individual's full name, current address, telephone number, and the name and number of this System of Records. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The Defense Information Systems Agency (DISA) rules for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Defense Information Systems Agency (DISA), Workforce Services Directorate (WSD)/MP61, 6910 Cooper Ave., Ft. Meade, MD 20755–7090.

Signed, written requests should include the individual's full name, current address, telephone number, and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2019–00608 Filed 1–31–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of The Great Lakes and Mississippi River Interbasin Study—Brandon Road Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Extension of public comment period.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Rock Island and Chicago Districts, are extending the comment period for the report ''The Great Lakes and Mississippi River

Interbasin Study (GLMRIS)—Brandon Road Integrated Feasibility Study and Environmental Impact Statement (EIS)—Will County, Illinois,'' (Final GLMRIS-Brandon Road Report & EIS) for 46 days in response to stakeholder requests for an extension, from January 7, 2019 to February 22, 2019.

DATES: The comment period for the Final GLMRIS-Brandon Road Report and EIS is extended to February 22, 2019.

ADDRESSES: The Final GLMRIS-Brandon Road Report and EIS are posted at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Rock Island District, ATTN: GLMRIS-Brandon Road EIS, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204–2004.; or contact online at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

SUPPLEMENTARY INFORMATION: The USACE is issuing this notice pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4332 *et seq.*) and the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (43 CFR parts 1500 through 1508). This notice announces the availability of the final GLMRIS-Brandon Road EIS. The Final GLMRIS-Brandon Road Report & EIS, its appendices, and other supporting documents can be accessed at: *https://www.mvr.usace.army.mil/GLMRIS-BR.*

Background Information

The Draft GLMRIS-Brandon Road EIS was released on August 18, 2017, and included a 112-day public comment period that ended on December 8, 2017. During that time, USACE held four meetings to solicit comments from the public. USACE analyzed the comments received from the public (Appendix K) and considered them in preparation of the Final GLMRIS-Brandon Road EIS. This EIS provided the necessary information for the public to fully evaluate a range of alternatives designed to meet the purpose and need of the Final GLMRIS-Brandon Road Report & EIS and to provide thoughtful and meaningful comment for the Agency's consideration.

The Final GLMRIS-Brandon Road Report & EIS identifies six alternatives including no new action (continuing current efforts); the nonstructural alternative; and three technology alternatives using an electric barrier and/or acoustic fish deterrent and lock closure. The effectiveness of these alternatives was considered against the three different modes of ANS transport, swimming, floating, and hitchhiking. Selection of a Recommended Plan required careful evaluation of each alternative's (1) reduction in the probability of establishment in the Great Lakes Basin, (2) relative life safety risk, (3) system performance robustness and (4) costs, which include construction; mitigation; operation and maintenance, repair, replacement and rehabilitation; and navigation impacts. Evaluation also included careful consideration of cost effectiveness and incremental cost analyses, significance of the Great Lakes Basin's ecosystem, acceptability, completeness, efficiency, and effectiveness. Based on the results of the evaluation and comparison of the alternatives, the Recommended Plan is the Technology Alternative—Acoustic Fish Deterrent with Electric Barrier, which includes the following measures: Nonstructural measures, acoustic fish deterrent, bubble curtain, engineered channel, electric barrier, flushing lock, and boat ramps. The Final GLMRIS-Brandon Road Report & EIS identifies potential significant adverse impacts that alternatives may have on existing uses and users of the waterways.

Steven M. Sattinger,

Colonel, U.S. Army, Commander & District Engineer.

[FR Doc. 2019–00717 Filed 1–31–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent/NEPA Scoping Meeting and Public Comment Period for the Chesapeake Bay Native Oyster Recovery Program, Virginia

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations, the U.S. Army Corps of Engineers (USACE) plans to prepare an Environmental Impact Statement (EIS) to evaluate environmental impacts from reasonable alternatives and to determine the potential for significant impacts related to implementation of the Chesapeake Native Oyster Recovery Program in the Commonwealth of Virginia.

DATES: Scoping comments will be accepted until March 1, 2019.

ADDRESSES: The public was invited to submit written comments at the meeting and/or to Ms. Kimberly Koelsch, Department of the Army, U.S. Army Corps of Engineers, Norfolk District, Planning Branch, Environmental Analysis Section (CENAO–WR–PE), Norfolk, VA 23510 or via email to *kimberly.c.koelsch@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Koelsch, 757–201–7837.

SUPPLEMENTARY INFORMATION: The Chesapeake Native Oyster Recovery Program is authorized by Section 704(b) of the Water Resources Development Act (WRDA) of 1986. USACE Norfolk District executes the Oyster Recovery Program in the Commonwealth of Virginia to achieve goals set by the Chesapeake Bay Protection and Restoration Executive Order.

Utilizing existing information, current technologies, research and population dynamics, the Chesapeake Bay Native Oyster Recovery Program will identify restoration strategies in each tributary. The actions and recommendations needed to restore native populations of oysters in Virginia tributaries, potential techniques and potential impacts will be identified and evaluated prior to construction, pursuant to the National Environmental Policy Act.

Scoping/Public Involvement: The NEPA Public Scoping meeting was held at the Great Neck Library, 1251 Bayne Drive, Virginia Beach, VA 23454 on January 10, 2019 from 4:30 until 6:30 p.m. Federal, state, and local agencies, and the public were invited to provide scoping comments and to identify issues and potentially significant effects to be considered in the analysis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–00697 Filed 1–31–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional

information about the Board, please visit the committee's website at *http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 8:00 a.m. to 12:00 p.m. on February 28, 2019. Public registration will begin at 7:15 a.m.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Texas A&M University Galveston Campus, Building 3035, Special Events Center, 200 Seawolf Parkway, Galveston, Texas 77554.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–8083; and by email at *Kenneth.E.Lichtman@usace.army.mil.*

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

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of funding for inland and coastal Navigation for FY 2019; status of the Inland Waterways Trust Fund (IWTF) and project updates; status of the construction activities for Olmsted Locks and Dam Project, the Locks and Dams 2, 3, and 4 on the Monongahela River Project, the Chickamauga Lock Project and the Kentucky Lock Project; discussion of capability and efficient funding and subject amounts for the ongoing cost shared IWTF construction projects; an update of the Upper Ohio River Navigation Study; an update of the Colorado River Locks and Brazos River Floodgates Study; and discussion of performance-based budgeting for construction projects.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the February 28, 2019 meeting. The final version will be provided at the meeting. All materials will be posted to the website after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 7:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–00669 Filed 1–31–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Request for Information on Conceptual Public Private Partnership (P3) Delivery of Specific U.S. Army Corps of Engineers Civil Works Projects

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice; request for information.

SUMMARY: The Assistant Secretary of the Army (Civil Works) has directed the U.S. Army Corps of Engineers (Corps) to establish a Public Private Partnership (P3) pilot program with the goals of demonstrating the viability of new delivery methods that can significantly reduce the cost and time of project delivery. The Corps is to identify up to 10 additional P3 pilot projects and has been provided guidance on the screening and selection criteria.

DATES: Information must be submitted to Headquarters U.S. Army Corps of Engineers on or before April 2, 2019.

ADDRESSES: You may submit information by any of the following methods:

- *Mail:* Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, Infrastructure Team, Attn: John Coho 3F65, 441 G Street NW, Washington, DC 20314.
- *Email: CW.Infrastructure.Team@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Snyder, USACE Infrastructure Funding and Financing Lead, at 651–290–5489, or email: *aaron.m.snyder@usace.army.mil.*

SUPPLEMENTARY INFORMATION: To develop the pilot program and identify up to 10 additional P3 pilot projects, information will need to be submitted based on the initial screening and selection criteria. The Corps will use a matrix to evaluate the project information that will be the basis for coordination and discussions for possible development of P3 delivery of specific U.S. Army Corps of Engineers Civil Works projects. Submittors are encouraged, but not required, to coordinate with the local Corps of Engineers District prior to providing information for this request. The criteria are as follows:

Initial Screening Criteria

(1) The P3 proposal:

(a) Has a construction cost in excess of $50 million;

(b) Has non-Federal sponsor support;

(c) Includes design, build, finance, operation and maintenance (DBFOM) or some combination thereof for Federally authorized projects;

(d) Accelerates project delivery; and

(e) Has the ability to generate revenue or leverage non-Federal funding sources.

(2) Existing authorities are sufficient to allow the P3 project to be completed.

(3) A qualitative assessment demonstrating that the P3 will deliver the project faster and/or more cost effectively than traditional delivery.

Selection Criteria

(1) Return on Federal Investment.

(a) P3 project proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI). ROFI will be calculated by annualizing the total project benefits and Federal costs utilizing the current discount rate, and applying the formula: (Benefits − Federal Costs)/(Federal Costs).

(b) For any P3 project where it has been determined that a reduction in the non-Federal share is warranted with authority provided in 33 U.S.C. 2213, the ROFI calculation will be adjusted to account for those modifications and address concerns pertaining to equity.

(2) *Replicability:* Project proposals that are replicable, meaning the proposed P3 structure or underlying concepts may be applied to other prospective projects.

(3) *Reliable Funding Sources:* Reliable non-Federal funding sources for the design, construction, operation and maintenance of Federally authorized water resource projects are identified.

(4) *Risk Allocation:* Project effectively allocates delivery and performance risk to non-Federal entities and minimizes Federal direct and contingent liabilities associated with the project.

The USACE has developed implementation guidance that will guide the development, coordination, and selections for this P3 pilot program. That implementation guidance and other relevant information can be obtained at: *https://www.usace.army.mil/Missions/Civil-Works/Infrastructure/Infra_P3_program/*.

Projects carried out under the P3 pilot program will be subject to the cost-sharing requirements included in the project authorization. The USACE intends to conduct follow up discussions and coordination with interested parties to gain a better understanding of the P3 proposals, understand obstacles to implementation and to inform project selection.

Existing Challenges

Significant research and analysis has been completed to date on the challenges facing the use of P3 projects on U.S. Army Corps of Engineers Civil Works Projects, particularly projects that are owned and operated by USACE. Reports documenting some of this information can be found at: *https://www.usace.army.mil/Missions/Civil-Works/Infrastructure/Infra_P3_program/* and should be considered when providing a response to this request. The report from the Harvard Kennedy School, citation below, can be used as a resource for information.

Ash Center for Democratic Governance and Innovation. (2017). *Tapping Private Financing and Delivery to Modernize America's Federal Water Resources.* Cambridge, MA: Harvard Kennedy School.

Key known challenges are: (1) Inability to collect, retain and reinvest fees; (2) inability to make commitments on future appropriations; and (3) enabling framework and authorities to implement P3 projects. The Corps has explored options for utilization of P3 on Federally owned assets to include the navigation system and hydropower, both of which have existing challenges pertaining to authorities and budget scoring. These challenges should be considered and understood when providing a response to this request.

Entities Submitting Information on a Project Must Include the Following Information

1. Project Name.
2. Project Location.
3. Name of the project sponsor.
4. Statement of support from non-Federal sponsor, or likely non-Federal sponsor.
5. The type of project (*i.e.,* Flood Risk Management, Ecosystem Restoration, Navigation, etc).
6. The authority that authorized the project.
7. Clearly identify if existing authorities are sufficient to allow the P3 to be completed (State and Federal).
8. Identification of additional authorities necessary to carry out the project as a P3.
9. The investment size of the project (*i.e.,* $70,000,000)
10. Anticipated activities included in the proposed P3 (*i.e.,* design, build, finance, operate and maintain)
11. Anticipated revenue sources for funding the P3 component of the project.
12. Ability to leverage non-Federal funding sources.
13. Expected impact on the project delivery schedule and costs.
14. A qualitative assessment demonstrating that the P3 will deliver the project faster and/or more cost effectively than traditional delivery.

15. Anticipated Return on Federal Investment. ROFI will be calculated by annualizing the total project benefits and Federal costs utilizing the current discount rate, and applying the formula: (Benefits − Federal Costs)/(Federal Costs).

16. Statement on replicability and how this approach may be applied to other prospective projects.

17. Statement on risk allocation and how this approach will effectively allocate delivery and performance risk to non-Federal entities and minimize Federal direct and contingent liabilities associated with the project.

18. Socioeconomic information to address concerns of equity which include: Population Benefited, Number of existing jobs in benefited area, Median Family Income, Unemployment Rate, and trends on population growth.

Although not required as part of the submittal the Corps is interested in gathering input on how equity issues can be addressed as part of the P3 program development. This could include means, methods, analysis, or other modifiers that could allow for an equitable distribution of projects.

Dated: January 29, 2019.

John W. Coho,

USACE Infrastructure Team, U.S. Army Corps of Engineers.

[FR Doc. 2019–00709 Filed 1–31–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0118]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Annual Fire Safety Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before March 4, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0118. 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. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Student Assistance General Provisions—Annual Fire Safety Report.

OMB Control Number: 1845–0097.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 4,310.

Total Estimated Number of Annual Burden Hours: 4,313.

Abstract: The Department of Education regulations at 34 CFR 668.49 require institutions to collect statistics on fires occurring in on-campus student housing facilities, including the number and cause of each fire, the number of injuries related to each fire that required treatment at a medical facility, the number of deaths related to each fire, and the value of property damage caused by each fire. Institutions must also publish an annual fire safety report containing the institution's policies regarding fire safety and the fire statistics information. Further institutions are required to maintain a fire log that records the date, time, nature, and general location of each fire in on-campus student housing facilities.

This request is to extend the current approval of reporting requirements contained in the regulations. The collection requirements in the regulations are necessary to meet institutional information reporting to students and staff as well as for reporting to Congress through the Secretary.

Dated: January 28, 2019.

Kate Mullan,

Acting Director, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–00580 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Expansion Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the EIR program—Expansion Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.411A (Expansion Grants).

DATES:

Applications Available: February 4, 2019.

Deadline for Notice of Intent to Apply: February 21, 2019.

Deadline for Transmittal of Applications: April 2, 2019.

Deadline for Intergovernmental Review: June 3, 2019.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Irene Montanti, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E323, Washington, DC 20202–5900. *Telephone:* (202) 453–7122. *Email: eir@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.'' Applicants proposing innovative practices that are supported by limited evidence can receive relatively small grants to support the development, implementation, and initial evaluation of the practices; applicants proposing practices supported by evidence from rigorous evaluations, such as an experimental study (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and States while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement and attainment, for which types of students, and in what contexts.

The Department awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

The Department expects that Expansion grants will provide funding for implementation and rigorous evaluation of a program that has been found to produce sizable, significant impacts under a Mid-phase grant or other effort meeting similar criteria, for the purposes of: (a) Determining whether such impacts can be successfully reproduced and sustained over time; and (b) identifying the conditions in which the program is most effective.

Expansion grants are supported by evidence that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on strong evidence (as defined in this notice) from at least one well-designed and well-implemented experimental study for at least one population and setting, and grantees are encouraged to implement at the national level (as defined in this notice).

This notice invites applications for Expansion grants only. The notices inviting applications for Early-phase and Mid-phase grants are published elsewhere in this issue of the **Federal Register**.

Background: While this notice is for the Expansion tier only, the premise of the EIR program is that new and innovative programs and practices can help to solve the persistent problems in education that prevent students, particularly high-need students, from succeeding. These innovations need to be evaluated, and if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for any practices which are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement, or greatly increase the efficiency and likelihood that they can be widely implemented in a variety of new populations and settings effectively.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment; and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. In connection with selection criterion B.2., we encourage applicants to develop a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes and key project components (as defined in this notice) of the project.

Disseminating evaluation findings is a critical element of every project, even if a rigorous evaluation does not demonstrate positive results. Such results can influence the next stage of education practice and promote follow-up studies that build upon the results. The EIR program considers all high-quality evaluations to be a valuable contribution to the field of education research and encourages the documentation and sharing of lessons learned.

For those innovations that have positive results and have the potential for continued development and implementation, the Department is interested in learning more about continued efforts regarding cost-effectiveness and feasibility when scaled to additional populations and/or

settings. EIR projects at the Mid-phase and Expansion levels are encouraged to test new strategies for recruiting and supporting new project adoption, seek efficiencies where project implementation has been too costly or cumbersome to operate at scale, and test new ways of overcoming any other barriers in practice or policy that might inhibit project growth. Early-phase grantees that are not yet ready to scale are still encouraged to think about how their innovations might translate to other populations or settings in the long term, and to select their partners and implementation sites accordingly.

Finally, all EIR applicants and grantees should consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. EIR encourages all grantees to engage in sustainability planning as part of a funded project. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

Expansion grants are expected to scale practices that have prior evidence of effectiveness, in order to improve outcomes for high-need students. They are also expected to generate important information about an intervention's effectiveness (*e.g.,* in what context(s) does the intervention work best? Where does it not work as well? What components of the practice are most critical to its success?). Expansion grants are uniquely positioned to help answer critical questions about the process of scaling a practice to the national level. Expansion grantees are encouraged to consider how the cost structure of a practice can change as the intervention scales. Additionally, grantees may want to consider multiple ways to facilitate implementation fidelity without making scaling too onerous or rigid a process.

Evaluations of Expansion grants are expected to be conducted in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the EIR-supported practice is most effective and how to effectively adapt the practice for these contexts and populations. An Expansion grantee is encouraged to design an EIR-supported evaluation that examines the cost-effectiveness of its practices, identifies potential obstacles and success factors to scaling that would be relevant to other organizations, and has the potential to meet the strong evidence threshold. We expect that Expansion grantees will work toward sustaining their projects and continuing to scale successful practices after the EIR grant period ends; EIR grantees can use their evaluations to assess how their EIR-funded practices could be successfully reproduced and sustained. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2019 Expansion competition includes three absolute priorities. All Expansion applicants must address Absolute Priority 1. Expansion applicants are also required to address one of the other two absolute priorities. The absolute priorities align with the purpose of the program and the Administration's priorities.

Absolute Priority 1—Strong Evidence, establishes the evidence requirement for this tier of grants. All Expansion applicants must submit prior evidence of effectiveness that meets the strong evidence standard.

Absolute Priority 2—Field-Initiated Innovations—General, allows applicants to propose projects that align with the intent of the EIR program statute: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

Absolute Priority 3—Field-Initiated Innovations—Science, Technology, Engineering, and Math (STEM), is intended to highlight the Administration's efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement, including computer science.

In Absolute Priority 3, the Department recognizes the importance of funding Pre-Kindergarten (Pre-K) through grade 12 STEM education that addresses the enrollment and achievement gap for underrepresented students in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws. The Department also encourages expanding access to STEM education in rural areas, especially through partnerships with rural school districts to utilize virtual and remote access to makerspace technologies, such as 3–D printers, to expand opportunities for students in rural areas where such tools are often cost prohibitive.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of high-need students beginning in Pre-K through grade 12.

Priorities: This notice includes three absolute priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from 34 CFR 75.226(d)(1). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. Absolute Priority 3 is from section 4611(a)(1)(A) of the ESEA and the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Absolute Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1—Strong Evidence, and one additional absolute priority.

These priorities are:

Absolute Priority 1—Strong Evidence.

Under this priority, we provide funding to projects supported by evidence that meets the conditions in the definition of strong evidence.

Note: An applicant must identify up to four study citations to be reviewed against the What Works Clearinghouse (WWC) Handbook (as defined in this notice) for the purposes of meeting strong evidence. The studies may have been conducted by the applicant or by a third party. An applicant should clearly identify these citations in the Evidence form. The Department may not review a study citation that an applicant fails to clearly identify for review. In addition to including up to four study citations, applicants should describe in the form information such as the following: (1) The positive student outcomes they intend to replicate under their Expansion grant and how the characteristics of students and the positive student outcomes in the study citations correspond with the characteristics of the high-need students to be served under the Expansion grant; (2) the correspondence of practice(s) the applicant plans to implement with the practice(s) cited in the studies; and (3) the intended student outcomes that the proposed practice(s) attempts to impact.

An applicant must ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available. If the

Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC may submit a query to the study author(s) to gather information for use in determining a study rating. Authors would be asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study may be deemed ineligible under the grant competition. After the grant competition closes, the WWC will, for purposes of its own curation of studies, continue to include responses to author queries and will make updates to study reviews as necessary. However, no additional information will be taken into account after the competition closes and the initial timeline established for response to an author query passes.

Absolute Priority 2—Field-Initiated Innovations—General.

Under the priority, we provide funding to projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science.

Under the priority, we provide funding to projects that are designed to:

(1) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students, and;

(2) Improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice).

Definitions: The definitions of ''baseline,'' ''experimental study,'' ''logic model,'' ''national level,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''regional level,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1. The definition of ''computer science'' is from the Supplemental Priorities. The definitions of ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA.

Baseline means the starting point from which performance is measured and targets are set.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the

key project components and relevant outcomes.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

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 institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $125,000,000.

These estimated available funds are the total available for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants). Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $15,000,000.

Maximum Award: We will not make an award exceeding $15,000,000 for a project period of 60 months.

Estimated Number of Awards: 1–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We anticipate that initial awards under this competition will be made for a three-year (36 month) period.

Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, we may make continuation awards to grantees for the remainder of the project period.

Applicants are to propose a budget that covers the entire project period of up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants

as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural and STEM education applicants out of rank order in one or more of the EIR competitions.

In addition, for FY 2019 the EIR program intends to award at least $60 million in funds for STEM education projects, contingent on receipt of a sufficient number of applications of sufficient quality.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit organization; and

(f) An SEA, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: LEA, SEA, BIE, and nonprofits are eligible to apply and submit and receive an EIR grant. A private IHE that can document its nonprofit status, as provided for under 34 CFR 75.51(b), which includes recognition by the Internal Revenue Service (IRS) as having 501(c)(3) status, is eligible to apply for and receive an EIR grant as a lead applicant, applying as a nonprofit organization. In addition, any IHE is eligible to be a partner in an application where an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization is the lead applicant that submits the application. A nonprofit organization, such as a development foundation, which is affiliated with a public IHE, can apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and could be a lead applicant for an EIR grant. A public IHE without 501(c)(3) status, or that could not provide any other documentation described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore could not apply for and receive an EIR grant.

2. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611(d) of the ESEA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer-reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003), and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Expansion grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,''

please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for an Expansion grant application to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) which absolute priorities the applicant intends to address. Applicants may access this form online at *www.surveymonkey.com/r/GD3BGJ6.* Applicants that do not complete this form may still submit an application.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Expansion grant competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 10 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The national significance of the proposed project.

(2) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

B. *Quality of the Project Design (up to 25 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

C. *Strategy to Scale (up to 20 points).*

The Secretary considers the applicant's strategy to scale the proposed project. In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

(2) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

D. *Adequacy of Resources and Quality of the Management Plan (up to 25 points).*

The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project. In determining the adequacy of resources and quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period.

(3) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(4) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

E. *Quality of the Project Evaluation (up to 20 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards without reservations as described in the What Works Clearinghouse Handbook (as defined in this notice).

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC

evidence standards without reservations. This webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

Note: The evaluation report is a specific deliverable under an Expansion grant that grantees must openly license to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (ERIC, *http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement and attainment for high-need students. We have established several performance measures (as defined in this notice) for the Expansion grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that

implement a well-designed, well-implemented, and independent evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reached the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) the percentage of grantees with an evaluation that provided information on the cost-effectiveness of the key practices, and obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* 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.

Dated: January 29, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–00711 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Early-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the EIR program—Early-phase Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.411C (Early-phase Grants).

DATES:

Applications Available: February 4, 2019.

Deadline for Notice of Intent to Apply: February 21, 2019.

Deadline for Transmittal of Applications: April 2, 2019.

Deadline for Intergovernmental Review: June 3, 2019.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Irene Montanti, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E323, Washington, DC 20202–5900. *Telephone:* (202) 453–7122. *Email: eir@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.'' Applicants proposing innovative projects that are supported by limited evidence can receive relatively small grants to support the development, implementation, and initial evaluation of the practices; applicants proposing projects supported by evidence from rigorous evaluations, such as an experimental study (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and States while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement and attainment, for which types of students, and in what contexts.

The Department awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Early-phase grants provide funding to support the development, implementation, and feasibility testing of a program, which prior research suggests has promise, for the purpose of determining whether the program can successfully improve student achievement and attainment for high-need students. Early-phase grants must demonstrate a rationale. These Early-phase grants are not intended simply to implement established practices in additional locations or address needs that are unique to one particular context. The goal is to determine whether and in what ways relatively newer practices can improve student achievement and attainment for high-need students.

This notice invites applications for Early-phase grants only. The notices inviting applications for Mid-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background: While this notice is for the Early-phase grants only, the premise of the EIR program is that new and innovative programs and practices can help to solve the persistent problems in education that prevent students, particularly high-need students, from succeeding. These innovations need to be evaluated, and if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for any practices which are already commonly implemented by educators, unless significant adaptations for such practices warrant testing to determine if they can accelerate achievement, or greatly increase the efficiency and likelihood that they can be widely implemented in a variety of new populations and settings effectively.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment; and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. In connection with selection criterion B.2., we encourage applicants to develop a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes and key project components (as defined in this notice) of the project.

Disseminating evaluation findings is a critical element of every project, even if a rigorous evaluation does not demonstrate positive results. Such results can influence the next stage of education practice and promote follow up studies that build upon the results. The EIR program considers all high-quality evaluations to be a valuable contribution to the field of education research and encourages the documentation and sharing of lessons learned.

For those innovations that have positive results and have the potential for continued development and implementation, the Department is interested in learning more about continued efforts regarding cost-effectiveness and feasibility when scaled to additional populations and settings. EIR projects at the Mid-phase and Expansion levels are encouraged to test new strategies for recruiting and supporting new project adoption, seek efficiencies where project implementation has been too costly or cumbersome to operate at scale, and test new ways of overcoming any other barriers in practice or policy that might inhibit project growth. Early-phase grantees that are not yet ready to scale are still encouraged to think about how their innovations might translate to other populations or settings in the long term and to select their partners and implementation sites accordingly.

Finally, all EIR applicants and grantees should consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. EIR encourages all grantees to engage in sustainability planning as part of a funded project. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

EIR is designed to offer opportunities for States, districts, schools, and educators to develop innovations and scale effective practices that address their most pressing challenges. Early-phase grantees are encouraged to make continuous improvements in project design and implementation before conducting a full-scale evaluation of effectiveness. Grantees should consider how easily others could implement the

proposed practice, and how its implementation could potentially be improved. Additionally, grantees should consider using data from early indicators to gauge initial impact and to consider possible changes in implementation that could increase student achievement and attainment.

By focusing on continuous improvement and iterative development, Early-phase grantees can make adaptations that are necessary to increase their practice's potential to be effective and ensure that the EIR-funded evaluation assesses the impact of a thoroughly conceived practice.

Early-phase applicants should develop, implement, and test the feasibility of their projects. In connection with selection criterion D.1., the evaluation of an Early-phase project should be an experimental or quasi-experimental design study (as defined in this notice) that can determine whether the program can successfully improve student achievement and attainment for high-need students. Early-phase grantees' evaluation designs are encouraged to have the potential to demonstrate a statistically significant effect on improving student outcomes or other relevant outcomes based on moderate evidence (as defined in this notice) from at least one well-designed and well-implemented experimental study. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2019 Early-phase competition includes three absolute priorities and one competitive preference priority. All Early-phase applicants must address Absolute Priority 1. Early-phase applicants are also required to address one of the other two absolute priorities. Applicants addressing Absolute Priority 3 also have the option to address the competitive preference priority. The absolute priorities and competitive preference priority align with the purpose of the program and the Administration's priorities.

Absolute Priority 1—Demonstrates a Rationale, establishes the evidence requirement for this tier of grants. All Early-phase applicants must submit prior evidence of effectiveness that demonstrates a rationale (as defined in this notice).

Absolute Priority 2—Field-Initiated Innovations—General, allows applicants to propose projects that align with the intent of the EIR program statute: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

Absolute Priority 3—Field-Initiated Innovations—Science, Technology, Engineering, and Math (STEM), invites applicants to invest in STEM education. This priority is intended to highlight the Administration's efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement, including computer science.

In Absolute Priority 3, the Department recognizes the importance of funding Pre-Kindergarten (Pre-K) through grade 12 STEM education that addresses the enrollment and achievement gap for underrepresented students in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws. The Department also encourages expanding access to STEM education in rural areas, especially through partnerships with rural school districts to utilize virtual and remote access to makerspace technologies, such as 3–D printers, to expand opportunities for students in rural areas where such tools are often cost prohibitive. Within Absolute Priority 3, the Department includes a competitive preference priority that specifically focuses on computer science, especially for underserved populations.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of high-need students beginning in Pre-K through grade 12.

Priorities: This notice includes three absolute priorities and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 1 is from sections 4611(a)(1) and 8101(21)(a)(ii)(I) of the ESEA. Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. Absolute Priority 3 is from section 4611(a)(1)(A) of the ESEA and the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). The competitive preference priority is from the Secretary's Final Supplemental Priorities.

Under the Early-phase grant competition, Absolute Priorities 2 and 3 constitute their own funding categories. The Secretary intends to award grants under each of these absolute priorities for which applications of sufficient quality are submitted. Applications will be rank ordered separately for Absolute Priorities 2 and 3, therefore applicants must clearly identify the specific absolute priority that the proposed project addresses.

Absolute Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1—Demonstrates a Rationale, and one additional absolute priority.

These priorities are:

Absolute Priority 1—Demonstrates a Rationale.

Under this priority, we provide funding to projects that demonstrate a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and includes ongoing efforts to examine the effects of such activity, strategy, or intervention (*i.e.,* complying with the requirement described in this notice to carry out an independent evaluation of the effectiveness of the project).

Absolute Priority 2—Field-Initiated Innovations—General.

Under the priority, we provide funding to projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science.

Under the priority, we provide funding to projects that are designed to:

(1) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students, and;

(2) Improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice).

Competitive Preference Priority: Within Absolute Priority 3, we give competitive preference to applications that address the following priority. For

FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points to an application, depending on how well the application addresses this priority.

This priority is:

Competitive Preference Priority (up to 5 Points).

Projects designed to improve student achievement or other educational outcomes in computer science (as defined in this notice). These projects must address the following priority area:

Expanding access to and participation in rigorous computer science (as defined in this notice) coursework for traditionally underrepresented students such as racial or ethnic minorities, women, students in communities served by rural local educational agencies (as defined in this notice), children or students with disabilities (as defined in this notice), or low-income individuals (as defined under section 312(g) of the Higher Education Act of 1965, as amended).

Note: Projects addressing this priority must be administered in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Definitions: The definitions of ''baseline,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''computer science,'' and ''rural local educational agency'' are from the Supplemental Priorities. The definitions of ''demonstrates a rationale,'' ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA.

Baseline means the starting point from which performance is measured and targets are set.

Children or students with disabilities means children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) or individuals defined as having a disability under Section 504 of the Rehabilitation Act of 1973 (Section 504) (or children or students who are eligible under both laws).

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale is based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State educational agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a

relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Rural local educational agency means a local educational agency that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title V, Part B of the Elementary and Secondary Education Act of 1965, as amended. Eligible applicants may determine whether a particular district is eligible for these programs by referring to information on the Department's website at *www2.ed.gov/nclb/freedom/local/reap.html.*

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Supplemental Priorities.

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 institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $125,000,000.

These estimated available funds are the total available for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants). Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $4,000,000.

Maximum Award: We will not make an award exceeding $4,000,000 for a project period of 60 months.

Estimated Number of Awards: 18–28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. Applicants are to propose a budget that covers the entire project period of up to 60 months. We anticipate that initial awards under this competition will be made for a three-year (36 month) period.

Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, we may make continuation awards to grantees for the remainder of the project period.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural and STEM education applicants out of rank order in one or more of the EIR competitions.

In addition, for FY 2019 the EIR program intends to award at least $60 million in funds for STEM education projects, contingent on receipt of a sufficient number of applications of sufficient quality.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit organization; and

(f) An SEA, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: While the competitive preference priority includes a reference and an accompanying definition for rural LEA, for the purposes of meeting the statutory rural set aside, an applicant must meet the requirements as listed above and provide the necessary locale codes in their grant application.

Note: LEA, SEA, BIE, and nonprofits are eligible to apply and submit and receive an EIR grant. A private IHE that can document its nonprofit status, as provided for under 34 CFR 75.51(b), which includes recognition by the Internal Revenue Service (IRS) as having 501(c)(3) status, is eligible to apply for and receive an EIR grant as a lead applicant, applying as a nonprofit organization. In addition, any IHE is eligible to be a partner in an application where an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization is the lead applicant that submits the application. A nonprofit organization, such as a development foundation, which is affiliated with a public IHE, can apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and could be a lead applicant for an EIR grant. A public IHE without 501(c)(3) status, or that could not provide any other documentation described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore could not apply for and receive an EIR grant but may serve as a partner on a grant awarded to an eligible applicant.

2. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611(d) of the ESEA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Early-phase grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers

on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for an Early-phase grant application to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) which absolute priorities the applicant intends to address. Applicants may access this form online at *www.surveymonkey.com/r/GXJTJ59.* Applicants that do not complete this form may still submit an application.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Early-phase competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 25 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

B. *Quality of the Project Design (up to 35 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

C. *Adequacy of Resources and Quality of the Management Plan (up to 20 points).*

The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project. In determining the adequacy of resources and quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

D. *Quality of the Project Evaluation (up to 20 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards with or without reservations as described in the What Works Clearinghouse Handbook (as defined in this notice).

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks*; (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp*; and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view two optional webinar recordings that were hosted by the Institute of Education Sciences. The first webinar discussed strategies for designing and executing well-designed quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23.* The second webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For Early-phase grant applications, the Department intends to conduct a two-tier review process to review and score all eligible applications. Reviewers will review and score all eligible Early-phase applications on the following three criteria: A. Significance, B. Quality of the Project Design, and C. Adequacy of Resources and Quality of the Management Plan. Applications that score highly on these three criteria will then have the remaining criterion, D. Quality of the Project Evaluation, reviewed and scored by a different panel of reviewers with evaluation expertise.

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

Note: The evaluation report is a specific deliverable under an Early-phase grant that grantees must openly license to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement and attainment for high-need students. We have established several performance measures (as defined in this notice) for the Early-phase grants. By reporting on these performance measures in Annual and Final Performance reports, grantees will satisfy the requirement in section 8101(21)(A)(ii)(II) of the ESEA for projects relying on the ''demonstrates a rationale'' evidence level to have ''ongoing efforts to examine the effects'' of the funded activity, strategy, or intervention.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need

students as specified in the application; (3) the percentage of grantees with evaluations designed to provide performance feedback to inform project design; (4) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes; (5) the percentage of grantees that implement an evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development, or replication in other settings; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reached the target number of high-need students specified in the application; (3) the percentage of grantees that use evaluation data to make changes to their practice(s); (4) the percentage of grantees that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (5) the percentage of grantees with a completed evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development, or replication in other settings; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov*. 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.

Dated: January 29, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–00708 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Mid-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the EIR program—Mid-phase Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.411B (Mid-phase Grants).

DATES:

Applications Available: February 4, 2019.

Deadline for Notice of Intent to Apply: February 21, 2019.

Deadline for Transmittal of Applications: April 2, 2019.

Deadline for Intergovernmental Review: June 3, 2019.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://innovation.ed.gov/what-we-do/innovation/education-innovation-and-research-eir/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Irene Montanti, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E323, Washington, DC 20202–5900. Telephone: (202) 453–7122. Email: *eir@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.'' Applicants proposing innovative practices that are supported by limited evidence can receive relatively small grants to support the development, implementation, and initial evaluation of the practices; applicants proposing practices supported by evidence from rigorous evaluations, such as an experimental study (as defined in this notice), can receive larger grant awards to support expansion across the country. This structure provides incentives for applicants to: (1) Explore new ways of addressing persistent challenges that other educators can build on and learn from; (2) build evidence of effectiveness of their practices; and (3) replicate and scale successful practices in new schools, districts, and States while addressing the barriers to scale, such as cost structures and implementation fidelity.

All EIR projects are expected to generate information regarding their effectiveness in order to inform EIR grantees' efforts to learn about and improve upon their efforts, and to help similar, non-EIR efforts across the country benefit from EIR grantees' knowledge. By requiring that all grantees conduct independent evaluations of their EIR projects, EIR ensures that its funded projects make a significant contribution to improving the quality and quantity of information available to practitioners and policymakers about which practices improve student achievement and attainment, for which types of students, and in what contexts.

The Department awards three types of grants under this program: ''Early-phase'' grants, ''Mid-phase'' grants, and ''Expansion'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

The Department expects that Mid-phase grants will be used to fund implementation and a rigorous evaluation of a program that has been successfully implemented under an Early-phase grant or other effort meeting similar criteria, for the purpose of measuring the program's impact and cost-effectiveness, if possible using existing administrative data. Mid-phase grants are supported by evidence that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on moderate evidence (as defined in this notice) from at least one well-designed and well-implemented experimental study for at least one population or setting, and grantees are encouraged to implement at the regional level (as defined in this notice) or at the national level (as defined in this notice). This notice invites applications for Mid-phase grants only. The notices inviting applications for Early-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background: While this notice is for the Mid-phase tier only, the premise of the EIR program is that new and innovative programs and practices can help to solve the persistent problems in education that prevent students, particularly high-need students, from succeeding. These innovations need to be evaluated, and if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for any practices which are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement, or greatly increase the efficiency and likelihood that they can be widely implemented in a variety of new populations and settings effectively.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment; and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. In connection with selection criterion B.2., we encourage applicants to develop a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes and key project components (as defined in this notice) of the project.

Disseminating evaluation findings is a critical element of every project, even if a rigorous evaluation does not demonstrate positive results. Such results can influence the next stage of education practice and promote follow up studies that build upon the results. The EIR program considers all high-quality evaluations to be a valuable contribution to the field of education research and encourages the documentation and sharing of lessons learned.

For those innovations that have positive results and have the potential for continued development and implementation, the Department is interested in learning more about continued efforts regarding cost-effectiveness and feasibility when scaled to additional populations and settings. EIR projects at the Mid-phase and Expansion levels are encouraged to test new strategies for recruiting and supporting new project adoption, seek efficiencies where project implementation has been too costly or cumbersome to operate at scale, and test new ways of overcoming any other barriers in practice or policy that might inhibit project growth. Early-phase grantees that are not yet ready to scale are still encouraged to think about how their innovations might translate to other populations or settings in the long term and to select their partners and implementation sites accordingly.

Finally, all EIR applicants and grantees should consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. EIR encourages all grantees to engage in sustainability planning as part of a funded project. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

Mid-phase projects are expected to refine and expand the use of practices with prior evidence of effectiveness in order to improve outcomes for high-need students. They are also expected to generate important information about an

intervention's effectiveness, including for whom and in which contexts a practice is most effective, as well as cost-effective. Mid-phase grants are uniquely positioned to help answer critical questions about the process of scaling a practice to the regional or national levels across geographies. Mid-phase grantees are encouraged to consider how the cost structure of a practice can change as the intervention scales. Additionally, grantees may want to consider multiple ways to facilitate implementation fidelity without making scaling too onerous.

Mid-phase applicants are encouraged to design an evaluation that has the potential to meet the strong evidence (as defined in this notice) threshold. Mid-phase grantees should measure the cost-effectiveness of their practices using administrative or other readily available data. These types of efforts are critical to sustaining and scaling EIR-funded effective practices after the EIR grant period ends, assuming that the practice has positive effects on important student outcomes. In order to support adoption or replication by other entities, the evaluation of a Mid-phase project should identify and codify the core elements of the EIR-supported practice that the project implements, and examine the effectiveness of the project for any new populations or settings that are included in the project. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2019 Mid-phase competition includes three absolute priorities. All Mid-phase applicants must address Absolute Priority 1. Mid-phase applicants are also required to address one of the other two absolute priorities. The absolute priorities align with the purpose of the program and the Administration's priorities.

Absolute Priority 1—Moderate Evidence, establishes the evidence requirement for this tier of grants. All Mid-phase applicants must submit prior evidence of effectiveness that meets the moderate evidence standard.

Absolute Priority 2—Field-Initiated Innovations—General, allows applicants to propose projects that align with the intent of the EIR program statute: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

Absolute Priority 3—Field-Initiated Innovations—Science, Technology, Engineering, and Math (STEM), is intended to highlight the Administration's efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement, including computer science.

In Absolute Priority 3, the Department recognizes the importance of funding Pre-Kindergarten through grade 12 STEM education that addresses the enrollment and achievement gap for underrepresented students in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws. The Department also encourages expanding access to STEM education in rural areas, especially through partnerships with rural school districts to utilize virtual and remote access to makerspace technologies, such as 3–D printers, to expand opportunities for students in rural areas where such tools are often cost prohibitive.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of high-need students beginning in Pre-K through grade 12.

Priorities: This notice includes three absolute priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from 34 CFR 75.226(d)(2). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. Absolute Priority 3 is from section 4611(a)(1)(A) of the ESEA and the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Under the Mid-phase grant competition, Absolute Priorities 2 and 3 constitute their own funding categories. The Secretary intends to award grants under each of these absolute priorities for which applications of sufficient quality are submitted. Because applications will be rank ordered separately for Absolute priorities 2 and 3, applicants must clearly identify the specific absolute priority that the proposed project addresses.

Absolute Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1—Moderate Evidence, and one additional absolute priority.

These priorities are:

Absolute Priority 1—Moderate Evidence.

Under this priority, we provide funding to projects supported by evidence that meets the conditions in the definition of moderate evidence.

Note: An applicant must identify up to two study citations to be reviewed against the What Works Clearinghouse (WWC) Handbook (as defined in this notice) for the purposes of meeting moderate evidence. The studies may have been conducted by the applicant or by a third party. An applicant should clearly identify these citations in the Evidence form. The Department may not review a study citation that an applicant fails to clearly identify for review. In addition to including up to two study citations, applicants should describe in the form information such as the following: (1) The positive student outcomes they intend to replicate under their Mid-phase grant and how the characteristics of students and the positive student outcomes in the study citations correspond with the characteristics of the high-need students to be served under the Mid-phase grant; (2) the correspondence of practice(s) the applicant plans to implement with the practice(s) cited in the studies; and (3) the intended student outcomes that the proposed practice(s) attempts to impact.

An applicant must ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC may submit a query to the study author(s) to gather information for use in determining a study rating. Authors would be asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study may be deemed ineligible under the grant competition. After the grant competition closes, the WWC will, for purposes of its own curation of studies, continue to include responses to author queries and will make updates to study reviews as necessary. However, no additional information will be taken into account

after the competition closes and the initial timeline established for response to an author query passes.

Absolute Priority 2—Field-Initiated Innovations—General.

Under the priority, we provide funding to projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science.

Under the priority, we provide funding to projects that are designed to:

(1) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students, and;

(2) Improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice).

Definitions: The definitions of ''baseline,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''national level,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''quasi-experimental design study,'' ''regional level,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1. The definition of ''computer science'' is from the Supplemental Priorities. The definitions of ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA.

Baseline means the starting point from which performance is measured and targets are set.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

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 institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $125,000,000.

These estimated available funds are the total available for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants). Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $8,000,000.

Maximum Award: We will not make an award exceeding $8,000,000 for a project period of 60 months.

Estimated Number of Awards: 8–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We anticipate that initial awards under this competition will be made for a three-year (36 month) period.

Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, we may make continuation awards to grantees for the remainder of the project period.

Applicants are to propose a budget that covers the entire project period of up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the eligible applicants section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural and STEM education applicants out of rank order in the Mid-phase competition.

In addition, for FY 2019 the EIR program intends to award at least $60 million in funds for STEM education projects, contingent on receipt of a sufficient number of applications of sufficient quality.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit organization; and

(f) An SEA, an LEA, a consortium described in (d), or the Bureau of Indian Education, in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: LEA, SEA, BIE, and nonprofits are eligible to apply and submit and receive an EIR grant. A private IHE that can document its nonprofit status, as provided for under 34 CFR 75.51(b), which includes recognition by the Internal Revenue Service (IRS) as having 501(c)(3) status, is eligible to apply for and receive an EIR grant as a lead applicant, applying as a nonprofit organization. In addition, any IHE is eligible to be a partner in an application where an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization is the lead applicant that submits the application. A nonprofit organization, such as a development foundation, which is affiliated with a public IHE, can apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and could be a lead applicant for an EIR grant. A public IHE without 501(c)(3) status, or that could not provide any other documentation described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore could not apply for and receive an EIR grant.

2. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications. Section 4611(d) of the ESEA also authorizes the Secretary to waive this matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(a) The difficulty of raising matching funds for a program to serve a rural area;

(b) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(1) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(2) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(3) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(4) Who are eligible to receive medical assistance under the Medicaid program; and

(c) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package. However, given the importance of matching funds to the long-term success of the project, the Secretary expects eligible entities to identify appropriate matching funds.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant (*i.e.,* Early-phase, Mid-phase, and Expansion grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Mid-phase competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for a Mid-phase grant application to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) which absolute priorities the applicant intends to address. Applicants may access this form online at *www.surveymonkey.com/r/GJ3XS96.* Applicants that do not complete this form may still submit an application.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Mid-phase competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 15 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

B. *Quality of the Project Design (up to 25 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

C. *Strategy to Scale (up to 20 points).*

The Secretary considers the applicant's strategy to scale the proposed project. In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

(2) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

D. *Adequacy of Resources and Quality of the Management Plan (up to 20 points).*

The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project. In determining the adequacy of resources and quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period.

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(4) The extent to which the costs are reasonable in relation to the objectives,

design, and potential significance of the proposed project.

E. *Quality of the Project Evaluation (up to 20 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards without reservations as described in the What Works Clearinghouse Handbook (as defined in this notice).

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(4) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

Note: The evaluation report is a specific deliverable under a Mid-phase grant that grantees must openly license to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The overall purpose of the EIR program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement and attainment for high-need students. We have established several performance measures (as defined in this notice) for the Mid-phase grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement an evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) the percentage of grantees with a completed evaluation that provided information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* 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.

Dated: January 29, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–00710 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0124]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; OESE Performance Review and Self-Assessment Protocol

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before March 4, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0124. 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. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Patrick Carr, 202–708–8196.

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: OESE Performance Review and Self-assessment Protocol.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 45.

Total Estimated Number of Annual Burden Hours: 90.

Abstract: The Department of Education's Office of Elementary and Secondary Education (OESE) administers multiple programs administered by State Educational Agencies (SEAs), including Title I, Sections 1001–1004 (School Improvement); Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies); Title I, Part B (Enhanced Assessments Grants (EAG), and Grants for State Assessments and Related Activities); Title II, Part A (Supporting Effective Instruction); Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement). Annual performance reviews—annual phone or on-site conversations with a purposeful sample of SEA and Local Education Agency (LEA) program directors and coordinators—help ensure that an SEA and its LEA are making progress toward improving student achievement and the quality of instruction for all students and are ensuring requirements are met through the review of the program and fiscal requirements to safeguard public funds from waste, fraud, and abuse. The information shared with OESE also informs the selection and delivery of technical assistance to SEAs and aligns structures, processes, and routines so OESE can regularly monitor the connection between grant administration and intended outcomes.

Dated: January 29, 2019.

Kate Mullan,

Acting Director, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–00739 Filed 1–31–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy, Office of Environmental Management.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 20, 2019—6:00 p.m.

ADDRESSES: DOE Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; E-Mail: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

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

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation: An Evaluation of Ongoing Groundwater Efforts
- Motions/Approval of November 14, 2018 Meeting Minutes
- Status of Outstanding Recommendations
- Alternate DDFO Report
- Committee Reports
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, 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 Melyssa P. Noe 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 the agenda item should contact Melyssa P. Noe 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 Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Signed in Washington, DC, on January 29, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–00766 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–132–LNG]

Magnolia LNG LLC; Application for Amendment to Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application for amendment (Application), filed on December 31, 2018, by Magnolia LNG LLC (Magnolia LNG). Previously, on November 30, 2016, in DOE/FE Order No. 3909, DOE/FE authorized Magnolia LNG to export domestically produced liquefied natural gas (LNG) from the proposed Magnolia LNG Terminal, to be located near Lake Charles, Calcasieu Parish, Louisiana (Magnolia LNG Terminal), to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policies (non-FTA countries). DOE/FE Order No. 3909 authorizes Magnolia LNG to export LNG in a volume equivalent to 394.2 billion cubic feet per year (Bcf/yr) of natural gas (1.08 Bcf per day) (Bcf/d). The Application requests a ''capacity increase,'' *i.e.,* to increase Magnolia LNG's approved non-FTA export volume to a total requested volume of 449 Bcf/yr (1.23 Bcf/d), which Magnolia states is equivalent to 8.8 million metric tons per annum (mtpa). Magnolia LNG states that this proposed increase will align its non-FTA export volume with the maximum LNG production for the Magnolia LNG Terminal, as requested in an application filed with the Federal Energy Regulatory Commission (FERC). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 2, 2019.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478.

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION: Magnolia LNG states that, on November 19, 2018, it filed an application at FERC (FERC Docket No. CP19–19–000) requesting an increase of 0.8 mtpa in the LNG production capacity of the Magnolia LNG Terminal. Magnolia LNG states that this capacity increase is based on a refinement of its final design for the Magnolia LNG Terminal and, if approved by FERC, would increase the Terminal's total LNG production capacity from 8 mtpa to 8.8 mtpa. In this Application, Magnolia LNG is seeking to increase its total non-FTA export volume in DOE/FE Order No. 3909 to 1.23 Bcf/d of natural gas, which Magnolia LNG states is equivalent to 8.8 mtpa of LNG. Additional details can be found in Magnolia LNG's Application, posted on the DOE/FE website at: *https://fossil.energy.gov/ng_regulation/sites/default/files/programs/MagnoliaLNG_App_AMEND12_31_18.pdf.*

DOE/FE Evaluation

The Application was filed under section 3 of the Natural Gas Act (NGA). This Notice applies only to the portion of the Application requesting authority to amend DOE/FE Order No. 3909 authorizing exports of LNG to non-FTA countries pursuant to section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a). DOE/FE will review Magnolia LNG's request to amend its FTA export authorizations in DOE/FE Order Nos. 3245 and 3406 separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[1] and DOE/FE's response to public comments received on that Study.[2]

Additionally, DOE will consider the following environmental documents:

• *Addendum to Environmental Review Documents Concerning Exports*

[1] NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf; see also* U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports; Notice of Availability of the 2018 LNG Export Study and Request for Comments, 83 FR 27314 (June 12, 2018).

[2] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

of Natural Gas From the United States, 79 FR 48132 (Aug. 15, 2014); [3] and

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014).[4]

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 13–132–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–132–LNG. *Please Note*: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on January 28, 2019.

Amy Sweeney,

Director, Division of Natural Gas, Office of Fossil Energy.

[FR Doc. 2019–00723 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Department of Energy, Office of Environmental Management.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 21, 2019—8:00 a.m.–4:00 p.m.

The opportunities for public comment are at 10:15 a.m. and 2:00 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Residence Inn Idaho Falls, 635 West Broadway, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Brad Bugger, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–0833; or email: *buggerbp@id.doe.gov* or visit the Board's internet home page at: *https://energy.gov/em/icpcab/.*

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: (agenda topics may change up to the day of the meeting; please contact Brad Bugger for the most current agenda):

- Recent Public Outreach
- Idaho Cleanup Project (ICP) Overview
- Update on Integrated Waste Treatment Unit (IWTU)
- Advanced Mixed Waste Treatment Project's (AMWTP) Long-Term Mission Decision
- Fiscal Year 2020 Budget Proposal
- Report from Subcommittee on DOE Redefinition of High-Level Waste Proposal
- Reports from Other Subcommittees and Board Organizational Topics

Public Participation: The EM SSAB, Idaho Cleanup Project, 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 Brad Bugger 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 presentations pertaining to agenda items should contact Brad Bugger at the address or telephone number listed above. The request 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 Brad Bugger, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/em/icpcab/listings/cab-meetings.*

Signed in Washington, DC, on January 29, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–00764 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy, Office of Environmental Management.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 21, 2019—6:00 p.m.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, Room 109, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

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
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, 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 Jennifer Woodard as soon as possible in advance of the meeting at the telephone 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 Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible 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. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials.*

Signed at Washington, DC, on January 25, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–00767 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During December 2018

	FE Docket Nos.
MAG ENERGY SOLUTIONS INC	18–177–NG
ARIZONA PUBLIC SERVICE COMPANY	18–179–NG
DOMINION ENERGY COVE POINT LNG, LP	18–180–LNG
EAP OHIO, LLC	18–181–NG
MEXICO PACIFIC LIMITED LLC	18–70–LNG
FORTISBC ENERGY INC	18–183–NG
SPRAGUE OPERATING RESOURCES LLC	18–184–NG; 16–177–NG
REPSOL OIL & GAS USA, LLC	18–178–LNG
SPRAGUE OPERATING RESOURCES LLC	18–140–NG
HARTREE PARTNERS, LP	18–185–NG
DISTRIBUTED GAS SOLUTIONS CANADA	18–188–LNG
AMERICAN LP CO d/b/a AMERICAN LIGHT & POWER	18–187–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2018, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), vacating prior authorization and an errata. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2018-0.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 28, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4316	12/03/18	18–177–NG	MAG Energy Solutions Inc.	Order 4316 granting blanket authority to import/export natural gas from/to Canada.
4319	12/11/18	18–179–NG	Arizona Public Service Company.	Order 4319 granting blanket authority to import/export natural gas from/to Mexico.
4320	12/11/18	18–180–LNG	Dominion Energy Cove Point LNG, LP.	Order 4320 granting blanket authority to import LNG from various international sources by vessel.
4321	12/11/18	18–181–NG	EAP Ohio, LLC	Order 4321 granting blanket authority to import/export natural gas from/to Canada.
4312	12/14/18	18–70–LNG	Mexico Pacific Limited LLC.	Opinion and Order 4314 granting Long-term, Multi-contract authority to export U.S.-sourced natural gas by pipeline to Mexico for liquefaction and re-export in the form of LNG to Non-free Trade Agreement Nations.
4323	12/20/18	18–183–NG	FortisBC Energy Inc	Order 4323 granting blanket authority to import/export natural gas from/to Canada.
4324; 3954–A	12/20/18	18–184–NG; 16–177–NG	Sprague Operating Resources LLC.	Order 4324 granting blanket authority to import natural gas from Canada, and Order 3854–A vacating prior authority.
Errata	12/20/18	18–178–LNG	Repsol Oil & Gas USA, LLC.	Errata Order 4314.
4286–A	12/20/18	18–140–NG	Sprague Operating Resources LLC.	Order 4286–A vacating blanket authority to import natural gas from Canada.
4325	12/21/18	18–185–NG	Hartree Partners, LP	Order 4325 granting blanket authority to import/export natural gas from/to Canada.
4326	12/21/18	18–188–LNG	Distributed Gas Solutions Canada.	Order 4326 granting blanket authority to export LNG to Canada by vessel.
4327	12/31/18	18–187–LNG	American LP Co d/b/a American Light & Power.	Order 4327 granting blanket authority to import/export natural gas from/to Mexico.

[FR Doc. 2019–00660 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During November 2018

	FE Docket Nos.
CORPUS CHRISTI LIQUEFACTION STAGE III, LLC	18–78–LNG
CHENIERE MARKETING, LLC AND CORPUS CHRISTI LIQUEFACTION, LLC	18–137–LNG
PLYMOUTH ROCK ENERGY, LLC	18–163–NG
EQUINOR NATURAL GAS LLC	18–160–NG; 18–101–LNG; 17–34–LNG
MANSFIELD POWER AND GAS, LLC	18–167–NG
BP ENERGY COMPANY	18–69–NG
PORT ARTHUR LNG, LLC	15–53–LNG; 18–162–LNG
ENERDYN INC	18–164–LNG
UNITED ENERGY TRADING, LLC	18–165–NG
NS POWER ENERGY MARKETING INC	18–166–NG
HUSKY MARKETING AND SUPPLY COMPANY	18–169–NG
GIGO TRANSPORT, INC	18–172–NG
PLUM ENERGY, LLC	18–174–LNG
GAS NATURAL PUERTO RICO, INC	18–175–LNG
NEXTERA ENERGY MARKETING, LLC	18–176–NG
CALPINE ENERGY SERVICES, L.P	18–173–NG
ACTIVE ENERGY INC	18–170–NG
REPSOL OIL & GAS USA, LLC	18–178–NG
TRANSALTA ENERGY MARKETING CORP	18–171–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives

notice that during November 2018, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), amending authorization to export LNG, and vacating prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2018-0.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 28, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4277	11/09/18	18–78–LNG	Corpus Christi Liquefaction Stage III, LLC.	Order 4277 granting long-term Multi-Contract Authority to export LNG by vessel from the Proposed Stage 3 LNG Facilities located at the Corpus Christi LNG Terminal in San Patricio and Nueces Counties, Texas to Free Trade Agreement Nations.
4298	11/01/18	18–137–LNG	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.	Order 4279 granting blanket authority to export LNG by vessel from the Corpus Christi Liquefaction Project located in Corpus Christi, Texas to Non-Free Trade Agreement Nations.
4299	11/13/18	18–163–NG	Plymouth Rock Energy, LLC.	Order 4299 granting blanket authority to import natural gas from Canada.
4300	11/13/18	18–160–NG; 18–101–LNG; 17–34–NG.	Equinor Natural Gas LLC	Order 4300 granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel, and vacating prior blanket authorizations 4236 and 4014.
4301	11/13/18	18–167–NG	Mansfield Power and Gas, LLC.	Order 4301 granting blanket authority to export natural gas to Mexico.
4302	11/19/18	18–69–LNG	BP Energy Company	Order 4302 granting blanket authority to export previously imported LNG by vessel to Free Trade Agreement Nations and Non-Free Trade Agreement Nations.
3698–A	11/20/18	15–53–LNG; 18–162–LNG	Port Arthur LNG, LLC	Order 3698–A amending long-term Multi-Contract Authority to export LNG by vessel from the Proposed Port Arthur LNG Project in Port Arthur, Texas to Free Trade Agreement Nations.
4303	11/26/18	18–164–LNG	Enerdyn Inc	Order 4303 granting blanket authority to export LNG to Mexico by truck.
4304	11/26/18	18–165–NG	United Energy Trading, LLC.	Order 4304 granting blanket authority to import/export natural gas from/to Canada.
4305	11/27/18	18–166–NG	NS Power Energy Marketing Inc.	Order 4305 granting blanket authority to import/export natural gas from/to Canada.
4306	11/26/18	18–169–NG	Husky Marketing and Supply Company.	Order 4306 granting blanket authority to import/export natural gas from/to Canada.
4307	11/26/18	18–172–NG	GIGO Transport, Inc	Order 4307 granting blanket authority to import natural gas from Canada/Mexico and to export natural gas to Mexico.
4308	11/26/18	18–174–LNG	Plum Energy, LLC	Order 4308 granting blanket authority to import/export LNG from/to Canada/Mexico by truck.
4309	11/26/18	18–175–LNG	Gas Natural Puerto Rico, Inc.	Order 4309 granting blanket authority to import LNG from various international sources by vessel.
4310	11/26/18	18–176–NG	NextEra Energy Marketing, LLC.	Order 4310 granting blanket authority to import/export natural gas from/to Canada.
4311	11/30/18	18–173–NG	Calpine Energy Services, L.P.	Order 4311 granting blanket authority to import/export natural gas from/to Canada, and vacating prior authorization 4281.
4313	11/30/18	18–170–NG	Active Energy Inc	Order 4313 granting blanket authority to import/export natural gas from/to Canada.
4314	11/30/18	18–178–NG	Repsol Oil & Gas USA, LLC.	Order 4314 granting blanket authority to import/export natural gas from/to Canada.
4315	11/30/18	18–171–NG	TransAlta Energy Marketing Corp.	Order 4315 granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2019–00661 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy, Office of Environmental Management.

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 20, 2019, 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
- Old Business
  - Consideration and Action on Draft Recommendation 2019–01, Periodic Reporting of EM Activities
  - Other Items
- New Business
- Update from NNMCAB Chair
- Update from Deputy Designated Federal Officer
- Public Comment Period
- EM Presentation
- 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.*

Signed in Washington, DC, on January 29, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–00763 Filed 1–31–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–9–000]

Notice of Electric Quarterly Report Users Group Meeting

On December 4, 2018 the Federal Energy Regulatory Commission (Commission) issued a notice that Commission staff will hold an Electric Quarterly Report (EQR) Users Group meeting on February 14, 2019. The meeting will take place from 1:00 p.m. to 5:00 p.m. (EST), in the Commission Meeting Room at 888 First Street NE, Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available via webcast.

Commission staff is hereby supplementing the December 4, 2018 notice with the agenda for discussion. During the meeting, Commission staff and EQR users will discuss recent improvements to the EQR program, potential improvements to the EQR program, and the EQR filing process. Staff is requesting that discussion topics for the meeting be emailed to *EQRUsersGroup@ferc.gov.*

Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting. An agenda of the meeting is attached.

Due to the nature of the discussion, those interested in participating are encouraged to attend in person. All interested persons (whether attending in person or via webcast) are asked to register online at *https://www.ferc.gov/whats-new/registration/02-14-19-form.asp.* There is no registration fee to participate in the meeting. Anyone with internet access can listen to the meeting by navigating to *www.ferc.gov's* Calendar of Events, locating the EQR Users Group Meeting on the Calendar, and clicking on the link to the webcast. The webcast will allow persons to listen to the technical conference. Please send questions during the meeting to *EQRUsersGroup@ferc.gov.* In the event you would also like to participate in the meeting dialogue by phone please select the telephone option when registering. If you have already registered for the meeting, and would like to participate by phone, please re-register and select the telephone option.

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 more information about the EQR Users Group meeting, please contact Jeff Sanders of the Commission's Office of Enforcement at (202) 502–6455, or send an email to *EQRUsersGroup@ferc.gov.*

Dated: January 11, 2019.

Kimberly D. Bose,

Secretary.

AGENDA

EQR Users Group Meeting—Commission Meeting Room

February 14, 2019

1:00–1:15 p.m.—*Welcome, Introductions, and Logistics*
1:15–1:45 p.m.—*Updates Since Last Meeting*
1:45–2:15 p.m.—*Discussion on EQR Product Fields*
2:15–2:45 p.m.—*Large Data Files*
2:45–3:00 p.m.—*Break*
3:00–3:30 p.m.—*EQR Self-Reports*
3:30–4:30 p.m.—*EQR Reassessment Project*
4:30–5:00 p.m.—*Open Discussion*
5:00 p.m.—*End of Meeting—Closing Remarks*

[FR Doc. 2019–00762 Filed 1–31–19; 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: EC19–50–000.
Applicants: Frontier Utilities Northeast LLC, NextEra Energy Services, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Frontier Utilities Northeast LLC, et al.
Filed Date: 1/25/19.
Accession Number: 20190125–5181.
Comments Due: 5 p.m. ET 2/15/19.

Docket Numbers: EC19–51–000.
Applicants: Bloom Energy Corporation, Diamond State Generation Partners, LLC, Yellow Jacket Energy, LLC, 2014 ESA Project Company, LLC, 2015 ESA Project Company, LLC, Canada Pension Plan Investment Board.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Bloom Energy Corporation, et al.
Filed Date: 1/28/19.
Accession Number: 20190128–5109.
Comments Due: 5 p.m. ET 2/19/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–52–000.
Applicants: Crystal Lake Wind Energy I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Crystal Lake Wind Energy I, LLC.
Filed Date: 1/28/19.
Accession Number: 20190128–5120.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: EG19–53–000.
Applicants: Crystal Lake Wind Energy II, LLC.
Description: Self-Certification of Self-Certification of Exempt Wholesale Generator Status of Crystal Lake Wind Energy II, LLC.
Filed Date: 1/28/19.
Accession Number: 20190128–5121.
Comments Due: 5 p.m. ET 2/19/19.

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

Docket Numbers: ER17–615–003; ER10–2184–027; ER10–2192–032; ER10–2178–032; ER11–2014–025; ER11–2013–025; ER13–1536–016; ER11–2005–025.
Applicants: Albany Green Energy, LLC, CER Generation, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc., Cow Branch Wind Power, LLC, CR Clearing, LLC, Exelon Generation Company, LLC, Wind Capital Holdings, LLC.
Description: Supplement to December 22, 2017 Updated Market Power Analysis for the Southeast Region of the Exelon Southeast Entities.
Filed Date: 1/24/19.
Accession Number: 20190124–5212.
Comments Due: 5 p.m. ET 2/7/19.

Docket Numbers: ER17–2386–001.
Applicants: Great Bay Solar I, LLC.
Description: Report Filing: Refund Report (ER17–2386 and EL18–8) to be effective N/A.
Filed Date: 1/28/19.
Accession Number: 20190128–5137.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER18–1708–001.
Applicants: Copenhagen Wind Farm, LLC.
Description: Notice of Non-Material Change in Status of Copenhagen Wind Farm, LLC.
Filed Date: 1/24/19.
Accession Number: 20190124–5229.
Comments Due: 5 p.m. ET 2/14/19.

Docket Numbers: ER18–1954–002.
Applicants: Gulf Power Company.
Description: Compliance filing: Notice of Effective Date & Compliance Filing (NITSA/NOA) ER18–1954 to be effective 1/1/2019.
Filed Date: 1/25/19.
Accession Number: 20190125–5141.
Comments Due: 5 p.m. ET 2/15/19.

Docket Numbers: ER18–2352–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–01–28_Amendment to Real-Time Buybacks of Spinning and Offline Supplemental to be effective 2/14/2019.
Filed Date: 1/28/19.
Accession Number: 20190128–5041.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER19–871–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: SWEPCO–ETEC Contracting Services Agreements (Monitor, Op, Dispatch) to be effective 1/1/2019.
Filed Date: 1/25/19.
Accession Number: 20190125–5113.
Comments Due: 5 p.m. ET 2/15/19.

Docket Numbers: ER19–872–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–01–28_SA 1925 ITC Midwest-Interstate Power and Light 4th Rev DTIA to be effective 3/30/2019.
Filed Date: 1/28/19.
Accession Number: 20190128–5104.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER19–873–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Lighthouse EC-Golden Spread EC Interconnection Agreement to be effective 1/15/2019.
Filed Date: 1/28/19.
Accession Number: 20190128–5108.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER19–874–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5260; Queue No. AD1–060 to be effective 1/2/2019.
Filed Date: 1/28/19.
Accession Number: 20190128–5119.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER19–875–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–01–28_Cyber Security Coordination to be effective 3/30/2019.
Filed Date: 1/28/19.
Accession Number: 20190128–5135.
Comments Due: 5 p.m. ET 2/19/19.

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: January 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–00604 Filed 1–31–19; 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: CP19–43–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Application of Transcontinental Gas Pipe Line Company, LLC under Section 7(b) to abandon certain firm transportation services.

Filed Date: 1/11/19.

Accession Number: 20190111–5164.

Comments Due: 5 p.m. ET 2/1/19.

Docket Numbers: RP19–577–000.

Applicants: Big Sandy Pipeline, LLC.

Description: Compliance filing Big Sandy Fuel Filing effective 3/1/2019.

Filed Date: 1/24/19.

Accession Number: 20190124–5125.

Comments Due: 5 p.m. ET 2/5/19.

Docket Numbers: RP19–578–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—ConEd to Pay Less #798588 to be effective 1/26/2019.

Filed Date: 1/25/19.

Accession Number: 20190125–5033.

Comments Due: 5 p.m. ET 2/6/19.

Docket Numbers: RP19–579–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2019 Subsystem & Pooling Revisions to be effective 3/1/2019.

Filed Date: 1/25/19.

Accession Number: 20190125–5036.

Comments Due: 5 p.m. ET 2/6/19.

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: January 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–00605 Filed 1–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Transmission Planning Advisory Subcommittee and Electric System Planning Working Group Meeting

February 1, 2019, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *https://www.nyiso.com/tpas?meetingDate=2019-02-01.*

Electric System Planning Working Group Meeting

February 11, 2019, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *https://www.nyiso.com/espwg?meetingDate=2019-02-11.*

Business Issues Committee Meeting

February 13, 2019, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *https://www.nyiso.com/business-issues-committee-bic-?meetingDate=2019-02-13.*

Operating Committee Meeting

February 14, 2019, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *https://www.nyiso.com/operating-committee-oc-?meetingDate=2019-02-14.*

Management Committee Meeting

February 27, 2019, 10:00 a.m.–2:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *https://www.nyiso.com/management-committee-mc-?meetingDate=2019-02-27.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER17–2327.

New York Independent System Operator, Inc., Docket No. ER19–528.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: January 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–00542 Filed 1–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IS18–766–000, IS18–767–000]

Notice Rescheduling Technical Conference: Mid-America Pipeline Company, LLC; Seminole Pipeline Company LLC

The technical conference originally scheduled for January 17, 2016, in the above-referenced proceeding, is hereby rescheduled to convene on February 20, 2019, at 9:00 a.m. (Eastern Standard Time). It will occur in Hearing Room 2 at the Commission's Washington DC offices.[1]

Dated: January 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–00541 Filed 1–31–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9043–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Receipt of Environmental Impact Statements
Filed 12/21/2018 Through 01/25/2019
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20180325, Final, USFS, WA, Sunrise Vegetation and Fuels Management, *Review Period Ends:* 03/04/2019, *Contact:* Johnny Collin 509–843–4643

EIS No. 20180326, Draft Supplement, BR, CA, Long-Term Water Transfers, *Comment Period Ends:* 03/18/2019, *Contact:* Dan Cordova 916–987–5483

EIS No. 20180327, Final, TxDOT, TX, Oakhill Parkway, *Contact:* Carlos Swonke 512–416–2734

Under 23 U.S.C. 139(n)(2), TxDOT has issued a single document that consists of a supplemental final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20180328, Draft, HUD, CT, Resilient Bridgeport, *Comment Period Ends:* 03/18/2019, *Contact:* Rebecca French 860–270–8231

EIS No. 20180329, Draft, USACE, CA, Amoruso Ranch, *Comment Period Ends:* 03/18/2019, *Contact:* Leah M. Fisher 916–557–6639

EIS No. 20180330, Draft, FHWA, LA, Lafayette Regional Xpressway Tier 1, *Comment Period Ends:* 03/18/2019, *Contact:* Todd Jeter 225–757–7612

EIS No. 20180331, Final, FERC, LA, Driftwood LNG Project, *Review Period Ends:* 03/04/2019, *Contact:* Office of External Affairs 866–208–3372

EIS No. 20180332, Final, FERC, CA, Yuba River Development Project, *Review Period Ends:* 03/04/2019, *Contact:* Alan Mitchnick 202–502–6074

EIS No. 20180333, Final, FERC, OR, Swan Lake North Pumped Storage Project, *Review Period Ends:* 03/04/2019, *Contact:* Office of External Affairs 866–208–3372

EIS No. 20180334, Final, FERC, NY, Northeast Supply Enhancement Project, *Review Period Ends:* 03/04/2019, *Contact:* Office of External Affairs 866–208–3372

EIS No. 20180335, Draft Supplement, USN, GU, Mariana Islands Training and Testing Draft Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement, *Comment Period Ends:* 03/18/2019, *Contact:* Nora Macariola-See 808–472–1402

EIS No. 20180336, Draft, FHWA, NY, Van Wyck Expressway Capacity and Access Improvements to JFK Airport, *Comment Period Ends:* 03/18/2019, *Contact:* Hans Anker 518–431–8896

Amended Notices

EIS No. 20180282, Final, USACE, IL, The Great Lakes and Mississippi River Interbasin Study—Brandon Road Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois, *Review Period Ends:* 02/22/2019, *Contact:* Andrew Leichty 309–794–5399. Revision to FR Notice Published 12/21/2018; Extending the Comment Period from 01/07/2019 to 02/22/2019.

Dated: January 29, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–00664 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 17, 2019, from 2:00 p.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 13, 2018

B. New Business

- Review of Insurance Premium Rates

[1] See the *Notice of Technical Conference* issued on December 12, 2018, for additional details regarding this conference.

Closed Session—Audit Committee

- CFO Report-List & Status of All Contracts
- Federal Managers Financial Integrity Act Vulnerability Review
- Annual Report on Whistleblower Activity

Dated: January 9, 2019.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2019–00618 Filed 1–31–19; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0136 and –0171)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (control Numbers 3064–0136 and 3064–0171). On November 2, 2018, the FDIC requested comment for 60 days on a proposal to renew these information collections. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on their renewal.

DATES: Comments must be submitted on or before March 4, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 2, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collections described below.[1] No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on these renewals.

Proposal to renew the following currently approved collections of information:

1. *Title:* Privacy of Consumer Information.

OMB Number: 3064–0136.

Form Number: None.

Affected Public: Insured state nonmember banks and consumers.

Burden Estimate

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Consumer Opt-Out/Status Update.	Reporting	Voluntary	404,921	1	.25	On Occasion	101,230.25
Annual Notice and Change in Terms.	Third-Party Disclosure	Mandatory	3,493	1	8	On Occasion	27,944
Initial Notice to Consumers	Third-Party Disclosure	Mandatory	156	1	60	On Occasion	9,360
Opt-Out Notice	Third-Party Disclosure	Mandatory	349	1	8	On Occasion	2,792
Total Hourly Burden							141,326.25

General Description of Collection

The elements of this collection are required under sections 503 and 504 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6803, 6804. The collection mandates notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

There is no change in the method or substance of the collection. However, the FDIC has reviewed its previous PRA submission and has reassessed its burden hours associated with responding to the existing requirements of sections 503 and 504 of the Gramm-Leach-Bliley Act. In particular, the time to comply with sections 503 and 504 has decreased due to streamlined and technological advances. In addition, the FDIC has also updated its estimated number of respondents based on available information. The overall decrease in burden hours is the result of these changes.

2. *Title:* Registration of Mortgage Loan Originators (SAFE Act).

OMB Number: 3064–0171.

Form Number: None.

Affected Public: FDIC Supervised Institutions and Employee Mortgage Loan Originators.

Burden Estimate

[1] 83 FR 55167 (November 2, 2018).

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Financial Institution Policies and Procedures for Ensuring Employee-Mortgage Loan Originator Compliance With S.A.F.E. Act Requirements.	Recordkeeping	Mandatory	3,575	1	20 hours	On Occasion.	71,500
Financial Institution Procedures to Track and Monitor Compliance with S.A.F.E. Act Compliance.	Recordkeeping	Mandatory	3,575	1	60 hours	On Occasion.	214,500
Financial Institution Procedures for the Collection and Maintenance of Employee Mortgage Loan Originator's Criminal History Background Reports.	Recordkeeping	Mandatory	3,575	1	20 hours	On Occasion.	71,500
Financial Institution Procedures for Public Disclosure of Mortgage Loan Originator's Unique Identifier.	Third Party Disclosure	Mandatory	3,575	1	25 hours	On Occasion.	89,375
Financial Institution Information Reporting to Registry.	Reporting	Mandatory	3,575	1	15 minutes	On Occasion.	893.75
Mortgage Loan Originator Initial and Annual Renewal Registration Reporting and Authorization Requirements.	Reporting	Mandatory	88,646	1	15 minutes	On Occasion.	22,161.50
Mortgage Loan Originator Registration Updates Upon Change in Circumstances.	Reporting	Mandatory	38,118	1	15 minutes	On Occasion.	9,529.50
Financial Institution Procedures for the Collection of Employee Mortgage Loan Originator's Fingerprints.	Recordkeeping	Mandatory	3,575	1	4 hours	On Occasion.	14,300
Mortgage Loan Originator Procedures for Disclosure to Consumers of Unique Identifier.	Third Party Disclosure	Mandatory	88,646	1	1 hour	On Occasion.	88,646
Total Hourly Burden							582,405.75

General Description of Collection

This information collection implements the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requirement that employees of Federally-regulated institutions who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and establishes national licensing and registration requirements. It also directs Federally-regulated institutions to have written policies and procedures in place to ensure that their employees who perform mortgage loan originations comply with the registration and other SAFE Act requirements.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

Dated at Washington, DC, on January 28, 2019.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–00561 Filed 1–31–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0178)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (3064–0178).

DATES: Comments must be submitted on or before April 2, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal

Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

1. *Title:* Market Risk Capital Requirements.

OMB Number: 3064–0178.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden
Identification of trading positions.	Recordkeeping	Mandatory	1	1	40	On Occasion	40
Trading and hedging strategies.	Recordkeeping	Mandatory	1	1	16	On Occasion	16
Active management of covered positions.	Recordkeeping	Mandatory	1	1	16	On Occasion	16
Review of internal models.	Recordkeeping	Mandatory	1	1	16	On Occasion	16
Internal audit report	Reporting	Mandatory	1	1	16	On Occasion	16
Backtesting adjustments to risk-based capital ratio calculations.	Recordkeeping	Mandatory	1	4	16	On Occasion	64
Demonstrate appropriateness of proxies.	Recordkeeping	Mandatory	1	1	8	On Occasion	8
Retention of subportfolio information.	Recordkeeping	Mandatory	1	1	24	On Occasion	24
Stressed Var-based measure quantitative requirements.	Reporting	Mandatory	1	4	40	On Occasion	160
Modeled specific risk	Reporting	Mandatory	1	4	88	On Occasion	352
Incremental risk model-prior approval.	Reporting	Mandatory	1	4	480	On Occasion	1,920
Comprehensive risk measurement-prior approval.	Reporting	Mandatory	1	4	480	On Occasion	1,920
Requirements of stress testing.	Recordkeeping	Mandatory	1	1	80	On Occasion	80
Securitization positions	Recordkeeping	Mandatory	1	4	120	On Occasion	480
Quantitative market risk disclosures.	Third-Party Disclosure.	Mandatory	1	4	8	On Occasion	32
Disclosure policy	Recordkeeping	Mandatory	1	1	40	On Occasion	40
Quantitative disclosures for each portfolio of covered positons.	Third-Party Disclosure.	Mandatory	1	4	8	On Occasion	32
Qualitative disclosures for each portfolio of covered positons.	Third-Party Disclosure.	Mandatory	1	1	12	On Occasion	12
Total Hourly Burden.							5,228

General Description of Collection

The FDIC's market risk capital rules (12 CFR part 324, subpart F) enhance risk sensitivity, increase transparency through enhanced disclosures and include requirements for the public disclosure of certain qualitative and quantitative information about the market risk of state nonmember banks and state savings associations (FDIC-supervised institutions). The market risk rule applies only if a bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets or $1 billion or more. Currently, only one FDIC-regulated entity meets the criteria of the information collection requirements that are located at 12 CFR 324.203 through 324.212. The collection of information is necessary to ensure capital adequacy appropriate for the level of market risk.

Section 324.203(a)(1) requires FDIC-supervised institutions to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and specifies the factors a FDIC-supervised institutions must take into account in drafting those policies and procedures. Section 324.203(a)(2) requires FDIC-supervised institutions to have clearly defined trading and hedging strategies for trading positions that are approved by senior management and specifies what the strategies must articulate. Section 324.203(b)(1) requires FDIC-supervised institutions to have clearly defined policies and procedures for actively managing all covered positions and specifies the minimum requirements for those policies and procedures. Sections 324.203(c)(4) through 324.203(c)(10) require the annual review of internal models and specify certain requirements for those models. Section 324.203(d) requires the internal audit group of a FDIC-supervised institution to prepare an annual report to the board of directors on the effectiveness of controls supporting the market risk measurement systems.

Section 324.204(b) requires FDIC-supervised institutions to conduct quarterly backtesting. Section 324.205(a)(5) requires institutions to demonstrate to the FDIC the appropriateness of proxies used to capture risks within value-at-risk models. Section 324.205(c) requires institutions to develop, retain, and make available to the FDIC value-at-risk and profit and loss information on sub-

portfolios for two years. Section 324.206(b)(3) requires FDIC-supervised institutions to have policies and procedures that describe how they determine the period of significant financial stress used to calculate the institution's stressed value-at-risk models and to obtain prior FDIC approval for any material changes to these policies and procedures.

Section 324.207(b)(1) details requirements applicable to a FDIC-supervised institution when the FDIC-supervised institution uses internal models to measure the specific risk of certain covered positions. Section 324.208 requires FDIC-supervised institutions to obtain prior written FDIC approval for incremental risk modeling. Section 324.209(a) requires prior FDIC approval for the use of a comprehensive risk measure. Section 324.209(c)(2) requires FDIC-supervised institutions to retain and report the results of supervisory stress testing. Section 324.210(f)(2)(i) requires FDIC-supervised institutions to document an internal analysis of the risk characteristics of each securitization position in order to demonstrate an understanding of the position. Section 324.212 requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the approach for determining the market risk disclosures it makes.

The annual burden for this information collection is estimated to be 5,228 hours. This represents an increase of 1,300 hours from the current burden estimate of 3,928 hours. This increase is not due to any new requirements imposed by the FDIC. Rather, it is due to FDIC's reassessment of the number of respondents as well as the frequency of responses per respondent per year.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (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. All comments will become a matter of public record.

Dated at Washington, DC, on January 28, 2019.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–00558 Filed 1–31–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0117; –0145; and –0152]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (control Numbers 3064–0117; 3064–0145; and 3064–0152). On November 23, 2018, the FDIC requested comment for 60 days on a proposal to renew these information collections. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on their renewal.

DATES: Comments must be submitted on or before March 4, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 23, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collections described below.[1] No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on these renewals.

Proposal to renew the following currently approved collections of information:

1. *Title:* Mutual-to-Stock Conversion of State Savings Banks.

OMB Number: 3064–0117.

Form Number: None.

Affected Public: Insured state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Mutual-to-Stock Conversion of State Savings Bank.	Reporting	Mandatory	5	1	250	On Occasion ..	1,250

[1] 83 FR 59833 (November 23, 2018).

SUMMARY OF ANNUAL BURDEN—Continued

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Total Hourly Burden.	.....	.....	.....	.....	.....	.....	1,250

General Description of Collection: State savings associations must file a notice of intent to convert to stock form, and provide the FDIC with copies of documents filed with state and federal banking and/or securities regulators in connection with any proposed mutual-to-stock conversion.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

2. *Title:* Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 3064–0145.

Form Number: None.

Affected Public: Insured state nonmember banks

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Estimated number of respondents	Estimated time per response (hours)	Frequency of response	Total estimated annual burden hours
Implementation (One Time):					
Develop Policies and Procedures for Response Program.	Recordkeeping	2	24	1	48
Ongoing:					
Notice Regarding Unauthorized Access to Customer Information.	Third Party Disclosure	315	36	On Occasion ..	11,340
Total Estimated Annual Burden	.....	.....	.....	.....	11,388

General Description of Collection: The Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice describes the federal banking agencies' expectations regarding a response program, including customer notification procedures, that a financial institution should develop and apply under the circumstances described in the *Guidance* to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The *Guidance* advises financial institutions when and how they might: (1) Develop notices to customers; (2) in certain circumstances defined in the *Guidance,* determine which customers should receive the notices; and (3) send the notices to customers.

There is no change in the method or substance of the information collection. With respect to the third party disclosure requirements associated with providing notices regarding unauthorized access to customer information, the FDIC revised its estimate of the response time from 29 hours per response to 36 hours per response. The agency also revised its estimate of the number of annual respondents from 80 to 315 to reflect current industry trend data.

3. *Title:* Identity Theft Red Flags.

OMB Number: 3064–0152.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
FACT Act Sections 114 and 315—Establish policies and Procedures.	Recordkeeping	Mandatory	3,575	1	16	On Occasion ..	57,200
FACT Act Section 315—Provide accurate confirmed address.	Third-Party Disclosure.	Mandatory	3,575	1	4	On Occasion ..	14,300
Total Hourly Burden.	.....	.....	.....	.....	.....	.....	71,500

General Description of Collection: The regulation containing this information collection requirement is 12 CFR part 334, which implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003).

FACT Act Section 114: Section 114 requires the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the FDIC (the Agencies) to jointly propose guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, each financial institution and creditor is required to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Credit card and debit card issuers must develop policies and procedures to assess the validity of a request for a change of address under certain circumstances.

The information collections pursuant to section 114 require each financial institution and creditor to create an Identity Theft Prevention Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the proposed regulations. In addition, staff must be trained to carry out the program. Each credit and debit card issuer is required to establish policies and procedures to assess the validity of a change of address request. The card issuer must notify the cardholder or use another means to assess the validity of the change of address.

FACT Act Section 315: Section 315 requires the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agencies. Part 334 provides such guidance. Each user of consumer reports must develop reasonable policies and procedures that it will follow when it receives a notice of address discrepancy from a consumer reporting agency. A user of consumer reports must furnish an address that the user has reasonably confirmed to be accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

There is no change in the method or substance of the information collection. The total estimated annual burden hours have increased because of the inclusion of the agency's estimate of third-party disclosure burden associated with the notices required by Section 315 of the FACT Act which were previously not included because the agencies had taken the position that the entities covered by the regulation were already furnishing addresses that they had reasonably confirmed to be accurate to consumer reporting agencies from which they receive a notice of address discrepancy as a usual and customary business practice. The above burden estimate now includes burden for the third-party disclosure requirements associated with Section 315 which resulted in an increase in estimated annual burden of 14,300 hours. This increase was offset, in part, by a reduction in the estimated number of respondents from 4,017 to 3,575 which resulted in a decrease in the estimated annual burden for the recordkeeping requirement associated with Sections 114 and 315 from 64,272 hour to 57,200 hours. The net effect of the revision is an increase in estimated annual burden from 64,272 hours to 71,500 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (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. All comments will become a matter of public record.

Dated at Washington, DC, on January 28, 2019.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–00560 Filed 1–31–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS19–01]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square Location, 1850 K Street NW, Washington, DC 20006.

Date: February 13, 2019.

Time: 10:00 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report

Action and Discussion Items

Open Session Minutes
- August 29, 2018

Reprogramming Request for FY18
Appraisal Foundation Grant
ASC Roundtable Summary

How To Attend and Observe an ASC Meeting

If you plan to attend the ASC Meeting in person, we ask that you send an email to *meetings@asc.gov.* You may register until close of business four business days before the meeting date. You will be contacted by the Federal Reserve Law Enforcement Unit on security requirements. You will also be asked to provide a valid government-issued ID before being admitted to the Meeting. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

Dated: January 29, 2019.

James R. Park,

Executive Director.

[FR Doc. 2019–00668 Filed 1–31–19; 8:45 am]

BILLING CODE 6700–01–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 (''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 February 19, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Scott Kopp, Galesville, Wisconsin, individually and acting in concert with Steve Kopp, LaCrosse, Wisconsin, and Mark Copp, Galesville, Wisconsin;* all to retain shares of Gale Bank Holding Company, Inc., and thereby indirectly retain shares of Bluff View Bank, both in Galesville, Wisconsin.

Board of Governors of the Federal Reserve System, January 29, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–00778 Filed 1–31–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1636]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved the private sector adjustment factor (PSAF) for 2019 of $17.8 million and the 2019 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2019.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: David C. Mills, Deputy Associate Director, (202) 530–6265; Amanda Holcombe, Financial Institution Policy Analyst, (202) 912–4625; Emily Massaro, Financial Institution Policy Analyst, (202) 452–2493, Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Lawrence Mize, Deputy Associate Director, (202) 452–5232; Max Sinthorntham, Senior Financial Institution Policy Analyst, (202) 452–2864, Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call (202) 263–4869. Copies of the 2019 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services website at *www.frbservices.org.*

I. Supplementary Information

Private Sector Adjustment Factor, Priced Services Cost Recovery, and Overview of 2019 Price Changes

A. Overview—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that will have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF). From 2008 through 2017, the Reserve Banks recovered 101.9 percent of their total expenses (including imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[1]

Table 1 summarizes 2017 actual, 2018 estimated, and 2019 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 101.0 percent in 2018 and budgeted to be 100.9 percent in 2019.

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1 [b]	2 [c]	3 [1 − 2]	4 [d]	5 [e f] [1/(2 + 4)]
2017 (actual)	441.6	419.4	22.2	4.6	104.1
2018 (estimate)	441.7	432.0	9.7	5.2	101.0
2019 (budget)	440.2	430.8	9.4	5.4	100.9

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes imputed income on investments when equity is imputed at a level that meets minimum capital requirements and, when combined with liabilities, exceeds total assets (attachment 1). For 2018, the projected revenue assumes implementation of the proposed fee changes.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pension plans under ASC 715 are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF.

[e] The recovery rates in this and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with ASC 715. Future gains or losses, and their effect on cost recovery, cannot be projected.

[1] The 10-year recovery rate is based on the pro forma income statements for Federal Reserve priced services published in the Board's *Annual Report.* Effective December 31, 2006, the Reserve Banks implemented Statement of Financial Accounting Standards (SFAS) No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* [Accounting Standards Codification (ASC) 715 *Compensation—Retirement Benefits*], which resulted in recognizing a cumulative reduction in equity related to the priced services' benefit plans. Including this cumulative reduction in equity from 2008 to 2017 results in cost recovery of 94.7 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

[f] For 2019, credits or debits related to the accounting for pension plans under ASC 715 include service cost only with the adoption of ASU 2017–07 *Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost* (Topic 715).

Table 2 provides an overview of cost-recovery budgets, estimates, and performance for the 10-year period from 2008 to 2017, 2017 actual, 2018 budget, 2018 estimate, and 2019 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2008–2017	2017 actual	2018 budget [a]	2018 estimate	2019 budget [b]
All services	101.9	104.1	100.1	101.0	100.9
Check	103.5	107.0	101.6	101.7	101.5
FedACH	98.5	99.8	96.1	98.0	101.8
Fedwire Funds and NSS	101.5	106.2	103.9	105.0	100.7
Fedwire Securities	102.2	103.6	97.6	96.5	94.7

[a] The 2018 budget figures reflect the final budgets as approved by the Board in December 2017.

[b] The 2019 budget figures reflect preliminary budget information from the Reserve Banks. The Reserve Banks will submit final budget data to the Board in November 2018, for Board consideration in December 2018.

1. *2018 Estimated Performance*—The Reserve Banks estimate that they will recover 101.0 percent of the costs of providing priced services in 2018, including total expense and targeted ROE, compared with a 2018 budgeted recovery rate of 100.1 percent, as shown in table 2. Overall, the Reserve Banks estimate that they will fully recover actual and imputed costs and earn net income of $9.7 million, compared with the targeted ROE of $5.2 million. The Reserve Banks estimate that the check service and the Fedwire® Funds and National Settlement Services will achieve full cost recovery; however, the Reserve Banks continue to estimate that the FedACH® Service and the Fedwire Securities Service will not achieve full cost recovery. Consistent with recent years, the FedACH Service will not achieve full cost recovery because of investment costs associated with the multiyear technology initiative to modernize its processing platform.[2] This investment is expected to enhance efficiency, the overall quality of operations, and the Reserve Banks' ability to offer additional services to depository institutions. The Reserve Banks estimate that the Fedwire Securities Service will not achieve full cost recovery because of ongoing market structure changes and investment costs associated with initiatives to promote operational resiliency.

2. *2019 Private-Sector Adjustment Factor*—The 2019 PSAF for Reserve Bank priced services is $17.8 million. This amount represents a decrease of $1.1 million from the 2018 PSAF of $18.9 million. This decrease is primarily the result of a decrease in the total cost of debt and partially offset by an increase in Board of Governors expenses.

3. *2019 Projected Performance*—The Reserve Banks project a priced services cost recovery rate of 100.9 percent in 2019, with a net income of $9.4 million and targeted ROE of $5.4 million. The Reserve Banks project that the price changes will result in a 2.5 percent average price increase for customers. The Reserve Banks project that each of the individual service lines, other than the Fedwire Securities Service, will fully recover their costs. The Reserve Banks anticipate that the FedACH technology modernization initiative will conclude in 2019, allowing for a projected return to cost recovery for the FedACH Service. Although the Fedwire Securities Service is not budgeted to fully cover its costs in 2019 because of volume declines driven by market changes, the service is projected to recover costs over the long run.[3]

The primary risks to the Reserve Banks' ability to achieve their targeted cost-recovery rates are unanticipated volume and revenue reductions and the potential for cost overruns from new and ongoing improvement initiatives. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to manage operating costs, to increase product revenue, and to capitalize on efficiencies gained from technology initiatives.

4. *2019 Pricing*—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2019:

Check

- The Reserve Banks will reassign the tier placement of 1,116 forward and 240 return endpoints in the FedForward® and FedReturn® products, respectively.[4]
- The Reserve Banks will lower the average daily forward receipt and return tier volume thresholds approximately 6.0 percent for tiers 1, 2, 3, and 4 for FedForward® and FedReturn® image cash letter and daily fee deposit options based on the 2019 tier assignments to account for the anticipated continued decline in check deposit volumes.
- The Reserve Banks will increase per-item fees for the FedForward® Premium Daily Fee A, B, and C deposit options by $0.001 for Tier 3 and $0.003 for Tier 4. The Reserve Banks will also increase the Premium Daily Fee C daily fixed fee by $200, from $3,500 to $3,700.
- The Reserve Banks will increase cash letter fees by $0.50 for all deadlines on FedForward® Standard, Deferred, Dollar-Culled, and Endpoint-Culled image cash letters and FedReturn® Standard image cash letters.
- The Reserve Banks will increase the per-item fee for the FedReceipt® Premium Delivery 8:00 a.m. EST target by $0.006 and per item fees for the Premium Delivery 10:00 a.m. target and Premium Delivery 12:00 noon target by $0.002.[5]
- The Reserve Banks will increase FedReceipt® Electronic Reject Repair fees by $0.05, increasing the Basic repair

[2] The Reserve Banks have been engaged in a multiyear technology initiative to modernize the FedACH processing platform by migrating the service from a mainframe system to a distributed computing environment.

[3] Fedwire Securities Service's ten-year average recovery rate in 2019 is 101.6 percent.

As the aggregate impact of market structural changes materializes, the Reserve Banks will take into account subsequent volume changes as well as future anticipated cost allocation adjustments, in order to adjust the Fedwire Securities Service's prices and to continue recovering costs over the long-run.

[4] The Reserve Banks evaluate and set tier assignments annually based on changes in the volume of items received by endpoints.

[5] The 8:00 a.m. delivery target is expressed in eastern time, while the 10:00 a.m. and 12:00 noon targets are local time.

from $0.15 per-item to $0.20 per-item and increasing the Premium repair from $0.25 per-item to $0.30 per-item.

- The Reserve Banks will increase all fees for the FedImage® product and certain truncation fees 10.0 percent (rounded to the nearest increment based upon the number of decimal places of the current fee).
- The Reserve Banks will introduce two new fees intended to improve the quality of check deposit processing and reduce errors in adjustment case submissions. The Reserve Banks will introduce a $0.50 fee for encoding error and duplicate-payment adjustment cases caused by the depositary bank's incorrect encoding or duplicate deposit of an item. The Reserve Banks will also introduce a $2.50 fee for automated adjustment case types that require manual intervention by Reserve Bank staff due to error on the part of the adjusting bank.

FedACH

- The Reserve Banks will offer a new ACH Exception Resolution Service® that will provide an automated means for customers to resolve ACH exceptions. The fee structure will contain fixed and variable elements, as outlined in the ACH fee schedule.
- The Reserve Banks will keep prices at existing levels for all existing priced FedACH products.

Fedwire Funds

- The Reserve Banks will increase the offline send surcharge and offline receive surcharge from $60.00 to $65.00.

National Settlement Service (NSS)

- The Reserve Banks will keep prices at existing levels for the priced NSS products.

Fedwire Securities

- The Reserve Banks will increase the agency online transfer fee from $0.77 to $0.98.
- The Reserve Banks will increase the automated claims adjustment process (ACAP) fee from $0.80 to $1.00.

FedLine® Access Solutions

- The Reserve Banks will discontinue offering new FedMail Fax subscriptions.
- The Reserve Banks will discontinue offering the Accounting Totals by Service (ACTS) report.
- The Reserve Banks will discontinue charging à la carte fees for additional FedLine Command server certificates. The Reserve Banks will provide FedLine Command server certificates as part of FedLine Command packages at no additional cost.
- The Reserve Banks will offer upgraded FedLine Direct® Plus and Premier packages, with monthly fees of $5,500 and $10,500 respectively, to reflect the incorporation of the Check 21 Large File Delivery service with the FedLine Direct solution. Existing customers may continue to use the legacy FedLine Direct Plus and Premier packages until they migrate to the upgraded packages. The Reserve Banks will also increase the monthly fee for the legacy FedLine Direct Plus package by $350, from $3,650 to $4,000.
- The Reserve Banks will increase the monthly à la carte fee for Network Diversity by $500, from $2,000 to $2,500.

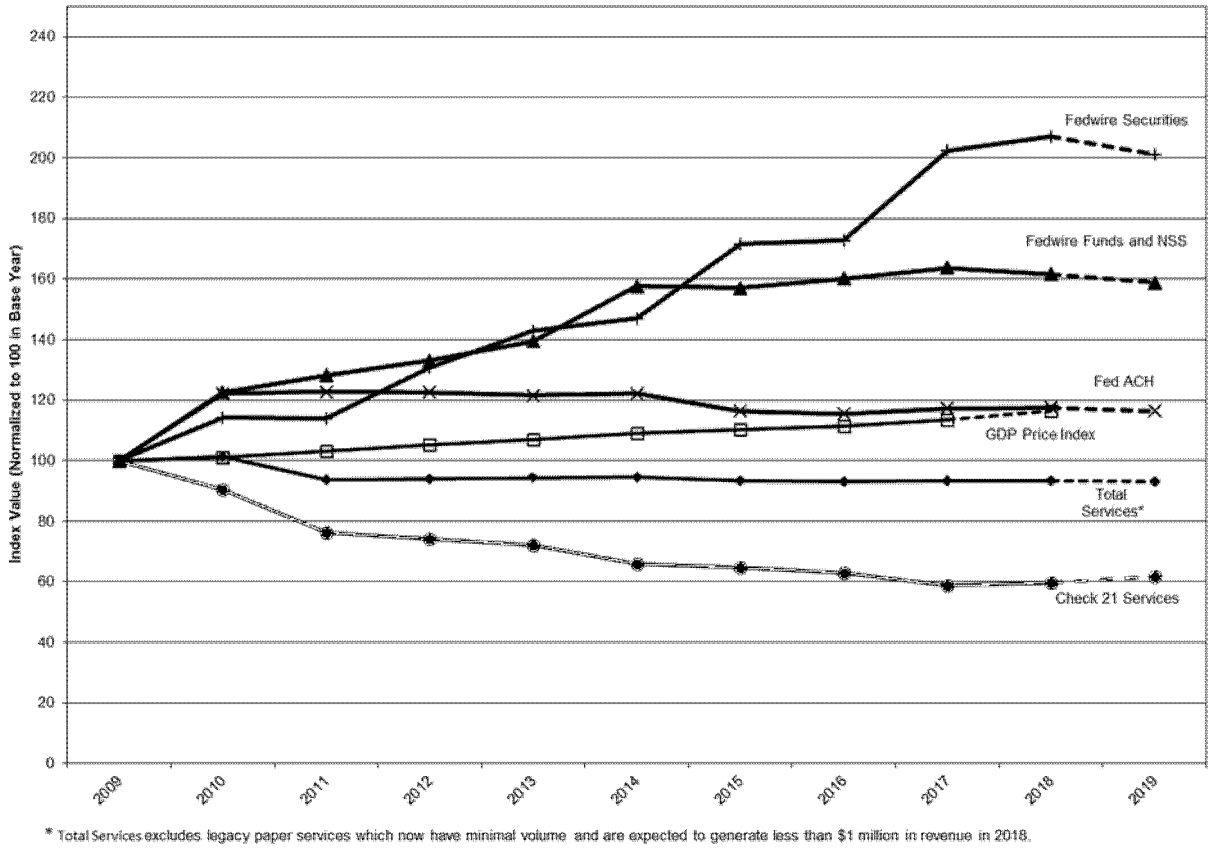
5. *2019 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price index.[6] The price index for Reserve Bank priced services is projected to remain relatively flat, with a decrease of less than 1 percent in 2019 from the 2018 level. The price index for Check 21 services is projected to increase approximately 3 percent. The price indexes for the FedACH Service, the Fedwire Funds and National Settlement Services, and the Fedwire Securities Service are projected to decrease approximately 1 percent, 2 percent, and 3 percent, respectively. For the period 2009 to 2019, the price index for total priced services is expected to decrease nearly 7 percent.

[6] For the period 2009 to 2017, the GDP price index increased 13.6 percent.

FIGURE 1

2019 PRICE INDEX

PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES



* Total Services excludes legacy paper services which now have minimal volume and are expected to generate less than $1 million in revenue in 2018.

B. *Private Sector Adjustment Factor*—The imputed debt financing costs, targeted ROE, and effective tax rate are based on a U.S. publicly traded firm market model.[7] The method for calculating the financing costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist are imputed as if these priced services were provided by a private business firm. The same generally accepted accounting principles that apply to commercial-entity financial statements apply to the relevant elements in the priced services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information about actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of depreciation and amortization expenses of each asset class. The priced portion of actual Federal Reserve liabilities consists of postemployment and postretirement benefits, accounts payable, and other liabilities. The priced portion of the actual net pension asset or liability is also included on the balance sheet.[8]

The equity financing rate is the targeted ROE produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a market risk premium. The risk-free rate is based on the three-month Treasury bill; the beta is assumed to be equal to 1.0, which approximates the risk of the market as a whole; and the market risk premium is based on the monthly returns in excess of the risk-free rate over the most recent 40 years. The resulting ROE reflects the return a shareholder would expect when investing in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not explicitly calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill the priced services' imputed income tax obligations. To the extent that performance results are greater or less

[7] Data for U.S. publicly traded firms is from the Standard and Poor's Compustat® database. This database contains information on more than 6,000 U.S. publicly traded firms, which approximates the entirety of the U.S. market.

[8] The pension assets are netted with the pension liabilities and reported as a net asset or net liability as required by ASC 715 *Compensation—Retirement Benefits.*

than the targeted ROE, income taxes are adjusted using the effective tax rate.

Capital structure. The capital structure is imputed based on the imputed funding need (assets less liabilities), subject to minimum equity constraints. Short-term debt is imputed to fund the imputed short-term funding need. Long-term debt and equity are imputed to meet the priced services long-term funding need at a ratio based on the capital structure of the U.S. publicly traded firm market. The level of equity must meet the minimum equity constraints, which follow the FDIC requirements for a well-capitalized institution. The priced services must maintain equity of at least 5 percent of total assets and 10 percent of risk-weighted assets.[9] Any equity imputed that exceeds the amount needed to fund the priced services' assets and meet the minimum equity constraints is offset by a reduction in imputed long-term debt. When imputed equity is larger than what can be offset by imputed debt, the excess is imputed as investments in Treasury securities; income imputed on these investments reduces the PSAF.

Application of the Payment System Risk (PSR) Policy to the Fedwire Services. The Board's PSR policy incorporates the international standards for financial market infrastructures (FMIs) developed by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions in the *Principles for Financial Market Infrastructures.* The revised policy retains the expectation that the Fedwire Services meet or exceed the applicable risk-management standards. Principle 15 states that an FMI should identify, monitor, and manage general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services. The Fedwire Services do not face the risk that a business shock would cause the service to wind down in a disorderly manner and disrupt the stability of the financial system. In order to foster competition with private-sector FMIs, however, the Reserve Banks' priced services will hold an amount equivalent to six months of the Fedwire Funds Service's current operating expenses as liquid financial assets and equity on the pro forma balance sheet.[10] Current operating expenses are defined as normal business operating expenses on the income statement, less depreciation, amortization, taxes, and interest on debt. Using the Fedwire Funds Service's preliminary 2019 budget, six months of current operating expenses would be $50.5 million. In 2019, $38.8 million of equity was imputed to meet the FDIC capital requirements, resulting in an ending equity balance of $51.8 million. No additional imputed equity was necessary to meet the PSR policy requirement.

Effective tax rate. Like the imputed capital structure, the effective tax rate is calculated based on data from U.S. publicly traded firms. The tax rate is the mean of the weighted average rates of the U.S. publicly traded firm market over the past 5 years.

Debt and equity financing. The imputed short- and long-term debt financing rates are derived from the nonfinancial commercial paper rates from the Federal Reserve Board's H.15 Selected Interest Rates release (AA and A2/P2) and the annual Merrill Lynch Corporate & High Yield Index rate, respectively. The equity financing rate is described above. The rates for debt and equity financing are applied to the priced services estimated imputed short-term debt, long-term debt, and equity needed to finance short- and long-term assets and meet equity requirements.

The 2019 PSAF is $17.8 million, compared with $18.9 million in 2018. The decrease of $1.1 million is attributable to a $2.8 million decrease in the cost of debt and a $0.3 million decrease in sales tax, offset by a $1.9 million increase in the Board's costs and a $0.1 million increase in the return on equity. The net $2.7 million decrease in cost of capital ($2.8 million less $0.1 million) resulted from lower funding needs driven by lower long-term assets. The increase in Board costs are attributed to a shift from policy to priced services oversight activities.

The PSAF expense of $17.8 million, detailed in table 5, reflects $7.1 million for capital funding, $7.0 million for BOG expense and $3.7 million in sales tax expense.

As shown in table 3, 2019 total assets of $846.6 million increased by $29.4 million from 2018. The net increase in total assets reflects a $105 million increase in short-term assets and imputed investments offset by a $75.6 million decrease in long-term assets.

The increase in the short-term assets is primarily driven by the imputed investments in Treasury securities and Federal Funds. These increases in short-term assets are largely offset by increases in short-term liabilities in the form of deferred credits. There were larger averages for check items in process of collection, and higher average ACH Pre-Fund account balances in the first several months of 2018. The 2019 balances are estimated based on the current account balance average for the first part of 2018.

The net long-term asset decrease of $75.6 million primarily consists of a $53.0 million decrease in the net pension asset and a combined $18.6 million decrease in Furniture and equipment and Leasehold improvements and long-term prepayments. The net pension asset decrease reflects lower plan contributions over the past two years, down from $720 million to $240 million in 2018 and from $480 million to $180 million in 2019. The decrease in furniture and equipment and Leasehold improvements and long-term prepayments are mainly due to a lower allocation of Reserve Bank assets to the Federal Reserve's priced services.

The capital structure of the 2019 pro forma balance sheet, provided in table 4, is composed of equity of $51.8 million, or 10 percent of the 2019 risk weighted assets detailed in table 6, and no long-term debt. The 2019 capital structure differs from that of 2018, which was composed of $57.8 million of equity and $76.9 million of long-term debt. The 2019 imputed equity required to fund assets and meet the publicly traded firm model capital requirements is $31.3 million. Long-term debt of $18.2 million was imputed at the observed market ratio of 58.3 percent. To meet the FDIC capital requirements for a well-capitalized institution, the $18.2 million of imputed long-term debt was substituted for equity, and additional $20.5 million equity was imputed. The resulting $51.8 million total level of equity satisfies the PSR policy requirements for 2019.

The net Accumulated Other Comprehensive Income loss is $624.3

[9] The FDIC rule, which was adopted as final on April 14, 2014, requires that well-capitalized institutions meet or exceed the following standards: (1) Total capital to risk-weighted assets ratio of at least 10 percent, (2) tier 1 capital to risk-weighted assets ratio of at least 8 percent, (3) common equity tier 1 capital to risk-weighted assets ratio of at least 6.5 percent, and (4) a leverage ratio (tier 1 capital to total assets) of at least 5 percent. Because all of the Federal Reserve priced services' equity on the pro forma balance sheet qualifies as tier 1 capital, only requirements 1 and 4 are binding. The FDIC rule can be located at *https://www.fdic.gov/news/board/2014/2014-04-08_notice_dis_c_fr.pdf.*

[10] This requirement does not apply to the Fedwire Securities Service. There are no competitors to the Fedwire Securities Service that would face such a requirement, and imposing such a requirement when pricing the securities services could artificially increase the cost of these services.

million, compared with $637.2 million in 2018. The slight decrease is primarily attributable to the actuarial gains as a result of higher than expected returns on pension assets and a lower discount rate. AOCI is in a net loss position and does not reduce the total imputed equity required to fund priced services assets or fulfill the FDIC equity requirements for a well-capitalized institution.

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR BUDGETED FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—projected average for year]

	2019	2018	Change
Short-term assets:			
Receivables	$36.7	$36.6	$0.0
Materials and supplies	0.6	0.5	0.1
Prepaid expenses	11.1	13.0	(1.9)
Items in process of collection [11]	95.0	87.0	8.0
Total short-term assets	143.4	137.1	6.3
Imputed investments: [12]			
Imputed investment in Treasury Securities	20.5	.....	20.5
Imputed investment in Fed Funds	253.0	174.8	78.2
Total imputed investments	273.5	174.8	98.7
Long-term assets:			
Premises [13]	104.2	103.7	0.2
Furniture and equipment	32.8	38.9	(6.0)
Leasehold improvements and long-term prepayments	87.7	100.3	(12.6)
Net pension asset	23.6	76.6	(53.0)
Deferred tax asset	181.4	185.6	(4.1)
Total long-term assets	429.7	505.3	(75.6)
Total assets	846.6	817.2	29.4
Short-term liabilities:			
Deferred credit items	348.0	261.8	86.2
Short-term debt	13.5	14.5	(1.0)
Short-term payables	34.9	35.6	(0.7)
Total short-term liabilities	396.4	311.9	84.5
Long-term liabilities:			
Long-term debt	.....	76.9	(76.9)
Postemployment/postretirement benefits and net pension liabilities [14]	398.4	370.5	27.9
Total liabilities	794.8	759.3	35.4
Equity [15]	51.8	57.8	(6.0)
Total liabilities and equity	846.6	817.2	29.4

TABLE 4—IMPUTED FUNDING FOR PRICED-SERVICES ASSETS

[Millions of dollars]

	2019	2018
A. Short-term asset financing:		
Short-term assets to be financed:		
Receivables	$36.7	$36.6
Materials and supplies	0.6	0.5
Prepaid expenses	11.1	13.0
Total short-term assets to be financed	48.4	50.1
Short-term payables	34.9	35.6
Net short-term assets to be financed	13.5	14.5

[11] Credit float, which represents the difference between items in process of collection and deferred credit items, occurs when the Reserve Banks debit the paying bank for transactions prior to providing credit to the depositing bank. Float is directly estimated at the service level.

[12] Consistent with the Board's PSR policy, the Reserve Banks' priced services will hold and amount equivalent to six months of the Fedwire Funds Service's current operating expenses as liquid net financial assets and equity on the pro forma balance sheet. Six months of the Fedwire Funds Service's projected current operating expenses is $50.5 million. In 2019, $38.8 million of equity was imputed to meet the regulatory capital requirements.

[13] Includes the allocation of Board of Governors assets to priced services of $2.9 million for 2019 and $1.1 million for 2018.

[14] Includes the allocation of Board of Governors liabilities to priced services of $0.8 million for 2019 and $0.6 million for 2018.

[15] Includes an accumulated other comprehensive loss of $624.3 million for 2019 and $637.2 million for 2018, which reflects the ongoing amortization of the accumulated loss in accordance with ASC 715. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected. See table 5 for calculation of required imputed equity amount.

TABLE 4—IMPUTED FUNDING FOR PRICED-SERVICES ASSETS—Continued

[Millions of dollars]

	2019	2018
Imputed short-term debt financing: [16]	13.5	14.5
B. Long-term asset financing:		
Long-term assets to be financed:		
Premises	104.2	103.9
Furniture and equipment	32.8	38.9
Leasehold improvements and long-term prepayments	87.7	100.3
Net pension asset	23.6	76.6
Deferred tax asset	181.4	185.6
Total long-term assets to be financed	429.7	505.3
Postemployment/postretirement benefits and net pension liabilities	398.4	370.5
Net long-term assets to be financed	31.3	134.8
Imputed long-term debt [23]	.....	76.9
Imputed equity [23]	51.8	57.8
Total long-term financing	51.8	134.8

TABLE 5—DERIVATION OF THE 2019 AND 2018 PSAF

[Dollars in millions]

	2019		2018	
	Debt	Equity	Debt	Equity
A. Imputed long-term debt and equity:				
Net long-term assets to finance	$31.3	$31.3	$134.8	$134.8
Capital structure observed in market	58.3%	41.7%	58.2%	41.8%
Pre-adjusted long-term debt and equity	$18.2	$13.1	$78.4	$56.4
Equity adjustments: [17]				
Equity to meet capital requirements	.....	51.8	.....	57.8
Adjustment to debt and equity funding given capital requirements [18]	(18.2)	18.2	(1.5)	1.5
Adjusted equity balance	.....	31.3	.....	57.8
Equity to meet capital requirements [19]	.....	20.5	.....	.....
Total imputed long-term debt and equity	.....	$51.8	$76.9	$57.8
B. Cost of capital:				
Elements of capital costs:				
Short-term debt [20]	$13.5 × 2.3% =	$0.3	$14.5 × 1.3% =	$0.2
Long-term debt [23]	3.9% =	.....	76.9 × 3.8% =	3.0
Equity [21]	51.8 × 13.3% =	6.8	57.8 × 11.7% =	6.7
	.....	$7.1	.....	$9.9
C. Incremental cost of PSR policy:				
Equity to meet policy	13.3% =	.....	11.7% =	.....
D. Other required PSAF costs:				
Sales taxes	$3.7	.....	$3.9	.....

[16] See table 5 for calculation.

[17] If minimum equity constraints are not met after imputing equity based on the capital structure observed in the market, additional equity is imputed to meet these constraints. The long-term funding need was met by imputing long-term debt and equity based on the capital structure observed in the market (see tables 4 and 6). In 2019, the amount of imputed equity met the minimum equity requirements for risk-weighted assets.

[18] Equity adjustment offsets are due to a shift of long-term debt funding to equity in order to meet FDIC capital requirements for well-capitalized institutions.

[19] Additional equity in excess of that needed to fund priced services assets is offset by an asset balance of imputed investments in treasury securities.

[20] Imputed short-term debt and long-term debt are computed at table 4.

[21] The 2019 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2019 after-tax CAPM ROE is calculated as 2.01% + (1.0 * 8.32%) = 10.33%. Using a tax rate of 22.2%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (10.33%/(1 − 22.2%)) = 13.27%. Calculations may be affected by rounding.

[22] If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints. Additional equity imputed to meet minimum equity requirements is invested solely in Treasury securities. The imputed investments are similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at *http://www.federalreserve.gov/releases/h15/data.htm.*

[23] The investments are imputed based on the amounts arising from the collection of items prior to providing credit according to established availability schedules.

TABLE 5—DERIVATION OF THE 2019 AND 2018 PSAF—Continued

[Dollars in millions]

	2019		2018	
	Debt	Equity	Debt	Equity
Board of Governors expenses	7.0		5.1	
		10.7		9.0
		$17.8		$18.9
E. Total PSAF:				
As a percent of assets		2.1%		2.3%
As a percent of expenses		3.3%		4.1%
F. Tax rates		22.2%		22.7%

TABLE 6—COMPUTATION OF 2019 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Dollars in millions]

	Assets	Risk weight	Weighted assets
Imputed investments:			
1-Year Treasury securities [22]	$20.5		
Federal funds [23]	253.0	0.2	$50.6
Total imputed investments	273.5		50.6
Receivables	36.7	0.2	7.3
Materials and supplies	0.6	1.0	0.6
Prepaid expenses	11.1	1.0	11.1
Items in process of collection	95.0	0.2	19.0
Premises	104.2	1.0	104.2
Furniture and equipment	32.8	1.0	32.8
Leasehold improvements and long-term prepayments	87.7	1.0	87.7
Net pension asset	23.6	1.0	23.6
Deferred tax asset	181.4	1.0	181.4
Total	846.6		518.3
Imputed equity:			
Capital to risk-weighted assets	10.0%		
Capital to total assets	6.1%		

C. *Check Service*—Table 7 shows the 2017 actual, 2018 estimated, and 2019 budgeted cost-recovery performance for the commercial check service.

TABLE 7—CHECK SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1 – 2]	4	5 [1/(2 + 4)]
2017 (actual)	142.0	131.3	10.7	1.4	107.0
2018 (estimate)	133.2	129.5	3.8	1.5	101.7
2019 (budget)	128.3	124.8	3.4	1.5	101.5

1. *2018 Estimate*—The Reserve Banks estimate that the check service will recover 101.7 percent of total expenses and targeted ROE, compared with a 2018 budgeted recovery rate of 101.6 percent. The expected decline in check volumes processed by the Reserve Banks continues to influence the check service's cost recovery.

Through August, total commercial forward and total commercial return check volumes were 7.6 percent and 7.2 percent lower, respectively, than they were during the same period last year. Consistent with anticipated fourth-quarter declines, for full-year 2018, the Reserve Banks estimate that their total forward check volume will decline 7.6 percent (compared with a budgeted decline of 4.7 percent) and their total return check volume will decline 7.7

percent (compared with a budgeted decline of 3.5 percent) from 2017 levels.[24] While these volume declines will affect budgeted total revenue, the Reserve Banks estimate that total expenses will also be lower given the decline in those expenses directly correlated with volumes as well as the continued recognition of operational efficiencies. This has allowed for close alignment between budgeted and estimated 2018 cost recovery.

2. *2019 Pricing*—The Reserve Banks expect the check service to recover 101.5 percent of total expenses and targeted ROE in 2019. The Reserve Banks project revenue to be $128.3 million, a decline of 3.7 percent from the 2018 estimate. This decline is driven in part by anticipated accelerating decline in the overall number of checks written, as well as by competition from correspondent banks, aggregators, and direct exchanges.[25] Total expenses for the check service are projected to be $124.8 million, a decrease of $4.7 million, or 3.6 percent, from 2018 expenses, primarily because of reduced operating costs, including cost savings associated with the Reserve Banks' customer support services.

The Reserve Banks evaluate and set tier assignments annually based on changes in the volume of items received by endpoints. In 2019, the Reserve Banks will reassign the tier placement of 1,116 forward and 240 return endpoints in the FedForward and FedReturn products, respectively.[26] Based on these 2019 tier assignments, the Reserve Banks will increase the FedForward Premium Daily Fee A, B, and C per item fees by $0.001 for Tier 3 and $0.003 for Tier 4, while also increasing to the Premium Daily Fee C daily fixed fee by $200, from $3,500 to $3,700. These price increases are intended to better align pricing between premium daily and standard deposit options.

The Reserve Banks will also lower the average daily forward receipt and return volume thresholds by approximately 6.0 percent for tiers 1, 2, 3, and 4 for FedForward® and FedReturn® image cash letter and daily fee deposit options based on the 2019 tier assignments.[27] These changes are intended to account for the anticipated continued decline in check deposit volumes. Tables 8, 9, 10, and 11 show the 2018 volume thresholds and the 2019 thresholds for the four tiered pricing structures.

TABLE 8—FEDFORWARD STANDARD DEPOSIT TIER VOLUME THRESHOLDS

[*Applicable to Standard ICL, Premium ICL, Deferred ICL, Dollar-Culled ICL, Endpoint-Culled ICL, Standard Daily Fee A, and Standard Daily Fee B deposit options*]

Tier	2018 Average daily forward receipt volume items/day	2019 Average daily forward receipt volume items/day
1	Over 65,000	Over 61,000.
2	10,001–65,000	9,401–61,000.
3	750–10,000	700–9,400.
4	Less than 750	Less than 700.

TABLE 9—FEDFORWARD PREMIUM DAILY DEPOSIT OPTION TIER VOLUME THRESHOLDS

[*Applicable to Premium Daily Fee A, Premium Daily Fee B, and Premium Daily Fee C deposit options*]

Tier	2018 Average daily forward receipt volume items/day	2019 Average daily forward receipt volume items/day
0	See explanation below*	See explanation below.*
1	Over 25,000	Over 23,500.
2	3,301–25,000	3,101–23,500.
3	750–3,300	700–3,100.
4	Less than 750	Less than 700.

**Tier 0 consists of financial institutions that meet both of the following criteria:*

1. Less than 10 percent of their Reserve Bank forward receipt volume was deposited with the Reserve Banks by Premium Daily Fee depositors during the sample period, and

2. Their average daily Reserve Bank forward receipt volume exceeded 150 items per day during the sample period.

Tier 0 is intended to be a transitional tier: Once a financial institution is assigned to tier 1–4 or the substitute check tier, it cannot be assigned to tier 0.

TABLE 10—FEDRETURN STANDARD DEPOSIT TIER VOLUME THRESHOLDS

[*Applicable to Standard ICL deposit option*]

Tier	2018 Average daily return receipt volume items/day	2019 Average daily return receipt volume items/day
1	Over 3,000	Over 2,820.
2	1,001–3,000	941–2,820.
3	100–1,000	94–940.
4	Less than 100	Less than 94.

[24] Total Reserve Bank forward check volumes are expected to be 4.8 billion in 2018. Total Reserve Bank return check volumes are expected to be 28.9 million in 2018.

[25] The Reserve Banks estimate that total commercial forward check volumes in 2019 will decline 8.5 percent, to 4.4 billion, and total commercial return check volumes will decline 7.5 percent, to 26.7 million in 2019.

[26] The tiers for 2019 are available at *https://www.frbservices.org/resources/fees/check-2019.html.*

[27] As part of the Reserve Banks' 2016 restructured FedForward and FedReturn fee schedules, the Reserve Banks use a volume-based tiered pricing structure to determine per-item fees based on the average daily receipt or return volume an endpoint receives from chartered institutions through the Reserve Banks. Tiers for the three premium variations of the Reserve Banks' daily subscription fee deposit options (FedForward Premium Daily Fee A, B, and C) are based only on volume received by the Reserve Banks' top 15 customers, which represent the likely users of the deposit options. These premium daily fee options include a fifth tier, Tier 0, composed of routing numbers for which the Reserve Banks currently receive little to no volume from the specified subset of Reserve Bank customers (and which therefore cannot currently be assigned to the other tiers with sufficient predictability). Tier 0 is evaluated annually, along with all other tiers and endpoints, and endpoints cannot be placed in Tier 0 if they have previously been assigned to one of the other tiers.

TABLE 11—FEDRETURN PREMIUM DAILY DEPOSIT OPTION TIER VOLUME THRESHOLDS

[*Applicable to Premium Daily Fee A deposit option*]

Tier	2018 Average daily return receipt volume items/day	2019 Average daily return receipt volume items/day
0	See explanation below*	See explanation below.*
1	Over 1,500	Over 1,410.
2	501–1,500	471–1,410.
3	100–500	94–470.
4	Less than 100	Less than 94.

**Tier 0 consists of financial institutions with less than 10 percent of their Reserve Bank return receipt volume deposited with the Reserve Banks by Premium Daily Fee depositors during the sample period.*

Tier 0 is intended to be a transitional tier: once a financial institution is assigned to tier 1–4 or the substitute check tier, it cannot be assigned to tier 0.

The Reserve Banks will increase cash letter fees by $0.50 for all deadlines on the FedForward Standard, Deferred, Dollar-Culled, and Endpoint-Culled image cash letters and FedReturn Standard image cash letters. The Reserve Banks will also increase the FedReceipt Premium Delivery 8:00 a.m. EST target per-item fee by $0.006 and the Premium Delivery 10:00 a.m. target and 12:00 noon target per-item fees by $0.002.[28] Further, the Reserve Banks will increase FedReceipt Electronic Reject Repair fees by $0.05, increasing the Basic repair fee from $0.15 per item to $0.20 per item and increasing the Premium repair fee from $0.25 per item to $0.30 per item. Together, these changes are intended to facilitate longer-term cost recovery for the check service by increasing the proportion of fixed revenue while still providing price stability for customers in light of the anticipated continued decline in check volumes.

The Reserve Banks will continue increasing fees to encourage depositors to shift volume away from legacy paper-related products in light of today's electronic check-processing environment. Specifically, the Reserve Banks will increase all fees for the FedImage product and certain truncation fees by approximately 10.0 percent.[29] Table 12 shows the 2019 FedImage and Electronic Check Services fees.

TABLE 12—FEDIMAGE AND ELECTRONIC CHECK SERVICES AND FEES

	Fixed fee	Per item fee
Image Archive:		
Image Capture + 7 business day archive	$6.00	$0.0090
Image Capture On-Us Surcharge		0.0212
30 business day archive		0.0011
60 business day archive		0.0013
7-year archive/11-year archive		0.0020
Dual archive (Transition period up to 120 days)		0.0012
Extended dual archive (More than 120 days)		0.0121
Back File Conversion	$4.25	0.0121
Electronic On-Us Service	$4.25	0.0121
Extended RAID Storage		
61 days to 6 months		0.0010
61 days to 12 months		0.0024
61 days to 24 months		0.0061
Image Retrievals:		
Retrievals to view via FedLine Web® inquiry		0.4300
Retrievals to email via FedLine Web:		
Request via FedLine Web inquiry		0.4300
Recurring request		0.4300
Image Access and Retrievals through a Gateway		0.4300
Subscription Retrievals		0.0026
Manual FedImage Requests (requests performed by FRB staff)		7.2500
Image Delivery:		
Physical Media:		
CD–ROM Select Accounts Service—RAID	$18.15/CD–ROM	0.0190
CD–ROM—Tape	$18.15/CD–ROM	0.1200
Truncation:		
Image Enhanced Truncation	$6.60	0.0110
Return Item Retrieval—Fedline		1.2700

Finally, the Reserve Banks will introduce two new fees as incentives to financial institutions to reduce errors in adjustment case submissions. The Reserve Banks will introduce a $0.50 fee for encoding error and duplicate payment adjustment cases caused by the depositary bank's incorrect encoding or duplicate deposit of an item. The

[28] The 8:00 a.m. delivery target is expressed in eastern time, while the 10:00 a.m. and 12:00 noon targets are local time.

[29] Because of rounding, the individual price increases range from 8.3 percent to 12.5 percent.

Reserve Banks will also introduce a $2.50 fee for automated adjustment case types that require manual intervention by Reserve Bank staff because of error on the part of the adjusting bank.[30] These new fees are intended to help drive efficiencies throughout the industry's check collection process by providing an incentive to financial institutions to improve the quality of their check deposit processing. In addition, the $2.50 fee will cover the staffing costs associated with manually handling cases that should have been automatically resolved. Table 13 shows the 2019 fees under Quality Improvement Initiatives for Electronic Check Collection.

TABLE 13—QUALITY IMPROVEMENT INITIATIVES

Product	Per case/ item fee
Check Adjustments—Deposit Quality Issues	$0.50
Check Adjustments—Incorrect/Incomplete Case Opening	2.50
Return Deposit Exceptions—Items Qualified to the Federal Reserve as BOFD[31]	15.00

The Reserve Banks estimate that the announced price changes will result in a 4.0 percent average price increase for check customers.

The primary risks to the Reserve Banks' ability to achieve budgeted 2019 cost recovery for the check service include greater-than-expected declines in check volume due to the general reduction in check writing and increased competition from correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue.

D. *FedACH Service*—Table 14 shows the 2017 actual, 2018 estimate, and 2019 budgeted cost-recovery performance for the commercial FedACH service.

TABLE 14—FEDACH SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1 – 2]	4	5 [1/(2 + 4)]
2017 (actual)	141.3	140.0	1.3	1.6	99.8
2018 (estimate)	149.2	150.4	−1.2	1.9	98.0
2019 (budget)	152.0	147.4	4.6	1.9	101.8

1. *2018 Estimate*—The Reserve Banks estimate that the FedACH service will recover 98.0 percent of total expenses and targeted ROE, compared with a 2018 budgeted recovery rate of 96.1 percent. Through August, FedACH commercial origination and receipt volume was 7.5 percent higher than it was during the same period last year. For full-year 2018, the Reserve Banks estimate that FedACH commercial origination and receipt volume will increase 6.1 percent from 2017 levels, in line with the budgeted increase of 5.2 percent. However, investment costs associated with the multiyear technology initiative to modernize the FedACH processing platform are driving the overall under recovery rate.

2. *2019 Pricing*—The Reserve Banks expect the FedACH service to recover 101.8 percent of total expenses and targeted ROE in 2019. FedACH commercial origination and receipt volume is projected to grow 3.3 percent, which, combined with anticipated incremental revenue from new services, is expected to contribute to an increase of $2.8 million in total revenue from the 2018 estimate. Total expenses are projected to decrease $3.0 million from 2018 expenses, primarily because of the reduction in costs associated with the development and expected completion in 2019 of the new FedACH technology platform.

The Reserve Banks will introduce a new Exception Resolution Service that provides an automated means for participants to manage ACH exceptions for entries settled through FedACH.[32] The Reserve Banks expect that automation of exception cases will improve efficiency of FedACH payments by streamlining existing time-consuming manual processes that banks use to manage exception cases. The Service is optional; customers will be able to originate an exception case directly through FedLine, through a third-party agent on their behalf, or through a Federal Reserve Bank on their behalf.

The Reserve Banks will not change fees for existing FedACH priced services.

The primary risks to the Reserve Banks' ability to achieve budgeted 2019 cost recovery for the FedACH service are unanticipated cost overruns associated with the FedACH technology modernization project and unanticipated volume reductions.

[30] This fee is charged to a financial institution that provides incorrect or incomplete information when opening an adjustment case with the Reserve Banks. The fee is only applicable to adjustment cases that would have resolved automatically had the case been submitted correctly (investigation types ENC, PAID, NCH, DISP, SOR and LNE).

[31] This existing fee was previously located in the FedReturn section of the Electronic Check Collection Fee.

[32] Specifically, the service is designed to handle disputes, notifications, questions, or requests for additional information from a financial institution either for their own use or on behalf of their account holder. Eight of the most common exception requests between financial institutions will be able to be managed through the service initially: (1) Written statement of unauthorized debit copy, (2) converted check copy, (3) ODFI request for return, (4) RDFI request for late return acceptance, (5) request for proof of debit authorization, (6) originator contact information, (7) payment trace request, and (8) general inquiries (used to contact another institution for information exchange).

The ERS product will not be available to customers on January 2nd, 2019.The Reserve Banks will provide notice to customers, regarding the availability of the product, once an implementation date has been determined.

E. *Fedwire Funds and National Settlement Services*—Table 15 shows the 2017 actual, 2018 estimate, and 2019 budgeted cost-recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 15—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1 − 2]	4	5 [1/(2 + 4)]
2017 (actual)	129.7	120.8	8.9	1.3	106.2
2018 (estimate)	132.2	124.4	7.8	1.5	105.0
2019 (budget)	133.6	131.1	2.5	1.6	100.7

1. *2018 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 105.0 percent of total expenses and targeted ROE, compared with a 2018 budgeted recovery rate of 103.9 percent. Through August, Fedwire Funds Service online volume was 5.1 percent higher than it was during the same period last year. For full-year 2018, the Reserve Banks estimate that Fedwire Funds Services online volume will increase 3.2 percent from 2017 levels, compared with the 0.8 percent volume decrease that had been budgeted. Through August, the National Settlement Service (NSS) settlement file volume was 3.6 percent higher than it was during the same period last year, and settlement entry volume was 1.1 percent higher. For the full year, the Reserve Banks estimate that settlement file volume will increase 1.5 percent (in line with a budgeted increase of 1.3 percent) and settlement entry volume will decrease 2.3 percent from 2017 levels (compared with a budgeted 0.7 percent increase).

2. *2019 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 100.7 percent of total expenses and targeted ROE. Revenue is projected to be $133.6 million, an increase of 1.1 percent from the 2018 estimate. The Reserve Banks project total expenses to be roughly $6.7 million higher than 2018 expenses, primarily reflecting investments in new initiatives to improve resiliency and operational functionality.

The Reserve Banks will increase the offline send surcharge and offline receive surcharge for the Fedwire Funds Service from $60.00 to $65.00 in order to offset project costs related to the automation of Office of Foreign Asset Control (OFAC) screening within the offline process. The Reserve Banks estimate that the price changes, along with an expected increase in incentive discount-eligible volume, will ultimately result in an overall 2.0 percent average price increase for Fedwire Funds customers.

The Reserve Banks will not change NSS fees for 2019.

The primary risk to the Reserve Banks' ability to achieve budgeted 2019 cost recovery for these services is an overrun in costs from new initiatives to improve resiliency and operational functionality. Unanticipated decreases in volume may also negatively impact cost recovery.

F. *Fedwire Securities Service*—Table 16 shows the 2017 actual, 2018 estimate, and 2019 budgeted cost-recovery performance for the Fedwire Securities Service.[33]

TABLE 16—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1 − 2]	4	5 [1/(2 + 4)]
2017 (actual)	28.6	27.3	1.3	0.3	103.6
2018 (estimate)	27.1	27.7	−0.7	0.3	96.5
2019 (budget)	26.4	27.5	−1.1	0.3	94.7

1. *2018 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 96.5 percent of total expenses and targeted ROE, compared with a 2018 budgeted recovery rate of 97.6 percent. The Reserve Banks estimate revenue to be $27.1 million, a decrease of 5.3 percent from the 2018 budget. Total expenses are projected to be $27.7 million for full-year 2018, an increase of 1.7 percent from the 2018 budget.

Through August, Fedwire Securities Service online agency transfer volume was 2.3 percent lower than it was during the same period last year. For full-year 2018, the Reserve Banks estimate that Fedwire Securities Service online agency transfer volume will decline 4.8 percent from 2017 levels, compared with a budgeted decline of

[33] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

15.4 percent. This decrease in online agency transfer volume primarily reflects two market trends. First, a continuation of interest rate increases in 2018 has led to a decrease in mortgage refinance volume and issuance, which in turn has led to a decrease in settlement activity for agency mortgage-backed securities over Fedwire Securities. Second, JP Morgan Chase (JPMC) has recently completed its exit from the broker-dealer services business, resulting in Bank of New York Mellon generally serving as the sole clearing bank for government securities. As a result of this market shift, online agency transfer volume is expected to decrease through year-end 2018. These structural changes within the government securities clearing and settlement market are expected to continue to affect online transfer volumes through 2019.

For full-year 2018, volumes for the Fedwire Securities' two largest revenue-generating services—account maintenance and issue maintenance—are expected to decline from 2017 levels. Through August, account maintenance volume was 5.3 percent lower than it was during the same period last year. For full-year 2018, the Reserve Banks estimate that account maintenance volume will decline 5.0 percent from 2017 levels, compared with a budgeted decline of 3.2 percent. The higher-than-expected account maintenance volume decline is largely the result of joint custody account closures. Through August, the number of agency issues maintained was 3.9 percent lower than it was during the same period last year. For full-year 2018, the Reserve Banks estimate that the number of agency issues maintained will decline 4.7 percent from 2017 levels, compared with a budgeted decline of 1.4 percent.

2. *2019 Pricing*—The Reserve Banks expect the Fedwire Securities Service to recover 94.7 percent of total expenses and targeted ROE in 2019. Revenue is projected to be $26.4 million, a decrease of 2.6 percent from the 2018 estimate. The Reserve Banks also project that 2019 expenses will remain relatively flat, decreasing by $0.2 million from the 2018 estimate. Significant drivers of 2019 operating costs include investments to advance new initiatives to improve resiliency and operational functionality.

As JPMC finalizes its reallocation of holdings and ongoing market changes reach steady state, the Reserve Banks project that online agency transfer volume will remain relatively flat, with a slight increase of 0.8 percent in 2019. Additionally, the volume of accounts maintained will likely decrease 5.6 percent, and the volume of agency issues maintained will likely decrease 15.5 percent.[34] Account maintenance volume is expected to continue to decline in 2019 because of ongoing joint custody account closures driven by state-level collateral program changes. Issue maintenance volume is expected to decline because of cost allocation adjustments necessitated by the completion of the Fedwire Modernization Program, and new securities related to the Federal Home Loan Mortgage Corporation's securities exchange program in advance of the Federal Housing Finance Agency's Single Security Initiative.

The Reserve Banks will increase the online agency transfer fee from $0.77 to $0.98. Processing costs for online agency transfers and online Treasury transfers are nearly identical, yet the corresponding fees are different; therefore, the fee change is intended to bring the two fees into better alignment.[35] Additionally, the Reserve Banks will increase the automated claims adjustment processing fee from $0.80 to $1.00. This fee increase will offset costs associated with the automated claims adjustment processing expansion project, which is scheduled to go live at year-end 2019. The Reserve Banks estimate that the combined price changes will result in a 6.0 percent average price increase for Fedwire Securities customers.

The primary risks to the Reserve Banks' ability to achieve budgeted 2019 cost recovery for these services are lower-than-expected volume resulting from the pace of structural changes in government securities clearing and settlement, and higher-than-expected costs from new initiatives to improve resiliency and operational functionality.

G. *FedLine Access*—The Reserve Banks charge fees for the electronic connections that depository institutions use to access priced services and allocate the costs and revenue associated with this electronic access to the various priced services. There are currently six FedLine channels through which customers can access the Reserve Banks' priced services: FedMail, FedLine Exchange, FedLine Web, FedLine Advantage, FedLine Command, and FedLine Direct.[36] The Reserve Banks bundle these channels into eleven FedLine packages, described below, that are supplemented by a number of premium (or à la carte) access and accounting information options. In addition, the Reserve Banks offer FedComplete packages, which are bundled offerings of FedLine connections and a fixed number of FedACH, Fedwire Funds, and Check 21-enabled transactions.

Eight attended access packages offer manual access to critical payment and information services via a web-based interface. The FedMail package provides access to basic information services via email, while the two FedLine Exchange packages are designed to provide certain services, such as the E-Payments Routing Directory, to customers that otherwise do not use FedLine for any payment services. The two FedLine Web packages offer online attended access to a range of services, including cash services, FedACH information services, and Check services. Three FedLine Advantage packages expand upon the FedLine Web packages and offer attended access to critical transactional services: FedACH, Fedwire Funds, and Fedwire Securities.

Three unattended access packages are computer-to-computer, IP-based interfaces. The FedLine Command package offers an unattended connection to FedACH as well as to most accounting information services. The two remaining options are FedLine Direct packages, which allow for unattended connections at one of two connection speeds to FedACH, Fedwire Funds, and Fedwire Securities transactional and information services and to most accounting information services.[37]

In 2019, the Reserve Banks will offer upgraded FedLine Direct Plus and FedLine Direct Premier packages, at monthly fees of $5,500 and $10,500 respectively, in order to reflect improved network resiliency, efficiency in supporting all payments traffic, and availability of higher network speeds.[38] Historically, the Reserve Banks' FedLine

[34] The online transfer fee, monthly account maintenance fee, and monthly issue maintenance fee accounted for more than 94 percent of total Fedwire Securities Service revenue through August 2018.

[35] Treasury online transfer fees are set by and remitted to the U.S. Department of the Treasury, except for a funds movement fee of $0.11, which is set and retained by the Federal Reserve Banks for their direct, support, and overhead costs of settling on their books the payment associated with the transfer of a Treasury security between securities accounts.

[36] FedMail, FedLine Exchange, FedLine Web, FedLine Advantage, FedLine Command, and FedLine Direct are registered trademarks of the Federal Reserve Banks.

[37] The Reserve Banks offer an unattended check product, Check 21 Large File Delivery, that allows a depository institution to upload and download check image cash letters automatically via a direct network connection to the Reserve Banks.

[38] As of July 16, 2018, 256K and T1 line speed connections are no longer offered to new customers as part of the FedLine Direct Plus and FedLine Direct Premier packages.

Direct connections were not able to support all payment traffic including Check Services because of limitations in network speed and ability to manage bandwidth.

The Reserve Banks will also increase the monthly fee for the current (legacy) FedLine Direct Plus solution by $350, from $3,650 to $4,000. Existing customers can use the current (legacy) FedLine Plus and Premier solutions and Check 21 Large File Delivery but will eventually need to convert to the enhanced FedLine Direct Solutions. Existing users should expect the legacy solutions to be retired and plan migration efforts to the new service packages beginning in late 2018. The Reserve Banks will also increase the à la carte Network Diversity monthly fee by $500, from $2,000 to $2,500.[39]

Table 17 provides a summary of the attributes and 2019 pricing for legacy and upgraded FedLine Direct packages:

TABLE 17—FEDLINE DIRECT PACKAGES

	Legacy[40]	2019[41]
FedLine Direct Plus:		
Connection Speed	256 Kbps	2 Mbps.
Dual Vendors	N/A	Included.
Check 21 Services	Available à la carte	Included.
Server Certificates	Two included	Included.
Network Diversity	None included	None included.
Contingency Solution	Available à la carte	Included.
Additional WANs	None included	None included.
VPNs	One included	One included.
Bundled FedLine Channels	Web, Advantage, Command	Web, Advantage, Command.
Price	$4,000.00	$5,500.00.
FedLine Direct Premier:		
Connection Speed	1.5 Mbps	2 Mbps.
Dual Vendors	N/A	Included.
Check 21 Services	Available à la carte	Included.
Server Certificates	Two included	Included.
Network Diversity	None included	One included.
Contingency Solution	Available à la carte	Included.
Additional WANs	None included	One included.
VPNs	Two included	Two included.
Bundled FedLine Channels	Web, Advantage, Command	Web, Advantage, Command.
Price	$6,800.00	$10,500.00.

In addition, the Reserve Banks will eliminate specific à la carte fees and services for current FedLine packages. The Reserve Banks will discontinue offering FedLine Command server certificates as a separate monthly fee. FedLine Command server certificates will be included in FedLine Command packages for no additional cost. Including these certificates in FedLine Command packages is similar to current practices for upgraded FedLine Direct packages and will result in a consistent customer experience across both product lines. The Reserve Banks will also discontinue offering the Accounting Totals by Service (ACTS) report as an Accounting Service option for customers, because of low usage. In addition, the Reserve Banks will discontinue offering new FedMail Fax subscriptions to customers, in order to encourage them to move to more modern and secure technology that meets industry standards and enhances their experience.

The Reserve Banks estimate that the price changes will result in a 7.5 percent average price increase for FedLine customers. This increase is primarily driven by the changes to FedLine Direct Plus and Premier packages that provide enhanced network options.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy ''The Federal Reserve in the Payments System.'' [42] Under this policy, the Board assesses whether proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If any proposed changes create such an effect, the Board must further evaluate the changes to assess whether the benefits associated with the changes—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The 2019 fees, fee structures, and changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The changes should permit the Reserve Banks to earn a ROE that is comparable to overall market returns and provide for full cost recovery over the long run.

III. 2019 Fee Schedules

[39] Network Diversity refers to a method for improving the resiliency of a computing network by using two or more telecommunication paths with different characteristics so that the first remains unaffected by events interrupting traffic on the second and vice versa.

[40] Available only to existing customers prior to 2019.

[41] Available to new and existing customers starting 2019.

[42] Federal Reserve Regulatory Service (FRRS) 9–1558.

FEDACH SERVICE 2019 FEE SCHEDULE

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**]

	Fee
FedACH minimum monthly fee:	
Originating Depository Financial Institution (ODFI) [43]	$50.00.
Receiving Depository Financial Institution (RDFI) [44]	$40.00.
Origination (per item or record):	
Forward or return items	$0.0035.
SameDay Service—forward item [45]	$0.0010 surcharge.
Addenda record	$0.0015.
FedLine Web-originated returns and notification of change (NOC) [46]	$0.35.
Facsimile Exception Return/NOC [47]	$45.00.
SameDay Exception Return	$45.00.
Automated NOC	$0.20.
Volume-based discounts (based on monthly billed origination volume) [48] per item when origination volume is:	
750,001 to 1,500,000 items per month	$0.0008 discount.
more than 1,500,000 items per month	$0.0010 discount.
Volume-based discounts (based on monthly billed receipt volume) [49] per item when receipt volume is:	
10,000,001 to 15,000,000 items per month	$0.0002 discount.
more than 15,000,000 items per month	$0.0003 discount.
Receipt (per item or record):	
Forward Item	$0.0035.
Return Item	$0.0075.
Addenda record	$0.0015.
Volume-based discounts:	
Non-Premium Receivers [50] per item when volume is:	
750,001 to 12,500,000 items per month [51]	$0.0017 discount.
more than 12,500,000 items per month [52]	$0.0019 discount.
Premium Receivers, Level One [53] per item when volume is:	
750,001 to 1,500,000 items per month [51]	$0.0017 discount.
1,500,001 to 2,500,000 items per month [52]	$0.0017 discount.
2,500,001 to 12,500,000 items per month [52]	$0.0018 discount.
more than 12,500,000 items per month [52]	$0.0020 discount.
Premium Receivers, Level Two [54] per item when volume is:	
750,001 to 1,500,000 items per month [51]	$0.0017 discount.
1,500,001 to 2,500,000 items per month [52]	$0.0017 discount.
2,500,001 to 12,500,000 items per month [52]	$0.0019 discount.
more than 12,500,000 items per month [52]	$0.0021 discount.
FedACH Bundled Package Pricing Discount:	
Monthly Bundled Service Package Discount [55]	$20.00 discount.
Monthly FedACH Risk® Management fees: [56]	
For up to 5 criteria sets	$35.00.
For 6 through 11 criteria sets	$70.00.
For 12 through 23 criteria sets	$125.00.
For 24 through 47 criteria sets	$150.00.
For 48 through 95 criteria sets	$250.00.
For 96 through 191 criteria sets	$425.00.
For 192 through 383 criteria sets	$675.00.
For 384 through 584 criteria sets	$850.00.
For more than 584 criteria sets	$1,100.00.
Risk origination monitoring batch (based on total monthly volume):	
For 1 through 100,000 batches (per batch)	$0.007.
For more than 100,000 batches (per batch)	$0.0035.
Monthly FedPayments® Reporter Service:	
FedPayments Reporter Service package pricing includes:	
ACH Received Entries Detail—Customer and Depository Financial Institution.	
ACH Return Reason Report—Customer and Depository Financial Institution.	
ACH Volume Summary by SEC Code—Customer.	
Customer Transaction Activity.	
Death Notification.	
International (IAT).	
Notification of Change.	
Payment Data Information File.	
Remittance Advice Detail.	
Remittance Advice Summary.	
Return Item Return Ratio.	
Social Security Beneficiary.	
Originator Setup.	
Report Delivery via FedLine Access Solution.	
On Demand Surcharge	$1.00.

FEDACH SERVICE 2019 FEE SCHEDULE—Continued

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**]

	Fee
Report delivery via FedLine file access solution (monthly fee):	
For up to 50 reports	$40.00.
For 51 through 150 reports	$60.00.
For 151 through 500 reports	$110.00.
For 501 through 1,000 reports	$200.00.
For 1,001 through 1,500 reports	$285.00.
For 1,501 through 2,500 reports	$460.00.
For 2,501 through 3,500 reports	$640.00.
For 3,501 through 4,500 reports	$820.00.
For 4,501 through 5,500 reports	$995.00.
For 5,501 through 7,000 reports	$1,225.00.
For 7,001 through 8,500 reports	$1,440.00.
For 8,501 through 10,000 reports	$1,650.00.
For more than 10,000 reports	$1,800.00.
Premier reports (per report generated): [57]	
ACH Volume Summary by SEC Code Report—Depository Financial Institution:	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Routing Number Activity Report:	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Originated Batch Report (monthly):	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Originated Batch Report (daily):	
Scheduled Report	$0.65.
On Demand Surcharge	$1.00.
On-us inclusion:	
Participation (monthly fee per RTN)	$10.00.
Per-item	$0.0030.
Per-addenda	$0.0015.
Report delivery via encrypted email (per email)	$0.20.
Other Fees and Discounts:	
Monthly fee (per RTN):	
FedACH Participation Fee [58]	$65.00.
SameDay Service Origination Participation Fee [59]	$10.00.
FedACH Settlement Fee [60]	$55.00.
FedACH Information File Extract Fee	$150.00.
IAT Output File Sort Fee	$75.00.
Fixed Participation Fee—Automated NOCs [61]	$5.00.
Non-Electronic Input/Output fee: [62]	
CD/DVD (CD or DVD)	$50.00.
Paper (file or report)	$50.00.
Fees and Credits Established by NACHA: [63]	
NACHA Same Day Entry fee (per item)	$0.052.
NACHA Same Day Entry credit (per item)	$0.052 (credit).
NACHA Unauthorized Entry fee (per item)	$4.50.
NACHA Unauthorized Entry credit (per item)	$4.50 (credit).
NACHA Admin Network fee (monthly fee per RTN)	$22.00.
NACHA Admin Network fee (per entry)	$0.000185.
FedGlobal® ACH Payments: [64]	
Fixed Monthly Fee (per RTN): [65]	
Monthly origination volume more than 500 items	$185.00.
Monthly origination volume between 161 and 500 items	$60.00.
Monthly origination volume less than 161 items	$20.00.
Per-item Origination Fee for Monthly Volume more than 500 Items (surcharge): [66]	
Canada service	$0.50.
Mexico service	$0.55.
Panama service	$0.60.
Europe service	$1.13.
Per-item Origination Fee for Monthly Volume between 161 and 500 items (surcharge): [66]	
Canada service	$0.75.
Canada service	$1.00.
Mexico service	$1.05.
Panama service	$1.10.

FEDACH SERVICE 2019 FEE SCHEDULE—Continued

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**]

	Fee
Europe service	$1.63.
Other FedGlobal ACH Payments Fees:	
Canada service:	
Return received from Canada[67]	$0.99 (surcharge).
Trace of item at receiving gateway	$5.50.
Trace of item not at receiving gateway	$7.00.
Mexico service:	
Return received from Mexico[67]	$0.91 (surcharge).
Item trace	$13.50.
Foreign currency to foreign currency (F3X) item originated to Mexico[66]	$0.67 (surcharge).
Panama service:	
Return received from Panama[67]	$1.00 (surcharge).
Item trace	$7.00.
NOC	$0.72.
Europe service:	
F3X item originated to Europe[66]	$1.25 (surcharge).
Return received from Europe[67]	$1.35 (surcharge).
Item trace	$7.00.
Exception Resolution Service:[68]	
Fixed Fee per RTN:[69]	
Self-Managed Cases	**$10.00**.
Agent-Managed Cases	**$10.00**.
Federal Reserve Bank-Managed Cases	**$60.00**.
Federal Reserve Bank-Managed Cases	
Case Open Fee	**$5.00**.
Case Response Fee	**$5.00**.
Variable Case Open Fees (applies to self-managed and agent-managed cases only at the parent RTN):[70]	
1–50 cases	**$1.25**.
51–100 cases	**$1.00**.
101–500 cases	**$0.75**.
501–1,000 cases	**$0.50**.
1,001–5,000 cases	**$0.25**.
5,001–10,000 cases	**$0.20**.
10,001–99,999,999 cases	**$0.10**.

[43] Any ODFI incurring less than $50 for the following fees will be charged a variable amount to reach the minimum: Forward value and non-value item origination fees, and FedGlobal ACH origination surcharges.

[44] Any RDFI not originating forward value and non-value items and incurring less than $40 in receipt fees will be charged a variable amount to reach the minimum. Any RDFI that originates forward value and nonvalue items incurring less than $50 in forward value and nonvalue item origination fees will only be charged a variable amount to reach the minimum monthly origination fee.

[45] This surcharge is assessed on all forward items that qualify for same-day processing and settlement and is incremental to the standard origination item fee.

[46] The fee includes the item and addenda fees in addition to the conversion fee.

[47] The fee includes the item and addenda fees in addition to the conversion fee. Reserve Banks also assess a $45 fee for every government paper return/NOC they process.

[48] Origination volumes at these levels qualify for a waterfall discount which includes all FedACH origination items.

[49] Origination discounts based on monthly billed receipt volume apply only to those items received by FedACH receiving points and are available only to Premium Receivers.

[50] RDFIs receiving through FedACH less than 90 percent of their FedACH-originated items.

[51] This per-item discount is a reduction to the standard receipt fees listed in this fee schedule.

[52] Receipt volumes at these levels qualify for a waterfall discount which includes all FedACH receipt items.

[53] RDFIs receiving through FedACH at least 90 percent of their FedACH-originated items, but less than 90 percent of all of their ACH items originated through any operator.

[54] RDFIs receiving through FedACH at least 90 percent of all of their ACH items originated through any operator.

[55] To qualify for the discount, a financial institution must meet all of the following criteria in a given month: (1) Be charged the minimum monthly fee—forward origination (57208); (2) subscribe to FedLine Web Plus or any higher FedLine® access solution; and (3) subscribe to the FedPayments Reporter service, the FedACH RDFI Alert service, or the FedACH Risk Origination Monitoring service.

[56] Criteria may be set for both the Origination Monitoring Service and the RDFI Alert Service. Subscribers with no criteria set up will be assessed the $35 monthly package fee.

[57] Premier reports generated on demand are subject to the package/tiered fees plus a surcharge.

[58] The fee applies to RTNs that have received or originated FedACH transactions during a month. Institutions that receive only U.S. government transactions or that elect to use a private sector operator exclusively are not assessed the fee.

[59] This surcharge is assessed to any RTN that originates at least one item meeting the criteria for same-day processing and settlement in a given month.

[60] The fee is applied to any RTN with activity during a month, including RTNs of institutions that elect to use a private-sector operator exclusively but also have items routed to or from customers that access the ACH network through FedACH. This fee does not apply to RTNs that use the Reserve Banks for only U.S. government transactions.

[61] Fee will be assessed only when automated NOCs are generated.

[62] Limited services are offered in contingency situations.

[63] The fees and credits listed are collected from the ODFI and credited to NACHA (admin network) or to the RDFI (same-day entry and unauthorized entry) in accordance with the *ACH Rules.*

[64] The international fees and surcharges vary from country to country as these are negotiated with each international gateway operator.

[65] A single monthly fee based on total FedGlobal ACH Payments origination volume.

[66] This per-item surcharge is in addition to the standard domestic origination fees listed in this fee schedule.

[67] This per-item surcharge is in addition to the standard domestic receipt fees listed in this fee schedule.

[68] The associated fees are effective upon availability of the product.

[69] A customer that opens at least 1,000 cases in a given month will receive a 50% discount on the fixed fee for that month.

[70] The per case fees are rolled up to the parent RTN, such that a customer that opens a total of 100 cases per month under two separate RTNs would pay a total of $112.50 ($1.25 for the first 50 cases and $1.00 for the next 50 cases) in addition to the fixed fees.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2019 FEE SCHEDULE

[Effective January 2, 2019. **Bold indicates changes from 2018 prices.**]

	Fee
Fedwire Funds Service	
Monthly Participation Fee	$95.00
Basic volume-based pre-incentive transfer fee (originations and receipts)—per transfer for the first 14,000 transfers per month	0.820
additional transfers up to 90,000 per month	0.245
every transfer over 90,000 per month	0.160
Volume-based transfer fee with the incentive discount (originations and receipts)—per eligible transfer for:[71]	
the first 14,000 transfers per month	0.164
additional transfers up to 90,000 per month	0.049
every transfer over 90,000 per month	0.032
Surcharge for Offline Transfers (Originations and Receipts)	**65.00**
Surcharge for End-of-Day Transfer Originations[72]	0.26
Monthly FedPayments Manager import/export fee[73]	50.00
Surcharge for high-value payments:	
>$10 million	0.14
>$100 million	0.36
Surcharge for Payment Notification:	
Origination Surcharge[74]	0.01
Receipt Volume[75]	N/A
Delivery of Reports—Hard Copy Reports to On-Line Customers	50.00
Special Settlement Arrangements (charge per settlement day)[76]	150.00
National Settlement Service	
Basic:	
Settlement Entry Fee	1.50
Settlement File Fee	30.00
Surcharge for Offline File Origination[77]	45.00
Minimum Monthly Fee[78]	60.00

FEDWIRE SECURITIES SERVICE 2019 FEE SCHEDULE (NON-TREASURY SECURITIES)

[Effective January 2, 2019. **Bold indicates changes from 2018 prices.**]

	Fee
Basic Transfer Fee:	
Transfer or reversal originated or received	**$0.98**
Surcharge:[79]	
Offline origination & receipt surcharge	80.00
Monthly Maintenance Fees:	
Account maintenance (per account)	57.50
Issue maintenance (per issue/per account)	0.77
Claims Adjustment Fee[80]	**1.00**
GNMA Serial Note Stripping or Reconstitution Fee[81]	9.00
Joint Custody Origination Surcharge[82]	46.00
Delivery of Reports—Hard Copy Reports to On-Line Customers	50.00

[71] The incentive discounts apply to the volume that exceeds 60 percent of a customer's historic benchmark volume. Historic benchmark volume is based on a customer's average daily activity over the previous five calendar years. If a customer has fewer than five full calendar years of previous activity, its historic benchmark volume is based on its daily activity for as many full calendar years of data as are available. If a customer has less than one year of past activity, then the customer qualifies automatically for incentive discounts for the year. The applicable incentive discounts are as follows: $0.656 for transfers up to 14,000, $0.196 for transfers 14,001 to 90,000, and $0.128 for transfers over 90,000.

[72] This surcharge applies to originators of transfers that are processed by the Reserve Banks after 5:00 p.m. eastern time.

[73] This fee is charged to any Fedwire Funds participant that originates a transfer message via the FedPayments Manager Funds tool and has the import/export processing option setting active at any point during the month.

[74] Payment Notification and End-of-Day Origination surcharges apply to each Fedwire funds transfer message.

[75] Provided on billing statement for informational purposes only.

[76] This charge is assessed to settlement arrangements that use the Fedwire Funds Service to effect the settlement of interbank obligations (as opposed to those that use the National Settlement Service). With respect to such special settlement arrangements, other charges may be assessed for each funds transfer into or out of the accounts used in connection with such arrangements.

[77] Offline files will be accepted only on an exception basis when a settlement agent's primary and backup means of transmitting settlement files are both unavailable.

[78] Any settlement arrangement that accrues less than $60 during a calendar month will be assessed a variable amount to reach the minimum monthly fee.

[79] This surcharge is set by the Federal Reserve Banks. It is in addition to any basic transfer or reversal fee.

[80] The Federal Reserve Banks offer an automated claim adjustment process only for Agency mortgage-backed securities.

[81] This fee is set by and remitted to the Government National Mortgage Association (GNMA).

[82] The Federal Reserve Banks charge participants a Joint Custody Origination Surcharge for both Agency and Treasury securities.

FEDLINE 2019 FEE SCHEDULE

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**.]

	Fee
FedComplete Packages (monthly)[83 84 85]	
FedComplete 100A Plus	$825.00.
includes:	
FedLine Advantage Plus package.	
FedLine subscriber 5-pack.	
7,500 FedForward transactions.	
46 FedForward Cash Letter items.	
70 FedReturn transactions.	
14,000 FedReceipt® transactions.	
35 Fedwire Funds origination transfers.	
35 Fedwire Funds receipt transfers.	
Fedwire participation fee.	
1,000 FedACH origination items.	
FedACH minimum fee—Forward Origination.	
7,500 FedACH receipt items.	
FedACH receipt minimum fee.	
10 FedACH web return/NOC.	
500 FedACH addenda originated.	
1,000 FedACH addenda received.	
100 FedACH Same-Day origination items.	
FedACH account servicing.	
FedACH settlement.	
FedACH Same-Day origination participation fee.	
FedComplete 100A Premier	$900.00.
includes:	
FedLine Advantage Premier package.	
Volumes included in the FedComplete 100A Plus package.	
FedComplete 100C Plus	$1,375.00.
includes:	
FedLine Command Plus package.	
Volumes included in the FedComplete 100A Plus package.	
FedComplete 200A Plus	$1,350.00.
includes:	
FedLine Advantage Plus package.	
FedLine subscriber 5-pack.	
25,000 FedForward transactions.	
46 FedForward Cash Letter items.	
225 FedReturn transactions.	
25,000 FedReceipt transactions.	
100 Fedwire Funds origination transfers.	
100 Fedwire Funds receipt transfers.	
Fedwire participation fee.	
2,000 FedACH origination items.	
FedACH minimum fee—forward origination.	
25,000 FedACH receipt items.	
FedACH receipt minimum fee.	
20 FedACH web return/NOC.	
750 FedACH addenda originated.	
1,500 FedACH addenda received.	
200 FedACH Same-Day origination items.	
FedACH account servicing.	
FedACH settlement.	
FedACH Same-Day origination participation fee.	
FedComplete 200A Premier	$1,425.00.
includes:	
FedLine Advantage Premier package.	
Volumes included in the FedComplete 200A Plus package.	
FedComplete 200C Plus	$1,900.00.
includes:	
FedLine Command Plus package.	
Volumes included in the FedComplete 200A Plus package.	
FedComplete Excess Volume and Receipt Surcharge:[86]	
FedForward[87]	$0.037/item.
FedReturn	$0.8200/item.
FedReceipt	$0.00005/item.
Fedwire Funds Origination	$0.8200/item.
Fedwire Funds Receipt	$0.082/item.
FedACH Origination	$0.0035/item.
FedACH Receipt	$0.00035/item.
FedComplete credit adjustment	various.
FedComplete debit adjustment	various.
FedLine Customer Access Solutions (monthly)	
FedMail[88]	$85.00.
includes:	
FedMail access channel.	
Check FedFoward, Fed Return and FedReceipt Services.	
FedACH Download Advice and Settlement Information.	

FEDLINE 2019 FEE SCHEDULE—Continued

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**.]

	Fee
Fedwire Funds Offline Advices.	
Check 21 Duplicate Notification Service.	
Check Adjustments.	
Funds Offline Advices.	
Daily Statement of Account (Text).	
Daylight Overdraft Reports.	
Monthly Statement of Service Charges (Text).	
Electronic Cash Difference Advices.	
FedLine Exchange [88]	$40.00.
includes:	
E-Payments Directory (via manual download).	
FedLine Exchange Premier [88]	$125.00.
includes:	
FedLine Exchange package.	
E-Payments Routing Directory (via auto download).	
FedLine Web [89]	$110.00.
includes:	
FedLine Web access channel.	
Services included in the FedLine Exchange package.	
Check FedForward, FedReturn and FedReceipt services.	
Check 21 Duplicate Notification Service.	
Check Adjustments.	
FedACH Derived Returns and NOCs.	
FedACH File, Batch and Item Detail Information.	
FedACH Customer Profile Information.	
FedACH Returns Activity Statistics.	
FedACH Risk RDFI Alert Service.	
FedACH Risk Returns Reporting Service.	
FedCash® Services.	
FedLine Web Plus [89]	$160.00.
includes:	
FedLine Web package.	
FedACH Risk Origination Monitoring Service.	
FedACH FedPayments Reporter Service.	
Check Large Dollar Return.	
Check FedImage Services.	
Account Management Information (AMI).	
Daily Statement of Account (PDF, Text).	
Monthly Account Services (SCRD File, Monthly Statement of Service Charges.	
(PDF), Monthly Statement of Service Charges (Text)).	
E-Payments Routing Directory (auto download).	
FedLine Advantage [89]	$415.00.
includes:	
FedLine Advantage access channel.	
One VPN device.	
Services included in the FedLine Web package.	
FedACH transactions.	
Fedwire Originate and Receive Funds Transfer.	
Fedwire Originate and Receive Securities Transfer.	
National Settlement Service transactions.	
Check Large Dollar Return.	
Check FedImage Services.	
Account Management Information with Intra-Day Download Search File.	
Daily Statement of Account (PDF, Text).	
Monthly Account Services (SCRD File, Monthly Statement of Service Charges.	
(PDF), Monthly Statement of Service Charges (Text)).	
FedLine Advantage Plus [89]	$460.00.
includes:	
FedLine Advantage package.	
One VPN device.	
FedACH Risk Origination Monitoring Service.	
FedACH FedPayments Reporter Service.	
Fedwire Funds FedPayments Manager Import/Export (less than or equal to 250.	
Fedwire transactions and one routing number per month).	
FedTransaction Analyzer® (less than 250 or equal to Fedwire transactions and one routing number per month).	
E-Payments Routing Directory (via auto download).	
FedLine Advantage Premier [89]	$570.00.
includes:	
FedLine Advantage Plus package.	
Two VPN devices.	
Fedwire Funds FedPayments Manager Import/Export (more than 250 Fedwire transactions or more than one routing number in a given month).	
FedTransaction Analyzer (more than 250 Fedwire transactions or more than one routing number per month).	
FedLine Command Plus	$1,035.00.
includes:	
FedLine Command access channel.	
Services included in the FedLine Advantage Plus package.	
One VPN device.	
FedLine Command server certificates.	
Fedwire Statement Services.	

FEDLINE 2019 FEE SCHEDULE—Continued

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**.]

	Fee
Fedwire Funds FedPayments Manager Import/Export.	
FedTransaction Analyzer.	
Intra-Day File (I-Day CI File).	
Statement of Account Spreadsheet File (SASF).	
Financial Institution Reconcilement Data File (FIRD).	
Billing Data Format File (BDFF).	
FedLine Direct Plus (Legacy) [90]	**$4,000.00.**
includes:	
FedLine Direct access channel.	
One VPN device.	
256K Dedicated WAN Connection.	
Services included in the FedLine Command Plus package.	
Two FedLine Direct server certificates.	
Daily Overdraft Reports.	
Treasury Check Information System (TCIS).	
FedLine Direct Plus	**$5,500.00.**
includes:	
FedLine Direct access channel.	
One VPN device.	
2 Mbps Dedicated WAN Connection.	
Services included in the FedLine Command Plus package.	
FedLine Direct server certificates.	
Treasury Check Information System (TCIS).	
Dual Vendors.	
FedLine Direct Contingency Solution (ACH).	
Check 21 Services.	
FedLine Direct Premier (Legacy) [90]	$6,800.00.
includes:	
FedLine Direct Plus package (legacy).	
T1 dedicated WAN connection.	
Two VPN devices.	
FedLine Direct Premier	**$10,500.00.**
includes:	
FedLine Direct Plus package (new).	
One additional dedicated WAN connection.	
One Network Diversity.	
Two VPN devices.	
A la carte options (monthly) [91]	
Electronic Access:	
FedMail—FedLine Exchange Subscriber 5-pack	$15.00.
FedLine Subscriber 5-pack (access to Web and Advantage)	$80.00.
Additional FedLine Direct Certificate [92]	$100.00.
Additional VPNs [93]	$100.00.
Additional WAN connections.	
256K(Legacy) [90]	$2,500.00.
T1 (Legacy) [90]	$3,200.00.
2 Mbps	**$3,000.00.**
WAN Connection Upgrade:	
10 Mbps [94]	**$1,700.00.**
30 Mbps [94]	**$3,000.00.**
50 Mbps [94]	**$4,000.00.**
100 Mbps [94]	**$7,000.00.**
200 Mbps [94]	**$11,000.00.**
FedLine International Setup (one-time fee)	$5,000.00.
FedLine Custom Implementation Fee [95]	various.
Network Diversity	**$2,500.00.**
FedLine Direct Contingency Solution [96]	$1,000.00.
Check 21 Large File Delivery [97]	various.
FedMail Email (for customers with FedLine Web and above) [98]	$20.00.
FedMail Fax [99]	$100.00.
VPN Device Modification	$200.00.
VPN Device Missed Activation Appointment	$175.00.
VPN Device Expedited Hardware Surcharge	$100.00.
VPN Device Replacement or Move	$300.00.
E-Payments Automated Download (1–5 Add'l Codes)	$75.00.
E-Payments Automated Download (6–20 Add'l Codes)	$150.00.
E-Payments Automated Download (21–50 Add'l Codes)	$300.00.
E-Payments Automated Download (51–100 Add'l Codes)	$500.00.
E-Payments Automated Download (101–250 Add'l Codes)	$1,000.00.
E-Payments Automated Download (>250 Add'l Codes)	$2,000.00.
Accounting Information Services (monthly):	
Cash Management System (CMS) Plus—Own report—up to six files with: [100]	
no respondent/sub-account activity	$60.00.
less than 9 respondent and/or sub-accounts	$125.00.
10–50 respondent and/or sub-accounts	$250.00.

FEDLINE 2019 FEE SCHEDULE—Continued

[Effective January 2, 2019. **Bold indicates changes from 2018 prices**.]

	Fee
51–100 respondents and/or sub-accounts	$500.00.
101–500 respondents and/or sub-accounts	$750.00.
>500 respondents and/or sub-accounts	$1,000.00.
End-of-Day Financial Institution Reconcilement Data (FIRD) File [101]	$150.00.
Statement of Account Spreadsheet File [102]	$150.00.
Intra-day Download Search File (with AMI) [103]	$150.00.
Other	
Software Certification	$0.00 to $8,000.00.
Vendor Pass-Through Fee	various.
Electronic Access Credit Adjustment	various.
Electronic Access Debit Adjustment	various.

By order of the Board of Governors of the Federal Reserve System, November 15, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–00624 Filed 1–31–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''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 February 19, 2019.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *The John Charles Simpson, III Trust, and John Charles Simpson, Jr., as trustee, Fenton, Missouri;* to acquire shares of Red River Bancshares, Inc., and thereby indirectly acquire shares of Red River Bank, both in Alexandria, Louisiana, and thereby join the group acting in concert previously approved to own shares of Red River Bancshares, Inc., which includes John Charles Simpson, the John Charles Simpson, Jr. Trust and the Angela Katherine Simpson Trust, and Simeon A. Thibeaux, Jr., as trustee of both trusts.

Board of Governors of the Federal Reserve System, January 28, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–00557 Filed 1–31–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

[83] FedComplete packages are all-electronic service options that bundle payment services with an access solution for one monthly fee.

[84] Packages with an 'A' include the FedLine Advantage channel, while packages with 'C' include the FedLine Command channel.

[85] FedComplete customers that use the email service would be charged the FedMail Email a la carte fee and for all FedMail-FedLine Exchange Subscriber 5-packs.

[86] Per-item surcharges are in addition to the standard fees listed in the applicable priced services fee schedules.

[87] FedComplete customers will be charged $4 for each FedForward cash letter over the monthly package threshold. This activity will appear under billing code 51998 in Service Area 1521 on a month-lagged basis.

[88] FedMail and FedLine Exchange packages do not include user credentials, which are required to access priced services and certain informational services. Credentials are sold separately in packs of five via the FedMail-FedLine Exchange Subscriber 5-pack.

[89] FedLine Web and Advantage packages do not include user credentials, which are required to access priced services and certain informational services. Credentials are sold separately in packs of five via the FedLine Subscriber 5-pack.

[90] Limited to installed base only. All customers with 256K or T1 connections will need to upgrade to a minimum 2Mbps Ethernet line speed connection.

[91] These add-on services can be purchased only with a FedLine Customer Access Service option.

[92] Additional FedLine Direct Certificates available for FedLine Direct packages (legacy) only.

[93] Additional VPNs are available for FedLine Advantage, FedLine Command, and FedLine Direct packages only.

[94] These upgrades are only available for the new FedLine Direct packages and the Add'l 2M WAN connection. Fee is in addition to the FedLine Direct package fees or additional WAN fees.

[95] The FedLine Custom Implementation Fee is $2,500 or $5,000 based on the complexity of the setup.

[96] Fee only applies to customers in a legacy FedLine Direct package. This feature is included in the monthly fee for customers in the new FedLine Direct packages.

[97] Limited to installed base only. The fee currently ranges from $1,400 to $20,725 depending on the size, speed, and location of the connection. All customers will eventually need to upgrade to a minimum 2 Mbps Ethernet line speed connection with the associated FedLine Direct package.

[98] Available only to customers with a priced FedLine package.

[99] Limited to installed base only.

[100] Cash Management Service options are limited to plus and premier packages.

[101] The End of Day Reconcilement File option is available for FedLine Web Plus, FedLine Advantage Plus, and Premier packages. It is available for no extra fee in FedLine Command Plus and Direct packages.

[102] The Statement of Account Spreadsheet File option is available for FedLine Web Plus, FedLine Advantage Plus, and Premier packages. It is available for no extra fee in FedLine Command Plus and Direct packages.

[103] The Intra-day Download Search File option is available for the FedLine Web Plus package. It is available for no extra fee in FedLine Advantage and higher packages.

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 2019.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Dime Community Bancshares, Inc., Brooklyn, NY;* to become a bank holding company upon the conversion of Dime Community Bank, Brooklyn, NY, from a state-charted savings bank to a state chartered commercial bank.

B. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *NB Holdings, LLC, Huntsville, Alabama;* to acquire voting shares of Citizens Bancorporation, Inc., Valley Head, Alabama, and thereby indirectly acquire shares of Citizens Bank of Valley Head, Valley Head, Alabama.

C. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Spirit of Texas Bancshares, Inc., Conroe, Texas;* to acquire 100 percent of the voting shares of First Beeville Financial Corporation, and thereby indirectly acquire voting shares of The First National Bank of Beeville, both of Beeville, Texas.

Board of Governors of the Federal Reserve System, January 29, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–00777 Filed 1–31–19; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112; Docket No. 2018–0001; Sequence No. 8]

Submission for OMB Review; Federal Management Regulation; State Agency Monthly Donation Report of Surplus Property, GSA Form 3040

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding State Agency Monthly Donation Report of Surplus Property, GSA Form 3040.

DATES: Submit comments on or before March 4, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for Information Collection 3090–0112. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0112; State Agency Monthly Donation Report of Surplus Personal Property'' under the heading ''Enter Keyword or ID'' and select ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property.

Instructions: Please submit comments only and cite Information Collection 3090–0112, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with 41 CFR 102–37.360, which requires a State Agency for Surplus Property (SASP) to submit annual reports of personal property donated to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 56.

Responses per Respondent: 4.

Total Responses: 224.

Hours Per Response: 1.5.

Total Burden Hours: 336.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 83 FR 48314 on September 24, 2018. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Dated: December 19, 2018.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–00795 Filed 1–31–19; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014; Docket No. 2018–0001; Sequence No. 7]

Submission for OMB Review; Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123.

DATES: Submit comments on or before: March 4, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123,'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0014.

Instructions: Please submit comments only and cite Information Collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Transfer Order—Surplus Personal Property and Continuation Sheet, Standard form (SF) 123, is used by a State Agency for Surplus Property (SASP) to donate Federal surplus personal property to public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents (electronic): 30,890

Respondents (manual): 312

Total Number of Respondents: 31,202

Total Hours Per Response (electronic at .017 Hours Per Response): 525.13

Total Hours Per Response (manual at .13 Hours Per Response): 40.56

Total Burden Hours: 565.69

C. Public Comments

A 60-day notice was published in the **Federal Register** at 83 FR 44273 on August 30, 2018. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, in all correspondence.

Dated: December 19, 2018.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–00794 Filed 1–31–19; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention within the Department of Health and Human Services announces the next meeting of the Community Preventive Services Task Force (CPSTF) on February 13–14, 2019, in Atlanta, Georgia.

DATES: The meeting will be held on Wednesday, February 13, 2019, from 8:30 a.m. to 6:00 p.m. EST, and Thursday, February 14, 2019, from 8:30 a.m. to 1:00 p.m. EST.

ADDRESSES: The CPSTF Meeting will be held at the CDC Edward R. Roybal Campus, Centers for Disease Control and Prevention Headquarters (Building 19), 1600 Clifton Road NE, Atlanta, GA 30329. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION**. Information regarding meeting logistics will be available on the Community Guide website (*www.thecommunityguide.org*) closer to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Onslow Smith, Center for Surveillance, Epidemiology and Laboratory Services; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E–69, Atlanta, GA 30329, phone: (404) 498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: This space-limited meeting is open to the public. All meeting attendees must register. To ensure completion of required security procedures and access to the CDC's Global Communications Center, U.S. citizens intending to attend in person must register by February 8, 2019, and non-U.S. citizens intending to attend in person must have registered by January

16, 2019. Failure to register by the dates identified could result in the inability to attend the CPSTF meeting in person.

Those unable to attend the meeting in person are able to do so via Webcast. CDC will send the Webcast URL to registrants upon receipt of their registration. All meeting attendees must register by February 8, 2019 to receive the webcast information. CDC will email webcast information from the *CPSTF@cdc.gov* mailbox.

To register for the meeting, whether to attend in person or via webcast, individuals should send an email to *CPSTF@cdc.gov* and include the following information: Name, title, organization name, organization address, phone, email, and whether attending in person or via webcast.

Public Comment: A public comment period, limited to three minutes per person, will follow the CPSTF's discussion of each systematic review. Individuals wishing to make public comments must indicate their desire to do so with their registration by providing their name, organizational affiliation, and the topic to be addressed (if known). Public comments will become part of the meeting summary. Public comment is not possible via Webcast.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews on existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when they are determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled in the *The Community Guide.*

Matters proposed for discussion: Cardiovascular Disease Prevention (Pharmacy-Based Interventions to Increase Medication Adherence); Mental Health (School-Based Cognitive Behavioral Therapy Programs for the Prevention of Depression and Anxiety Disorders); Cancer Prevention and Control (Community Health Worker Interventions to Improve Screening Rates for Breast, Colorectal, and Cervical Cancer); Health Equity (Supportive Housing Policies to Address Homelessness); Physical Activity (Effectiveness of eHealth Interventions for Increasing Physical Activity Among Older Adults and an Economic Review of Interventions to Increase Active Travel to School). The agenda is subject to change without notice.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the CDC and is located at 1600 Clifton Road NE, Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must register by the dates outlined under MEETING ACCESSABILITY. In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Edward R. Roybal Campus through the front entrance on Clifton Road. Vehicles may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government-issued photo identification (*e.g.,* a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. Instructions for completing the required security paperwork will be provided after registration. All persons entering the building must pass through a metal detector. CDC Security personnel will issue a visitor's ID badge at the entrance to Building 19. Visitors may receive an escort to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: January 29, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–00784 Filed 1–31–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10575 and CMS–10572]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 4, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Generic Clearance for the Health Care Payment Learning and Action Network; *Use:* The Center for Medicare and Medicaid Services (CMS), through the Center for Medicare and Medicaid Innovation, develops and tests innovative new payment and service delivery models in accordance with the requirements of section 1115A and in consideration of the opportunities and factors set forth in section 1115A(b)(2) of the Act. To date, CMS has built a portfolio of models (in operation or already announced) that have attracted participation from a broad array of health care providers, states, payers, and other stakeholders. During the development of models, CMS builds on ideas received from stakeholders—consulting with clinical and analytical experts, as well as with representatives of relevant federal and state agencies.

CMS will continue to partner with stakeholders across the health care system to catalyze transformation through the use of alternative payment models. To this end, CMS launched the Health Care Payment Learning and Action Network, an effort to accelerate the transition to alternative payment models, identify best practices in their implementation, collaborate with payers, providers, consumers, purchasers, and other stakeholders, and monitor the adoption of value-based alternative payment models across the health care system. A system wide transition to alternative payment models will strengthen the ability of CMS to implement existing models and design new models that improve quality and decrease costs for CMS beneficiaries.

The information collected from LAN participants will be used by the CMS Innovation Center to potentially inform the design, selection, testing, modification, and expansion of innovative payment and service delivery models in accordance with the requirements of section 1115A, while monitoring the percentage of payments tied to alternative payment models across the U.S. health care system. In addition, the requested information will be made publically available so that LAN participants (payers, providers, consumers, employers, state agencies, and patients) can use the information to inform decision making and better understand market dynamics in relation to alternative payment models. *Form Number:* CMS–10575 (OMB control number: 0938–1297); *Frequency:* Occasionally; *Affected Public:* Individuals; Private Sector (Business or other For-profit and Not-for-profit institutions), State, Local and Tribal Governments; *Number of Respondents:* 30,110; *Total Annual Responses:* 23,110; *Total Annual Hours:* 25,917. (For policy questions regarding this collection contact Dustin Allison at 410–786–8830.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection for Transparency in Coverage Reporting by Qualified Health Plan Issuers; *Use:* Section 1311(e)(3) of the Affordable Care Act requires issuers of Qualified Health Plans (QHPs), to make available and submit transparency in coverage data. This data collection would collect certain information from QHP issuers in Federally-facilitated Exchanges and State-based Exchanges that rely on the federal IT platform (*i.e., HealthCare.gov*). HHS anticipates that consumers may use this information to inform plan selection.

As stated in the final rule Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310; March 27, 2012), broader implementation will continue to be addressed in separate rulemaking issued by HHS, and the Departments of Labor and the Treasury (the Departments).

Consistent with Public Health Service Act (PHS Act) section 2715A, which largely extends the transparency reporting provisions set forth in section 1311(e)(3) to non-grandfathered group health plans (including large group and self-insured health plans) and health insurance issuers offering group and individual health insurance coverage (non-QHP issuers), the Departments intend to propose other transparency reporting requirements at a later time, through a separate rulemaking conducted by the Departments, for non-QHP issuers and non-grandfathered group health plans. Those proposed reporting requirements may differ from those prescribed in the HHS proposal under section 1311(e)(3), and will take into account differences in markets, reporting requirements already in existence for non-QHPs (including group health plans), and other relevant factors. The Departments also intend to streamline reporting under multiple reporting provisions and reduce unnecessary duplication. The Departments intend to implement any transparency reporting requirements applicable to non-QHP issuers and non-grandfathered group health plans only after notice and comment, and after giving those issuers and plans sufficient time, following the publication of final rules, to come into compliance with those requirements. *Form Number:* CMS–10572 (OMB control number: 0938–1310); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 160; *Number of Responses:* 160; *Total Annual Hours:* 10,880. (For questions regarding this collection contact Valisha Jackson at (301) 492- 5145.)

Dated: January 28, 2019.

William N. Parham, III

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–00578 Filed 1–31–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2561]

Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices.'' This guidance is intended to assist drug sponsors and device manufacturers who are planning to develop new antimicrobial drugs and antimicrobial susceptibility test (AST) devices and who seek to coordinate development of these products such that the AST device could be cleared either at the time of new drug approval or shortly thereafter.

DATES: The announcement of the guidance is published in the **Federal Register** on February 1, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2016–D–2561 for ''Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Ribhi Shawar, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4604, Silver Spring, MD 20993–0002, 301–796–6694; or Joseph Toerner, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 22, Rm. 6244, Silver Spring, MD 20993, 301–796–1400.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance is intended to assist drug sponsors and device manufacturers who are planning to develop new antimicrobial drugs and AST devices and who seek to coordinate development of these products such that the AST device could be cleared either at the time of new drug approval or shortly thereafter. Specifically, the guidance describes interactions between drug sponsors and device manufacturers for coordinated development of a new antimicrobial drug and an AST device. The guidance also explains the considerations for submitting separate applications to the Center for Drug

Evaluation and Research and the Center for Devices and Radiological Health when seeking clearance of an AST device coincident with, or soon following, antimicrobial drug approval. Finally, the guidance clarifies that the review of the new antimicrobial drug product and AST device(s) will remain independent, and that coordinated development does not influence the Medical Device User Fee Act and the Prescription Drug User Fee Act review timelines for either product.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of September 21, 2016 (81 FR 64913). FDA revised the guidance as appropriate in response to the comments.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* Persons unable to download an electronic copy of ''Coordinated Development of Antimicrobial Drugs and Antimicrobial Susceptibility Test Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* or *druginfo@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400061 and the guidance title to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
812	Investigational Device Exemption	0910–0078
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
312	Investigational New Drug Regulations	0910–0014
314	Applications for FDA Approval to Market a New Drug.	0910–0001

Dated: January 15, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00569 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4628]

Risk Evaluation and Mitigation Strategies Assessment: Planning and Reporting; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry on the assessment of risk evaluation and mitigation strategies (REMS) entitled ''REMS Assessment: Planning and Reporting; Draft Guidance for Industry.'' The draft guidance is one of several guidance documents being developed to fulfill performance goals under the fifth authorization of the prescription drug user fee program, the Prescription Drug User Fee Act V. This draft guidance describes how to develop a REMS Assessment Plan; specifically, how the REMS program goals, objectives, and REMS design may impact the selection of metrics and data sources, which will be used to assess whether the REMS is meeting its risk mitigation goals.

The draft guidance recommends assessing the REMS using both process measures and outcome measures and provides examples of metrics by assessment categories, as well as data sources that may be utilized to evaluate the performance of the REMS. The draft guidance also discusses considerations for assessing the impact of REMS on patient access to the drug or its burden to the healthcare delivery system. Finally, this draft guidance provides recommendations on a standardized approach for reporting REMS assessment findings to FDA using the REMS Assessment Report.

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2018–D–4628 for ''REMS Assessment: Planning and Reporting.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Doris Auth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2480, Silver Spring, MD 20993–0002, 301–796–0487, *Doris.Auth@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''REMS Assessment: Planning and Reporting.'' The Food and Drug Administration Amendments Act of 2007 created section 505–1 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1), which authorizes FDA to require a REMS for certain drugs if FDA determines that a REMS is necessary to ensure that the benefits of the drug outweigh its risks.

REMS elements may include a medication guide, a patient package insert, and/or a communication plan. FDA may also require certain elements to assure safe use (ETASU) as part of a REMS. The ETASU can include, for example, requirements that health care providers who prescribe the drug have particular training or experience, that patients using the drug be monitored, or that the drug be dispensed to patients with evidence or other documentation of safe use conditions. Certain REMS with ETASU may also include an implementation system through which the sponsor is able to monitor and evaluate implementation of the ETASU and work to improve their implementation. All REMS for drugs approved under a new drug application or a biologics license application must include a timetable for submission of assessments of the REMS. The timetable for submission of assessments must be, at a minimum, by 18 months, 3 years, and in the 7th year after the initial approval of the REMS. For additional information about REMS, see the guidances for industry ''Format and Content of a REMS Document'' (82 FR 47529, October 12, 2017) (available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm18&4128.pdf*), FDA's Application of Statutory Factors in Determining When a REMS Is Necessary (81 FR 64911, September 21, 2016) (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM521504.pdf),* and Risk Evaluation and Mitigation Strategies: Modifications and Revisions Guidance for Industry (80 FR 18629, April 7, 2015) (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM441226.pdf).*

The FD&C Act requires applicants to conduct assessments to evaluate the effectiveness of the REMS. The statute specifies that the assessment for REMS must include an assessment of the extent to which the approved strategy, including each element of the strategy, is meeting the goal or whether one or more such goals or such elements should be modified (section 505–1(g)(3) of the FD&C Act). The statute does not specifically describe how an applicant should conduct assessments. Many REMS include a goal related to knowledge, such as to inform or educate patients and health care providers about the serious risks associated with and safe use of a drug. When knowledge goals are part of a REMS, the REMS Assessment Plan generally includes, as appropriate, an evaluation of patients' and health care providers' understanding of the serious risk(s) associated with, and safe use of, the drug. Elsewhere in this issue of the

Federal Register, FDA is announcing the availability of a draft guidance entitled ''Survey Methodologies to Assess REMS Goals That Relate to Knowledge,'' which addresses the use of surveys to address the knowledge goal.

In addition to knowledge-related goals, REMS may include goals and objectives related to the outcomes the REMS is intended to mitigate; therefore, REMS assessments should also include elements that would indicate whether these goals and objectives are being met. REMS assessments can also include elements to assess the burden of REMS on the health care delivery system and any unintended barriers to patient access of the drug.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''REMS Assessment: Planning and Reporting.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection are given under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed.

We invite 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: REMS Assessment: Planning and Reporting—OMB Control Number 0910–NEW.

Description: This draft guidance provides instruction on submitting REMS Assessments to FDA. These instructions recommend that application holders submitting REMS Assessments should include the following information in each submission: (1) A cover page that includes the reporting time point, the date of the REMS Assessment Report, and the assessment reporting period. The cover page should be followed by (2) a table of contents; (3) an executive summary of the findings and conclusions; (4) an introduction section; (5) a background section, which includes the REMS goals and objectives, requirements, and materials that were in place during the assessment reporting period, a REMS history, and any pending supplements; (6) a summary of the REMS Assessment Plan as an overview in tabular format (or other format outline) and details of the assessment plan including any study protocols submitted with the assessment or references to protocols submitted prior to the REMS Assessment Report and methodology used to support REMS assessment (*e.g.,* survey, other methodology); (7) a summary of the previous assessments, including the key results and the overall conclusions; (8) the results or summary of findings of each assessment metric, including a written summary of the data that was analyzed, key results and a description of any limitations. When appropriate, the data should be reported for the reporting period and cumulatively, and trends in performance compared to previous periods should be reported and discussed; (9) a discussion including the overall assessment of whether the REMS is meeting its goals and objectives, including the basis for that conclusion, and for REMS with ETASU, whether the burden on the healthcare delivery system is being minimized to the extent practicable, whether the ETASU are unduly burdensome on patient access to medication, and an explanation for these conclusions; (10) any proposed modifications to the REMS (*e.g.,* to address REMS compliance issues, reduce burdens, overcome barriers to patient access, improve efficiencies) as well as the basis for the proposed modifications; and (11) any proposed revisions to the REMS Assessment Plan if additional information is needed to make a determination that the goal of the REMS is being met, or if there are aspects of the REMS that are no longer necessary to assess.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance for industry on REMS assessment: Planning and reporting	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
REMS Assessments Submissions	47	1	47	162.5	7,638

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

There are currently 76 approved REMS programs. Based on a current review of REMS assessment submission data and anticipating a similar number of future submissions, we estimate that there will be 47 REMS Assessment submissions annually. We also estimate that it will take an application holder 162.5 hours to prepare and submit each REMS Assessment (''Average Burden per Response'' in table 1) in accordance with recommendations found in the guidance.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 16, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00676 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2818]

Rare Diseases: Common Issues in Drug Development; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Rare Diseases: Common Issues in Drug Development.'' This draft guidance assists sponsors of drug and biological products intended to treat or prevent rare diseases in conducting more efficient and successful development programs through discussions of selected issues commonly encountered in rare disease drug development. This draft guidance addresses the following important aspects of drug development: Adequate description and understanding of the disease's natural history, adequate understanding of the pathophysiology of the disease and the drug's proposed mechanism of action, nonclinical pharmacotoxicology considerations to support the proposed clinical investigation or investigations, reliable endpoints and outcome assessment, standard of evidence to establish safety and effectiveness, drug manufacturing considerations during drug development, participation of patients, caretakers, and advocates in development programs, and interactions with the Agency. This guidance revises and replaces the draft guidance of the same name issued on August 17, 2015.

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* 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–D–2818 for ''Rare Diseases: Common Issues in Drug Development; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lucas Kempf, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6460, Silver Spring, MD 20993–0002, 301–796–1140, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Rare Diseases: Common Issues in Drug Development.'' This draft guidance assists sponsors of drug and biological products intended to treat or prevent rare diseases in conducting more efficient and successful development

programs through a discussion of selected issues commonly encountered in rare disease drug development. This draft guidance addresses the following important aspects of drug development:

- Adequate description and understanding of the disease's natural history
- Adequate understanding of the pathophysiology of the disease and the drug's proposed mechanism of action
- Nonclinical pharmacotoxicology considerations to support the proposed clinical investigation or investigations
- Reliable endpoints and outcome assessment
- Standard of evidence to establish safety and effectiveness
- Drug manufacturing considerations during drug development

This guidance revises and replaces the draft guidance for industry of the same name issued on August 17, 2015 (80 FR 49246). This revision includes the following:

- Updates to the natural history section
- Inclusion of issues for evaluation of biomarkers for consideration as surrogate endpoints
- Description of nonclinical flexibility
- Additional information on historical (external) controls and early randomization
- Addition of safety section
- Retitled Chemistry, Manufacturing, and Controls section to Pharmaceutical Quality Considerations
- Additional information on changes to drug substance or manufacturing process with clarification on areas of flexibility
- Addition of a considerations section addressing several topics including participation of patients, caretakers, and advocates; consideration of pediatric issues; and interactions with FDA

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Rare Diseases: Common Issues in Drug Development.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The following collections of information in the draft guidance have been approved under OMB control number 0910–0001:

- Submitting under 21 CFR 314.50(c)(1)(iv) and (d)(3) (§ 314.50(c)(1)(iv) and (d)(3)) a summary of the nonclinical pharmacology and toxicology section and the human pharmacokinetics and bioavailability section of new drug application (NDAs);
- Submitting under § 314.50(d)(1)(i) chemistry, manufacturing, and controls information, including the drug substance, for the content and format of a NDA for rare diseases; and
- Submitting under § 314.50(d)(5) and (d)(5)(iv) clinical data of a drug, including a description of any other data information relevant to an evaluation of the safety and effectiveness of a drug.

The following collections of information in the draft guidance have been approved under OMB control number 0910–0014:

- Submitting under 21 CFR 312.23(a)(6)(i) (§ 312.23(a)(6)(i)) a protocol for the duration of a trial and the criteria to enter a trial and under § 312.23(a)(6)(i), (a)(6)(iii)(d) and (g) a description of an estimate of patients that will be involved in a trial, including a description of the safety exclusions and a description of clinical procedures, laboratory, or other methods;
- Submitting under § 312.23(a)(3)(i) a brief introductory statement and general investigational plan, including the route of administration of a drug;
- Submitting under § 312.23(a)(7) and (a)(7)(iv)(a) chemistry, manufacturing, and controls information for the content and format of an investigational new drug application (IND) and the safety and effectiveness of such information;
- Submitting under § 312.23(a)(8) and (a)(8)(i) pharmacology, toxicology, and drug disposition information for rare diseases;
- Submitting under 312.23(a)(10)(iii) plans for assessing pediatric safety and effectiveness;
- Submitting under § 312.32(c)(1) IND safety reports;
- Submissions under §§ 312.305(b) and 312.310(b) for expanded access uses and treatment of an individual patient.

The collections of information in 21 CFR part 316 for submitting the content and format of NDAs for orphan drugs have been approved under OMB control number 0910–0167.

The collections of information under § 314.80 for submitting postmarketing reporting of adverse drug experiences have been approved under OMB control number 0910–0230.

The collections of information under §§ 312.47 and 312.82 for requesting meetings with FDA about drug development programs have been approved under OMB control number 0910–0429.

The following collections of information have been approved under OMB control number 0910–0765: (1) Requests under 21 CFR part 314, subpart H to grant accelerated approval for INDs to treat rare diseases that are serious or life threatening and (2) as a basis for accelerated approval requests, submissions of evidence to support that an endpoint reasonably likely to predict clinical benefit.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/Biologics;BloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 16, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00677 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1387]

Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Safety and Performance Based Pathway,'' which was previously issued in draft version entitled ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria.'' This final

guidance provides FDA's current thinking on using performance criteria to demonstrate substantial equivalence for premarket notification (510(k)) submissions. The intent of the final guidance is to describe an optional program for certain well understood device types, where a submitter could demonstrate that a new device meets FDA-identified performance criteria instead of directly comparing the performance of the new device to a specific, submitter-identified predicate device as part of a demonstration of substantial equivalence.

DATES: The announcement of the guidance is published in the **Federal Register** on February 1, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2018–D–1387 for ''Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Safety and Performance Based Pathway'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Sonja Fulmer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5451, Silver Spring, MD 20993–0002, 240–402–5979; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has explained and clarified, through the guidance entitled ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)],'' [1] how it makes substantial equivalence decisions under section 513(i)(1)(A) of the Federal, Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(i)(1)(A)). Substantial equivalence is rooted in comparisons between new devices and predicate devices. However, the FD&C Act does not preclude FDA from using performance criteria to facilitate this comparison. If a legally marketed device performs at certain levels relevant to its safety and effectiveness, and a new device meets those levels of performance for the same characteristics, FDA could find the new device as safe and effective as the legally marketed device. Instead of reviewing data from direct comparison testing between the two devices, FDA could support a finding of substantial equivalence with data demonstrating the new device meets the level of performance of an appropriate predicate device(s). Under the approach expanded in this guidance, a submitter could

[1] Available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM284443.*

satisfy the requirement to compare its device with a legally marketed device by, among other things, independently demonstrating conformance to all performance criteria necessary to support a finding of substantial equivalence for a device type established in FDA guidance, rather than using direct predicate comparison testing for some of the performance characteristics.

Use of objective performance criteria developed for this approach may promote predictability and consistency in the review of 510(k) submissions, thereby reducing burdens on the Agency and possibly review times on individual submissions. At the same time, this approach satisfies the statutory standard for demonstrating substantial equivalence. The reviews of Safety and Performance Based Pathway 510(k) submissions remain subject to the same timeframes as Traditional 510(k) submissions, but FDA anticipates that faster review timeframes may be possible for the Safety and Performance Based Pathway 510(k) submissions. As a result, this pathway is intended to promote the public health by helping patients gain more timely access to new medical devices that are high quality, safe, and effective. Moreover, as FDA stated in its April 2018 Medical Device Safety Action Plan,[2] this approach would provide an opportunity for device developers to demonstrate that their product meets these modern performance criteria as well as the ability to do so in a more straightforward and efficient manner than under the traditional 510(k) Pathway. Through this more transparent approach, FDA may drive greater market competition to develop safer devices. Manufacturers would be able to demonstrate that their products meet established performance criteria (including those related to safety), and thus, may be able to more readily demonstrate that their products perform equivalent to or better than other devices on the market (including that they are safer).

FDA considered comments received on the draft guidance entitled ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria'' that appeared in the **Federal Register** of April 12, 2018 (83 FR 15847). FDA has changed the name of this draft guidance to the ''Safety and Performance Based Pathway'' and revised it as appropriate in response to the comments received. Among others, FDA received comments requesting additional clarity on the device types that will be appropriate for the Safety and Performance Based Pathway and how the performance criteria will be developed. FDA intends to maintain a list of device types appropriate for the Safety and Performance Based Pathway on the FDA website. Additionally, industry and other stakeholders may suggest device types for which FDA should consider establishing performance criteria, by for example, identifying products for which there are comprehensive FDA-recognized consensus standards. FDA also welcomes evidence-based suggestions on what the performance criteria should be for such device types. FDA intends to develop performance criteria for appropriate device types through guidance in accordance with the good guidance practices regulation (§ 10.115), which includes an opportunity for FDA to receive input from stakeholders.

[2] ''Medical Device Safety Action Plan: Protecting Patients, Promoting Public Health,'' April 2018, available at *https://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/UCM604690.pdf.*

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on the ''Safety and Performance Based Pathway.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Safety and Performance Based Pathway'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17046 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807, subpart E have been approved under OMB control number 0910–0120.

Dated: January 15, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00568 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4629]

Survey Methodologies To Assess Risk Evaluation and Mitigation Strategies Goals That Relate to Knowledge; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Survey Methodologies to Assess REMS Goals That Relate to Knowledge; Draft Guidance For Industry.'' This draft guidance provides recommendations to industry on conducting risk evaluation and mitigation strategies (REMS) assessment surveys used to evaluate respondent knowledge of REMS-related information. Most applicants use surveys to evaluate patients' and healthcare providers' understanding of the serious risks associated with, and safe use of, their drugs to assess REMS knowledge goals. The draft guidance discusses general principles and recommendations related to conducting REMS assessment knowledge surveys, including study design, survey instrument development, survey data collection and processing, and data analysis.

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2018–D–4629 for the ''Survey Methodologies to Assess REMS Goals That Relate to Knowledge.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Brian Gordon, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2486, Silver Spring, MD 20993–0002, 301–796–3960, *Brian.Gordon@fda.hhs.gov;* Doris Auth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2480, Silver Spring, MD 20993–0002, 301–796–0487, *Doris.Auth@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Survey Methodologies to Assess REMS Goals That Relate to Knowledge.'' The Food and Drug Administration Amendments Act of 2007 (FDAAA) created section 505–1 (21 U.S.C. 355–1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which authorizes FDA to require a REMS for certain drugs if FDA determines that a REMS is necessary to ensure that the benefits of a drug outweigh its risks.

REMS elements may include a medication guide, a patient package insert, and/or a communication plan. FDA may also require certain elements to assure safe use (ETASU) as part of a REMS. The ETASU can include, for example, requirements that health care providers who prescribe the drug have particular training or experience, that patients using the drug be monitored, or that the drug be dispensed to patients with evidence or other documentation of safe use conditions. Certain REMS with ETASU may also include an implementation system through which the sponsor is able to monitor and evaluate implementation of the ETASU and work to improve their implementation. All REMS for drugs approved under a new drug application or a biologics license application must include a timetable for submission of assessments of the REMS. The timetable for submission of assessments must be, at a minimum, an assessment by 18 months after the strategy is initially approved, an assessment by 3 years after the strategy is initially approved, and an assessment in the 7th year after the initial approval of the REMS. For additional information about REMS, see the draft guidance for industry ''Format and Content of a REMS Document,'' (82 FR 47529, October 12, 2017) available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm184128.pdf.*

The FD&C Act requires applicants to conduct assessments to evaluate the effectiveness of REMS. The statute specifies that the assessment for REMS must include an assessment of the extent to which the approved strategy,

including each element of the strategy, is meeting the goal or whether one or more such goals or such elements should be modified (section 505–1(g)(3) of the FD&C Act). The statute does not specifically describe how this assessment should be conducted. Many REMS include a goal related to knowledge, such as to inform or educate patients and healthcare providers about the serious risks associated with and safe use of a drug. When knowledge goals are part of a REMS, the REMS assessment plan generally includes, as appropriate, an evaluation of patients' and healthcare providers' understanding of the serious risk(s) associated with, and safe use of, the drug.

The purpose of the REMS knowledge assessment is to evaluate the target populations' knowledge about the serious risk(s) and safe use of the drug. Most applicants use surveys to evaluate patients' and healthcare providers' understanding of the serious risk(s) associated with, and safe use of, their drugs to assess REMS knowledge goals.

This draft guidance, which describes best practices for the design, conduct, and data analyses of the results of REMS assessment knowledge surveys to evaluate patients' and healthcare providers' understanding of the serious risk(s) associated with, and safe use of, a drug, incorporates input obtained from the June 7, 2012, public workshop on ''REMS Assessments: Social Science Methodologies to Assess Goals Related to Knowledge,'' and the comments submitted to the docket opened in association with the workshop (FDA–2012–N–0408).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on conducting risk evaluation and mitigation strategy assessment surveys used to assess respondent knowledge of REMS-related information. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance ''REMS Assessment: Planning and Reporting.'' The assessment of burden hours included in the NOA for the draft guidance ''REMS Assessment: Planning and Reporting'' includes the burden for conducting knowledge surveys when conducted in support of a REMS Assessment.

III. Electronic Access

Persons with access to the internet may obtain the document at *https://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 17, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00749 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4524]

S11 Nonclinical Safety Testing in Support of Development of Pediatric Medicines; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''S11 Nonclinical Safety Testing in Support of Development of Pediatric Medicines.'' The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance recommends international standards for the nonclinical safety studies recommended to support the development of pediatric medicines. Tissue engineered products, gene and cellular therapies, and vaccines are excluded from the scope of this guidance. The guidance provides a weight of evidence approach to determine when nonclinical toxicity studies may be recommended in juvenile animals. If such studies are recommended, the guidance provides appropriate study designs. The draft guidance is intended to promote harmonization of recommendations for such studies and should facilitate the timely conduct of pediatric clinical trials and reduce the use of animals in accordance with the 3Rs (replace/reduce/refine) principles.

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* 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–2018–D–4524 for ''S11 Nonclinical Safety Testing in Support of Development of Pediatric Medicines.'' Received comments will be placed in

the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3103, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Karen Davis Bruno, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6428, Silver Spring, MD 20993–0002, 301–796–1199; or Mercedes Serabian, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 5313, Silver Spring, MD 20993–0002, 240–402–8349. *Regarding the ICH:* Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization, and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization, and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In September 2018, the ICH Assembly endorsed the draft guideline entitled ''S11 Nonclinical Safety Testing in Support of Development of Pediatric Medicines'' and agreed that the guideline should be made available for public comment. The draft guideline is the product of the S11 Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the S11 Safety Expert Working Group.

The draft guidance describes a weight of evidence approach to determine when nonclinical toxicity studies may be recommended in juvenile animals to support development of medicines to be used in pediatric patients. If such studies are recommended, the draft guidance also provides appropriate study designs. The draft guidance describes study designs as consisting of a core set of endpoints that can be supplemented by additional endpoints depending on the concerns identified in the weight of evidence approach. The draft guidance also provides guidance on potential approaches for the nonclinical support of drugs that will be developed only for use in pediatric patients or that will be first tested in pediatric patients. The draft guidance is intended to promote harmonization of recommendations for such studies and should facilitate the timely conduct of pediatric clinical trials and reduce the use of animals in accordance with the 3Rs (replace/reduce/refine) principles.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Nonclinical Safety Testing in Support of Development of Pediatric Medicines.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes

and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.regulations.gov, https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: January 16, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00681 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0539]

Immunogenicity Testing of Therapeutic Protein Products—Developing and Validating Assays for Anti-Drug Antibody Detection; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Immunogenicity Testing of Therapeutic Protein Products—Developing and Validating Assays for Anti-Drug Antibody Detection.'' This guidance provides recommendations to facilitate industry's development and validation of assays for assessment of the immunogenicity of therapeutic protein products during clinical trials. The guidance applies to assays for the detection of anti-drug antibodies (ADAs) and may also apply to some peptides, oligonucleotides, and combination products on a case-by-case basis. The guidance includes recommendations regarding the development and validation of screening assays, confirmatory assays, titration assays, and neutralization assays. This guidance finalizes the revised draft guidance for industry entitled ''Assay Development and Validation for Immunogenicity Testing of Therapeutic Protein Products'' issued in April 2016 and includes a revised title.

DATES: The announcement of the guidance is published in the **Federal Register** on February 1, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2009–D–0539 for ''Immunogenicity Testing of Therapeutic Protein Products—Developing and Validating Assays for Anti-Drug Antibody Detection.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ebla Ali-Ibrahim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6302, Silver Spring, MD 20993, 301–796–3691; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Immunogenicity Testing of Therapeutic Protein Products—Developing and Validating Assays for Anti-Drug Antibody Detection.'' This guidance finalizes the revised draft guidance for industry entitled ''Assay Development and Validation for Immunogenicity Testing of Therapeutic Protein Products'' issued in April 2016. Changes made to the guidance took into consideration comments received. In addition to editorial changes primarily for clarification, this guidance includes updated information on titration and confirmatory assays and an additional discussion of immunogenicity risk assessment.

Immune responses to therapeutic protein products have the potential to affect product pharmacokinetics, pharmacodynamics, safety, and efficacy. The clinical effects of patient immune responses are highly variable, ranging from no measurable effect to extremely harmful. Detection and analysis of ADA formation is a helpful tool in understanding potential patient immune responses. Information on immune responses observed during clinical trials, particularly the incidence of ADA induction or any implications of ADA responses affecting pharmacokinetics, pharmacodynamics, safety, and efficacy, is crucial for any therapeutic protein product development program. Accordingly, such information, if applicable, should be included in the prescribing information as a subsection of the ADVERSE REACTIONS section entitled ''Immunogenicity.''

In general, results from assays for detection of ADA facilitate understanding of the immunogenicity, pharmacokinetics, pharmacodynamics, safety, and efficacy of therapeutic protein products. However, the detection of ADA is dependent on key operating parameters of the assays (for example, sensitivity, specificity), which vary between assays. Therefore, the development of valid, sensitive, specific, and selective assays to measure ADA responses is a key aspect of therapeutic protein product development.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Immunogenicity Testing of Therapeutic Protein Products—Developing and Validating Assays for Anti-Drug Antibody Detection.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 201 have been approved under OMB control number 0910–0572; the collections of information in 21 CFR part 211 have been approved under OMB control number 0910–0139; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0119; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 16, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00666 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4726]

Abbreviated New Drug Application Submissions—Amendments and Requests for Final Approval to Tentatively Approved Abbreviated New Drug Applications; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''ANDA Submissions—Amendments and Requests for Final Approval to Tentatively Approved ANDAs.'' This guidance is intended to assist applicants in preparing and submitting amendments to tentatively approved abbreviated new drug applications (ANDAs), including requests for final approval. This guidance provides recommendations on the timing and content of amendments to tentatively approved ANDAs to facilitate submission in a timely fashion to enable final approval on the earliest lawful approval date.

DATES: Submit either electronic or written comments on the draft guidance by April 2, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2018–D–4726 for ''ANDA Submissions—Amendments and Requests for Final Approval to Tentatively Approved ANDAs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1670, Silver Spring, MD 20993–0002, 240–402–7930, *elizabeth.giaquinto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''ANDA Submissions—Amendments and Requests for Final Approval to Tentatively Approved ANDAs.'' This guidance is intended to assist applicants in preparing and submitting amendments to tentatively approved ANDAs, including requests for final approval. This guidance provides recommendations on the timing and content of amendments to tentatively approved ANDAs to facilitate submission in a timely fashion to enable final approval on the earliest date on which the ANDA may lawfully be approved based on patent and/or exclusivity protections (''earliest lawful ANDA approval date'').

If an ANDA meets the substantive requirements for approval but cannot be finally approved by FDA because of unexpired patents or exclusivities, FDA will tentatively approve the ANDA. Under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355), a drug product that is the subject of a tentatively approved ANDA is not an approved drug and may not be marketed without final Agency approval. In addition, under section 301 of the FD&C Act (21 U.S.C. 331), the introduction or delivery for introduction into interstate commerce of such a drug product before the final approval date is prohibited.

An ANDA applicant may submit amendments to a tentatively approved application that propose changes to the application, request final approval, or propose changes *and* request final approval. As described in the draft guidance, an amendment may delay FDA's final approval of the ANDA until after the earliest lawful ANDA approval date, depending on the nature of the changes proposed in the amendment and any related deficiencies identified upon review. The draft guidance is intended to assist applicants in preparing an amendment for submission in a timely fashion to obtain final approval on the earliest lawful approval date. In particular, applicants that wish to request final approval should determine whether changes are necessary before requesting this final approval, review any changes that have been made to their application since the tentative approval was granted, and consider the possible review goal dates that may be assigned to the request for final approval to request final approval in a timely fashion.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''ANDA Submissions—Amendments and Requests for Final Approval to Tentatively Approved ANDAs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collection of information for the submission of ANDAs under 21 CFR part 314, subpart C has been approved under OMB control number 0910–0001. In accordance with the PRA, prior to publication of any final guidance document, FDA intends to solicit public

comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov*.

Dated: January 11, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–00680 Filed 1–31–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Srikanth Santhanam, Ph.D. (Respondent), staff scientist in the Division of Gastroenterology, Department of Internal Medicine, Washington University in St. Louis (WUSTL). Dr. Santhanam engaged in research misconduct in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grants R01 DK109384, R03 DK100737, P30 DK052574, and T32 DK077653; National Institute of Allergy and Infectious Diseases (NIAID), NIH, grants R01 AI126587 and U01 AI1095776; and National Cancer Institute (NCI), NIH, grants R21 CA206039 and P30 CA091842. The administrative actions, including supervision for a period of two (2) years, were implemented beginning on December 14, 2018, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Srikanth Santhanam, Ph.D., Washington University in St. Louis: Based on the respondent's voluntary admission and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Srikanth Santhanam, staff scientist in the Division of Gastroenterology, Department of Internal Medicine, WUSTL, engaged in research misconduct in research supported by NIDDK, NIH, grants R01 DK109384, R03 DK100737, P30 DK052574, and T32 DK077653; NIAID, NIH, grants R01 AI126587 and U01 AI1095776; and NCI, NIH, grants R21 CA206039 and P30 CA09184.

In addition to making a voluntary admission, Respondent cooperated fully with WUSTL and ORI and has expressed remorse for his actions.

ORI found that Respondent engaged in research misconduct by falsifying data that were included in a manuscript and a revision submitted to *Cancer Research,* entitled ''IDO1 and kynurenine pathway metabolites activate PI3K-Akt signaling in the neoplastic colon epithelium to promote cancer cell proliferation and inhibit apoptosis.''

ORI found that Respondent intentionally, knowingly, and/or recklessly falsely labeled figures in both the original submission and the revised submission of the manuscript. Specifically, Respondent falsely reported:

- In Figure 2A and resubmission Figure 3A, that the cytoplasmic and nuclear fraction bands for kynurenine (Kyn) and quinolinic acid (QA) and the nuclear fraction bands for β-Catenin were from a single experiment when they were from unrelated experiments
- in resubmission Figures 4A, 8A, and 8B, the descriptions of Western blot analyses, which he labeled as showing the effect of Kyn and QA on HCT116 cells (Figure 4A), mouse AOM/DSS tumor organoids (Figure 8A) and human FAP tumor organoids (Figure 8B, pPRAS40 only), when in fact he used HT29 cells for each test
- in resubmission Figure 4B, that bands labeled as representing pAKT S473 were actually PRAS40
- in Figure S2C, resubmission Figure 3C, and resubmission Figure S3A, that bands labeled as representing total AKT actually came from an unknown source
- in resubmission Figure 7B, that the bands labeled as representing staurosporine-induced apoptosis were actually the same protein samples used to show TNF-α induced apoptosis in Figure 7A
- in resubmission Figures 3A, 3B, and 4A, that the cell lines used were between 3 and 10 passages old, when in fact they were passaged more than 10 times.

As a result of the admission, the corresponding author contacted the journal immediately; the manuscript was not reviewed.

Dr. Santhanam entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed:

(1) To have his research supervised for a period of two (2) years beginning on December 14, 2018; Respondent agreed that prior to submission of an application for U.S. Public Health Service (PHS) support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that for a period of two (2) years beginning on December 14, 2018, any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) that if no supervisory plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI; and

(4) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of two (2) years beginning on December 14, 2018.

Wanda K. Jones,

Interim Director, Office of Research Integrity.

[FR Doc. 2019–00667 Filed 1–31–19; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy, Confidentiality and Security.

Date and Times: Thursday, March 21, 2019: 9:00 a.m.–5:30 p.m. (EDT), Friday, March 22, 2019: 8:30 a.m.–3:00 p.m. (EDT).

Place: Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Auditorium, Hyattsville, Maryland 20782.

Status: Open. There will be an opportunity for public comment at the end of the first day of the meeting.

Purpose: NCVHS is charged with studying and identifying privacy and security and access measures to protect individually identifiable health information in an environment of electronic networking and multiple uses of data. Further, the Committee advises the Secretary and is mandated to report to Congress on the status of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which establishes the regulatory framework for personally identifiable health information by covered entities and business associates.

Through the Subcommittee on Privacy, Confidentiality and Security, the Committee undertook a ''Beyond HIPAA'' initiative to examine emerging health information privacy and security issues that are beyond the scope of HIPAA to consider a health data privacy and security framework for the 21st century. The goals for the Beyond HIPAA initiative are to:

1. Identify and describe the changing environment and the risks to privacy and security of confidential health information; highlight promising policies, practices and technology;

2. Lay out integrative models for how best to protect individuals' privacy and secure health data uses outside of HIPAA protections while enabling useful uses, services and research;

3. Formulate recommendations for the Secretary on actions that HHS and other federal Departments might take; and

4. Prepare a report for data stewardship.

The objective of this meeting is to develop recommendations to define a contemporary framework of data stewardship for the HHS Secretary, including a pathway for improving private and public sector governance of health information over the next decade. To accomplish this, the Subcommittee plans to:

(a) Outline key principles for stewardship of health data in the environment described in a recent NCVHS environmental scan report and the essential public and private levers to ensure appropriate governance;

(b) Reach consensus on actions to update NCVHS' 2008 report, ''Enhanced Protections for Uses of Health Data: A Stewardship Framework for ''Secondary Uses'' of Electronically Collected and Transmitted Health Data—Summary for Policy Makers.''

Through this work, the Subcommittee also plans to identify key themes for communications with individuals, policymakers, and stakeholders in the private sector. The times and topics for this meeting are subject to change. Please refer to the posted agenda for any updates.

Contact Persons for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Information pertaining to meeting content may be obtained from Rachel Seeger, MA, MPA, Office of the Secretary/Office of Civil Rights, Room 509E, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201, telephone: (202) 260–7106. Summaries of meetings and a roster of Committee members are available on the NCVHS website: *www.ncvhs.hhs.gov,* where further information including a meeting agenda and instructions to access the live broadcast of the meeting will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Dated: January 28, 2019.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2019–00706 Filed 1–31–19; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

DATES: *Applicable Date:* January 11, 2019 unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and Evaluation, Room 422F.5, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–7409—or visit *http://aspe.hhs.gov/poverty/.*

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Health Resources and Services Administration Information Center at 1–800–638–0742. You also may visit *https://www.hrsa.gov/get-health-care/affordable/hill-burton/index.html/.*

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's website at *https://www.census.gov/topics/income-poverty/poverty.html* or contact the Census Bureau's Customer Service Center at 1–800–923–8282 (toll-free) or visit *https://ask.census.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used as an eligibility criterion by Medicaid and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2019 notice reflect the 2.4 percent price increase between calendar years 2017 and 2018. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. In rare circumstances, the rounding and standardizing adjustments in the formula result in small decreases in the poverty guidelines for some household sizes even when the inflation factor is not negative. In cases where the year-to-year change in inflation is not negative and the rounding and standardizing adjustments in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2019 guidelines are roughly equal to the poverty thresholds for calendar year 2018 which the Census Bureau expects to publish in final form in September 2019.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2019 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	$12,490
2	16,910
3	21,330
4	25,750
5	30,170
6	34,590
7	39,010
8	43,430

For families/households with more than 8 persons, add $4,420 for each additional person.

2019 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	$15,600
2	21,130
3	26,660
4	32,190
5	37,720
6	43,250
7	48,780
8	54,310

For families/households with more than 8 persons, add $5,530 for each additional person.

2019 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	$14,380
2	19,460
3	24,540
4	29,620
5	34,700
6	39,780
7	44,860
8	49,940

For families/households with more than 8 persons, add $5,080 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).''

Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

Note that this notice does not provide definitions of such terms as ''income'' or ''family,'' because there is considerable variation in defining these terms among the different programs that use the guidelines. These variations are traceable to the different laws and regulations that govern the various programs. This means that questions such as ''Is income counted before or after taxes?'', ''Should a particular type of income be counted?'', and ''Should a particular person be counted as a member of the family/household?'' are actually questions about how a specific program applies the poverty guidelines. All such questions about how a specific program applies the guidelines should be directed to the entity that administers or funds the program, since that entity has the responsibility for defining such terms as ''income'' or ''family,'' to the extent that these terms are not already defined for the program in legislation or regulations.

Alex M. Azar,

Secretary of Health and Human Services.

[FR Doc. 2019–00621 Filed 1–31–19; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee 2019 Schedule

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS

ACTION: 2019 Public Meeting Dates of the Health Information Technology Advisory Committee

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with section 4003(e) of the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the National Coordinator for Health Information Technology (National Coordinator). The HITAC will hold public meetings throughout 2019. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Lauren Richie, Designated Federal Officer, at Lauren.*Richie@hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). The HITAC will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub.L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

Composition

The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary
  - 1 of whom shall be appointed to represent the Department of Health and Human Services; and
  - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives; and
- Other members are appointed by the Comptroller General of the United States.

Members will serve for one-, two-, or three-year terms. All members may be reappointed for subsequent three-year terms. Each member is limited to two three-year terms, not to exceed six years of service. After establishment, members shall be appointed for a three-year term. Members serve without pay, but will be provided per-diem and travel costs for committee services.

Recommendations

The HITAC recommendations to the National Coordinator are publicly available at *https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it.*

Public Meetings

The schedule of meetings to be held in 2019 is as follows:

- February 20, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- March 20, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008
- April 10, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008
- May 13, 2019 from approximately 9:30 a .m. to 2:30 p.m./Eastern Time (virtual meeting)
- June 19, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- September 18, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008
- October 16, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- November 13, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)

All meetings are open to the public. Additional meetings may be scheduled as needed. For web conference instructions and the most up-to-date information, please visit the HITAC calendar on the ONC website, *http://www.healthit.gov/FACAS/calendar.*

Contact Person for Meetings: Lauren Richie, *lauren.richie@hhs.gov* . A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Lauren Richie for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the National Coordinator on the topics of interoperability, privacy and security, and patient access. In addition, the committee will also address any administrative matters and hear periodic reports from ONC. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its website prior to the meeting, the material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's website after the meeting, at *http://www.healthit.gov/hitac.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting.

Persons attending ONC's HITAC meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its HITAC meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lauren Richie at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. No. 92–463 , 5 U.S.C., App. 2).

Dated: January 28, 2019

Lauren Richie,

Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2019–00707 Filed 1–31–19; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: February 11, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00687 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; Exploring Epigenomic or Non-Coding RNA Regulation in the Development, Maintenance, or Treatment of Chronic Pain (R61/R33 Clinical Trial Optional).

Date: February 15, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4228, MSC 9550, Bethesda, MD 20892, 301–827–5842, *ramadanir@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00686 Filed 1–31–19; 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 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: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00682 Filed 1–31–19; 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 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: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle Hotel, 1400 6th Ave., Seattle, WA 98101.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@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: January 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00716 Filed 1–31–19; 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 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: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: February 11–12, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Janet M Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting, due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00691 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Epidemiology and Cohort Studies for Alzheimer's Disease, Related Dementias and Cognitive Resilience.

Date: February 13, 2019.

Time: 10:00 a.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: Gianina Ramona Dumitrescu, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, *dumitrescurg@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00646 Filed 1–31–19; 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 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: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: February 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@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: January 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00714 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Fogarty HIV Research Training Programs.

Date: February 11, 2019.

Time: 1:00 p.m. to 2:00 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: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00642 Filed 1–31–19; 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 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: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section

Date: February 12–13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Leslie S. Itsara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *leslie.itsara@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00650 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Topics in Antimicrobial Drug Discovery and Resistance.

Date: February 15, 2019.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00644 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interdisciplinary Molecular Sciences and Training.

Date: February 13, 2019.

Time: 10:00 a.m. to 12:00 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: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00694 Filed 1–31–19; 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 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: Population Sciences and Epidemiology Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chittari V. Shivakumar, Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00684 Filed 1–31–19; 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 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: Emerging Technologies and Training Neurosciences Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: February 12–13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Menger Hotel, 204 Alamo Plaza, San Antonio, TX 78205.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00693 Filed 1–31–19; 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 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: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00685 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors provides advice on programmatic activities. This meeting complements year-long activities to ensure NTP's scientific direction, expertise, and capabilities are

strategically positioned to address public health issues and provide the necessary scientific information to inform decision-making. The agenda includes talks by invited speakers on ''The Changing Toxicology Landscape: Challenges and the Future of Risk Assessment'' followed by time for BSC discussion and input to NTP. The talks were originally scheduled for December 11, 2018; however, the meeting day was cancelled due to inclement weather. This meeting is by webcast only and is open to the public. Registration is requested for oral comment and is required to access the webcast. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/165.*

DATES: *Meeting:* February 15, 2019; 10:00 a.m.–2:00 p.m. (EST).

Written Public Comment Submissions: Deadline is February 8, 2019.

Oral Comments: Deadline is February 8, 2019.

Registration to view the webcast: Deadline February 15, 2019.

Registration to view the meeting via the webcast is required.

ADDRESSES: *Meeting web page:* The preliminary agenda, registration, and other meeting materials will be posted at *http://ntp.niehs.nih.gov/go/165.*

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Wolfe, Designated Federal Official for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3209, Fax: 301–451–5759, Email: *wolfe@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION: The preliminary agenda topics include talks by invited speakers on ''The Changing Toxicology Landscape: Challenges and the Future of Risk Assessment'' that were not presented on December 11, 2018, as that meeting day was cancelled due to inclement weather. These talks complement year-long activities to ensure NTP's scientific direction, expertise, and capabilities are strategically positioned to address public health issues and provide the necessary scientific information to inform decision-making. The talks will be followed by BSC discussion and input to NTP. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting website (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting website.

Meeting and Registration: The meeting is open to the public with time scheduled for oral public comments. Registration to view the webcast is by February 15, 2019, at *http://ntp.niehs.nih.gov/go/165.* Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: NTP invites written and oral public comments on the agenda topics. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.* The deadline for submission of written comments is February 8, 2019. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comments: The agenda allows for one public comment period (up to 6 commenters, 5 minutes per speaker). Registration for oral comments is on or before February 8, 2019, at *http://ntp.niehs.nih.gov/go/165.* Oral comments will be received only during the formal public comment periods indicated on the preliminary agenda. Oral comments will only be by teleconference line. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration is on a first-come, first-served basis, and registrants will be assigned a number in their confirmation email. Each organization is allowed one time slot per comment period. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available.

Meeting Materials: The preliminary meeting agenda is available on the meeting web page (*http://ntp.niehs.nih.gov/go/165*) and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: January 28, 2019.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2019–00579 Filed 1–31–19; 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 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: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section

Date: February 15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Meridien Delfina, 530 Pico Blvd., Santa Monica, CA 90405

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00647 Filed 1–31–19; 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 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: February 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Zoe, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.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)

Dated: January 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00740 Filed 1–31–19; 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 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: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00690 Filed 1–31–19; 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 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: Oncology 1-Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: February 12–13, 2019.

Time: 8:00 a.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: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00672 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse 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 on Drug Abuse Special Emphasis Panel; Responding to Opioid Use Disorders (OUD) in Tribal Communities in the Context of SAMHSA Funding (R61/R33—Clinical Trials Optional).

Date: February 13, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00639 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Intercellular Interactions.

Date: February 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Maqsood A. Wani, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00671 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; Multi-Site Studies for System-Level Implementation of Substance Use, Prevention and Treatment Services (R01; R34).

Date: February 13, 2019.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00689 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director: Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Toxicology Program Special Emphasis Panel was renewed for an additional two-year period on January 7, 2019.

It is determined that the National Toxicology Program Special Emphasis Panel is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Natasha M. Copeland, Program Analyst, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *copelana@mail.nih.gov*.

Dated: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00637 Filed 1–31–19; 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 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: Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology Study Section.

Date: February 11–12, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00696 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Applications.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Julia Spencer Barthold, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3073, *julia.barthold@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00675 Filed 1–31–19; 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 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: Risk, Prevention and Health Behavior Integrated Review Group, Addiction Risks and Mechanisms Study Section.

Date: February 11–12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00648 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel.

Date: February 15, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Boulevard, DEM1, Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00674 Filed 1–31–19; 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 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 14–15, 2019.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel, 1600 King Street, Alexandria, VA 22314.

Contact Person: Christine A Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301–435–0657, *christine.piggee@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00673 Filed 1–31–19; 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 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: February 11–12, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00645 Filed 1–31–19; 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 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: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: February 12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Pere Marquette Hotel, 817 Common Street, New Orleans, LA 70112.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00692 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Modeling and Simulation to Optimize HIV Prevention Research.

Date: February 28, 2019.

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: Shalanda A Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00641 Filed 1–31–19; 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 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: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: February 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW, Washington, DC 20005.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00649 Filed 1–31–19; 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 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: Center for Scientific Review Special Emphasis Panel; Imaging Guided Interventions and Surgery Special Panel.

Date: February 14, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shing Chun Benny Lam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, *lams4@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(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: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00643 Filed 1–31–19; 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 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: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: February 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Méridien Delfina Santa Monica, 530 Pico Blvd., Santa Monica, CA 90405.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@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: January 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00715 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 Environmental Health Sciences Special Emphasis Panel; Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: February 13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Virtual Meeting).

Contact Person: Laura A. Thomas, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00638 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational 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 Center for Advancing Translational Sciences Special Emphasis Panel; Rare Disease Clinical Research.

Date: February 11–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center Rooms—Linden Oak and Salon F–H, 5701 Marinelli Road, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Carol Lambert, Ph.D., Director, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1076, Bethesda, MD 20892, 301–435–0814, *lambert@mail.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00695 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS 2019–1 SBIR Topic 65: Co-Delivery and Formulation of Adjuvants for HIV Vaccines and Topic 66: Effective Targeted Delivery of RNA-based Vaccines and Therapeutics.

Date: February 14, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Audrey O Lau, Ph.D., MPH, Acting Senior Scientific Review Officer, AIDS Review Branch, SRP, Rm. 3E70, National Institutes of Health, NIAID 5601 Fishers Lane, MSC 9834, Rockville, MD 20852–9834, 240–669–2081, *audrey.lau@nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the partial Government shutdown of December 2018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 28, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–00640 Filed 1–31–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting Cancellation

This is a notice of meeting cancellation of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) of February 27, 2019, 9:00 a.m.–5:00 p.m. (EDT). The meeting was announced on the **Federal Register**/Vol. 83, No. 245/Friday, December 21, 2018/[FR Doc. 2018–27637 Filed 12–20–18].

Future meetings will be announced at a later time. Pertinent council information may be obtained by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment, National Advisory Council.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov*.

Dated: January 28, 2019.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2019–00545 Filed 1–31–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center—Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ

08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

The following laboratories are voluntarily withdrawing from the National Laboratory Certification Program:

National Toxicology Laboratories, Inc., 1100 California Ave. Bakersfield, CA 93304, 661–322–4250/800–350–3515, Withdrawal effective December 19, 2018
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory), Withdrawal effective January 18, 2019

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,

Chemist.

[FR Doc. 2019–00613 Filed 1–31–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0069]

Privacy Act of 1974; System of Records

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new DHS/U.S. Immigration and Customs Enforcement (ICE) system of records titled, ''Department of Homeland Security/U.S. Immigration and Customs Enforcement–017 Angel Watch Program System of Records.'' This system of records covers records collected as part of ICE's Angel Watch Program (also referred to as Operation Angel Watch) conducted by the Child Exploitation Investigations Unit of the ICE Homeland Security Investigations Cyber Crimes Center. ICE's Angel Watch Program is conducted as part of the Angel Watch Center (AWC), a joint initiative among ICE, DHS's U.S. Customs and Border Protection (CBP), and the U.S. Department of Justice's U.S. Marshals Service, as prescribed by International Megan's Law (IML) to Prevent Child Exploitation and Other Sexual Crimes through Advanced Notification of Traveling Sex Offenders (Pub. L. 114–119).

The AWC's mission is to prevent child sex tourism by alerting destination countries that covered sex offenders—individuals who have been convicted of sexual offenses against minors and are required to register as sex offenders with any jurisdiction in the United States—have scheduled upcoming travel to those countries. In accordance with IML, the AWC sends information to the U.S. Department of State (DoS) to facilitate that agency's placement of unique identifiers on the passports of covered sex offenders.

This system of records describes how DHS/ICE, in accordance with IML, collects and maintains records about covered sex offenders and shares certain information with DoS; the U.S. Department of Justice; other federal, state, and local agencies; and foreign countries. This newly established system of records will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 4, 2019. This new system will be effective upon publication. Routine uses will be effective March 4, 2019.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0069 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Philip S. Kaplan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0069. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Amber Smith, (202) 732–3300, Privacy Officer, Office of Information Governance and Privacy, Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5004, Washington, DC 20536. For privacy questions, please contact: Philip S. Kaplan, *privacy@hq.dhs.gov,* (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) proposes to establish a new DHS system of records titled, ''DHS/ICE–017 Angel Watch Program System of Records.'' This system of records covers only Angel Watch Program activities (also referred to as Operation Angel Watch) conducted by the Child Exploitation Investigations Unit of the ICE Homeland Security Investigations (HSI) Cyber Crimes Center, which developed the Angel Watch Center (AWC), a joint initiative among ICE, DHS's U.S. Customs and Border Protection (CBP), and the U.S. Department of Justice's U.S. Marshals Service, as prescribed by International Megan's Law (IML) to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (Pub. L. 114–119).

ICE previously relied on the DHS/ICE–009 External Investigations System of Records Notice, last published at 75 FR 404 (January 5, 2010), to cover Angel Watch Program records. ICE has determined a separate system of records notice (SORN) will provide greater transparency and clearly describe the records the Angel Watch Program collects and maintains on individuals.

This system of records does not cover records originating from Justice/FBI–001 National Crime Information Center (NCIC) System of Records; [1] DHS/CBP–006 Automated Targeting System; [2] and the U.S. Department of State Consular Lookout and Support System.[3] At all times, the Angel Watch Program references these records directly from the underlying systems in a manner consistent with law enforcement purposes stated in the source systems' compliance documentation.

This system of records also does not cover CBP or U.S. Marshals Service records created or maintained as part of their work in the AWC. Additionally, in some cases, records originating with Angel Watch Program activities may give rise to or be used in investigations by ICE. Those records continue to be covered by the DHS/ICE–009 External Investigations SORN.

The Angel Watch Program, created in 2007 by ICE's HSI, and managed by the Child Exploitation Investigations Unit of HSI's Cyber Crimes Center, identifies individuals who have been convicted of sexual crimes against a minor and who may be traveling overseas for the purpose of sexually abusing or exploiting minors, a crime known as ''child sex tourism,'' and notifies the relevant destination countries, as appropriate.

Additionally, the AWC is required to provide the U.S. Department of State (DoS) with information about covered sex offenders—individuals who have been convicted of sexual offenses against minors and are required to register as sex offenders with any jurisdiction in the United States—who are traveling or intend on traveling abroad so DoS may place a unique identifier on their U.S. passports.

Pursuant to IML, the Angel Watch Program runs automated queries through CBP's Automated Targeting System—Passenger (ATS–P). ATS–P scans passenger manifests of outgoing international flights and identifies passengers with a possible match to a record in the National Sex Offender database owned by the Department of Justice's National Criminal Information Center (NCIC) for a sexual offense against a minor (hereinafter, National Sex Offender Registry or NSOR). Once a traveler is identified as a potential match to an NSOR record, the Angel Watch Program reviews the traveler's biographical data received from ATS–P to verify that the traveler is correctly matched to the subject identified in the NSOR record, and also reviews the corresponding NCIC criminal history data to confirm that the traveler has been convicted of a covered sex offense as defined within IML. In accordance with information sharing agreements, once the Angel Watch Program has confirmed individuals with scheduled travel are covered sex offenders, it shares information about those individuals with the U.S. Marshals Service, which is co-located at the AWC, to ensure the covered sex offenders have provided notification to states or locales about their upcoming travel, as applicable. As part of the Angel Watch Program, ICE does not use or retain any information about individuals who are determined not to be covered sex offenders.

Through the Angel Watch Program ICE evaluates multiple factors including the details of each covered sex offender's travel itinerary to determine if notification to the destination country is appropriate. If ICE determines that notification is appropriate, it sends an operational record (*i.e.,* biographic information from source systems pertaining to a covered sex offender) to HSI Attaché offices, which are located at certain United States embassies. The Attachés then send a notification record (*i.e.,* a derivative of an operational record containing only the information needed to provide situational awareness) to law enforcement and/or border security officials in the destination country or countries of the covered sex offender's pending arrival. By notifying officials in the destination countries prior to the covered sex offender's arrival, and by providing basic flight information and conviction information located in the NSOR, HSI enables the destination countries to make informed decisions about whether they believe the covered sex offender may pose a risk of engaging in child sex tourism. HSI advises foreign countries that this information is for informational purposes only. If ICE's Angel Watch Program determines that notification is

[1] JUSTICE/FBI 001—National Crime Information Center, 64 FR 52343 (September 28, 1999), and as amended, available at: *https://www.justice.gov/opcl/doj-systems-records.*

[2] DHS/CBP 006—Automated Targeting System, 77 FR 30297 (May 22, 2012).

[3] STATE 05—Overseas Citizen Services Records, September 8, 2016, 81 FR 62235 (September 8, 2016); STATE 26—Passport Records, March 24, 2015, 80 FR 15653 (March 24, 2015); and STATE 39—Visa Records, October 25, 2012, 8377 FR 28062 (June 15, 2018). U.S. Department of State SORNs are available at: *https://www.state.gov/privacy/sorns/index.htm.*

inappropriate, it will not proceed and will delete the information.

Prior to traveling abroad, ICE strongly encourages travelers who believe they might be a covered sex offender to contact the destination country to ensure they will be permitted entry upon arrival.

In accordance with 34 U.S.C. 21503(e)(7), ICE's Angel Watch Program has established a mechanism to receive complaints from individuals alleged to be affected by erroneous notifications to destination countries. The Angel Watch Program will ensure that any complaint is promptly reviewed, and in the case of a complaint that involves a notification sent by another Federal Government agency, the Angel Watch Program will provide the individual with the contact information, for the appropriate entity and forward the complaint to that entity, as required by IML. If the Angel Watch Program determines it provided inaccurate information, it will take corrective action to remedy the error, including notifying any foreign government who received the inaccurate information, as well as other Federal Government agencies with which it has previously shared the incorrect information, so they can update their records, as needed. The Angel Watch Program will provide a complainant with a written response in the event incorrect information was shared, along with an explanation, to the extent permitted by law and policy, as to why the incorrect information was shared, and actions the program has taken to remedy the error. The Angel Watch Program will publicly post instructions on how to submit a complaint on the ICE public-facing website. The program agrees to receive any complaint about an individual having been identified by the Angel Watch Program as a covered sex offender via email at the following address: *DHSINTERMEGANSLAW@ICE.DHS.GOV*.

This new system of records will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ICE–017 Angel Watch Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE)–017 Angel Watch Program System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the ICE Headquarters in Washington, DC and Homeland Security Investigations (HSI) Attaché offices abroad.

SYSTEM MANAGER(S):

Homeland Security Investigations, Cyber Crimes Center Child Exploitation Investigations Unit, (866) 347–2423, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 202–203; 18 U.S.C. 1591, 1596, 2251, 2260, 2423; 19 U.S.C. 1628, 34 U.S.C. 21503.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect information on covered sex offenders to: (1) Combat transnational child sex tourism or exploitation; (2) Share information on covered sex offenders with foreign countries to aid them in making informed decisions regarding the admissibility of travelers in their own countries; (3) Support the receipt of and response to any complaints by alleged covered sex offenders or others related to the activities of the Angel Watch Program; (4) Identify potential criminal activity; uphold and enforce criminal laws; and ensure public safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system are: (1) Individuals, including United States citizens, who have an NSOR record for a sexual offense against a minor and who have scheduled international travel, and (2) individuals, as well as any representative acting on their behalf, filing complaints with the Angel Watch Program concerning alleged inaccurate information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

1. Notification records consist of information transmitted to DHS's foreign counterparts for situational awareness. This information may include name, date of birth, Alien Registration Number (A-Number), Social Security number, passport number, and country of birth.

2. Complaints filed by individuals or their representatives concerning the sharing of their travel information under this program. This includes any information submitted by the complainant; information compiled by the agency in researching the complaint; records of an individual's criminal history and/or status on the sex offender registry; memoranda or other communications within the agency or with other agencies related to the complaint; research conducted in DHS and other government data systems; and the agency's response to the complaint.

RECORD SOURCE CATEGORIES:

Angel Watch Program notification records validate biographic information against the Advance Targeting System—Passenger (ATS–P), owned by U.S. Customs and Border Protection;[4] the National Sex Offender Registry within the National Crime Information Center, maintained by the Federal Bureau of Investigation;[5] domestic courts and law enforcement agencies; the U.S. Department of Justice's National Sex Offender Public website (NSOPW), and state, territories, and tribal sex offender registries, available through NSOPW, including the entities responsible for their maintenance;[6] and the U.S.

[4] DHS/CBP 006—Automated Targeting System, 77 FR 30297 (May 22, 2012).

[5] JUSTICE/FBI 001—National Crime Information Center, 64 FR 52343 (September 28, 1999), and as amended, *available at: https://www.justice.gov/opcl/doj-systems-records.*

[6] NSOPW is a public resource that searches the public sex offender registries from all 50 states, the District of Columbia, the five principal U.S. territories, and federally recognized Indian tribes. Conversely, the FBI's National Sex Offender Registry is a database available only to law

Department of State from its Consular Lookout and Support System.[7] Information is also obtained directly from the individuals covered by this system of records or their representatives in the event a complaint is filed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the U.S. Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS 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.

G. To an appropriate Federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To a foreign government to provide notice of the intended travel of a covered sex offender from the United States to the foreign country, and to assist that government in making an informed decision as to whether the offender may pose a risk of engaging in child sex tourism while in that country.

J. To federal, state, tribal, territorial, local, international, or foreign government agencies or entities for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) to verify the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) to verify the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

K. To the U.S. Marshals Service to coordinate, cooperate, and de-conflict activities related to the foreign travel of covered sex offenders.

L. To the U.S. Department of State: (1) To provide notice of U.S. citizens identified as covered sex offenders who are traveling, or intend on traveling, abroad so Department of State may place a unique identifier on their passports; (2) to provide notice of those individuals no longer deemed a covered sex offender; or (3) to resolve complaints, inaccuracies, or errors.

M. To other Federal Government agencies for the purpose of referring complaints received from individuals that are appropriately handled by those other agencies.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/ICE stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name and/or name and date of birth. In the case of complaints, records may be retrieved by name or complaint number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

ICE is in the process of drafting a proposed record retention schedule to be submitted to NARA for approval for the information maintained by the Angel Watch Program. The proposed retention policy for notification records is seven (7) years from the year in which the travel was scheduled to occur, and

enforcement that is maintained by the FBI's Criminal Justice Information Services Division.

[7] STATE 05—Overseas Citizen Services Records, September 8, 2016, 81 FR 62235 (September 8, 2016); STATE 26–Passport Records, March 24, 2015, 80 FR 15653 (March 24, 2015); and STATE 39—Visa Records, October 25, 2012, 8377 FR 28062 (June 15, 2018). Department of State SORNs are *available at: https://www.state.gov/privacy/sorns/index.htm.*

for complaint records, seven years after the complaint was closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/ICE safeguards records in this system according to all applicable rules and policies, including all applicable DHS automated systems security and access policies. ICE has strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records may submit a request in writing to the Chief Privacy Officer and ICE Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provides a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why you believe the Department would have information on him/her;
- Identify which component(s) of the Department the individual believes may have the information about him/her;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;
- If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''access procedures'' above. Individuals who wish to contest the accuracy of records in this system of records should submit these requests to the Privacy Division of the ICE Information Governance & Privacy Office. Requests must comply with verification of identity requirements set forth in Department of Homeland Security Privacy Act regulations at 6 CFR 5.21(d). Please specify the nature of the complaint and provide any supporting documentation. By mail (please note substantial delivery delays exist): ICE Information Governance & Privacy Office, ATTN: Privacy Division, 500 12th Street SW, Mail Stop 5004, Washington, DC 20536. By email: *ICEPrivacy@ice.dhs.gov.*

Please contact the Privacy Division with any questions about submitting a request at 202–732–3300 or *ICEPrivacy@ice.dhs.gov.*

NOTIFICATION PROCEDURES:

See ''Record Access Procedures''.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2019–00770 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0036]

Privacy Act of 1974; Computer Matching Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of a new computer matching program.

SUMMARY: This document provides notice of the establishment of a computer matching program between the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) and the U.S. Department of Housing and Urban Development (HUD). The purpose of this CMA is to ensure that eligible housing assistance applicants do not receive a duplication of housing benefits from both DHS/FEMA and HUD, as required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

DATES: The matching program will be effective for a period of 18 months beginning either January 31, 2019, or 40 days after the publication of this notice, whichever is later. The matching program may be extended for up to an additional 12 months thereafter, if certain conditions are met. Please submit comments on the proposal by March 4, 2019. A new or revised matching notice will become effective 30 days from the date of publication in the **Federal Register**, unless the agency determines that significant changes to the matching notice are necessary, and as such, the agency will publish a revised matching notice and provide an additional 30-day public comment.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0036 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *DHS Fax:* 202–343–4010.
- *DHS Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.
- *HUD Mail:* Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10110, Washington, DC 20410.

Instructions: All comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore,

commenters should be careful to include in their comments only information that they wish to make publicly available. Comments made by fax or mail may be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays. If you want to schedule an appointment to review comments made by fax or mail, please contact the person listed under

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Individuals wishing to submit general questions on this matching program, including requesting a copy of the Computer Matching Agreement between DHS/FEMA and HUD, may contact either John Bravacos, Departmental Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10226, Washington, DC 20410, telephone number (202) 402–6064, William Holzerland, Senior Director for Information Management, DHS/FEMA, 500 C Street SW, Washington, DC 20479, telephone number (202) 212–5100. [These are not toll-free numbers.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Relay Service). For privacy questions, please contact: Philip S. Kaplan, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security, FEMA provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–108, 81 FR 94424 (December 23, 2016).

Participating Agencies

The Department of Homeland Security, Federal Emergency Management Agency and the Department of Housing and Urban Development are both the source and the recipient agency under this matching program.

Authority for Conducting the Matching Program

A. The Robert T. Stafford Disaster and Emergency Assistance Act (Pub. L. 93–288), as amended at 42 U.S.C. 5121 *et seq.,* requires each federal agency that administers any program that provides financial assistance as a result of a major disaster or emergency, to assure that no individual or entity receives duplicate financial assistance under any program or insurance, or any other source. Furthermore, the Act requires DHS/FEMA or HUD (whichever agency provided the duplicate assistance) to recover all duplicative assistance from the recipient, when the head of such agency considers it to be in the best interest of the Federal Government, (42 U.S.C. 5155). Also, Section 408(i) of the Stafford Act, 42 U.S.C. 5174(i), as amended, directs and authorizes DHS/FEMA, in carrying out Section 408 (Federal Assistance to Individuals and Households), to ''develop a system, including an electronic database,'' to include, for example, to help verify the identity and address of recipients of assistance to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance by sharing personally identifiable information.

B. Fraud, waste, and abuse prevention efforts pursuant to the aforementioned statutory authorities are also applicable to certain FEMA-administered pilot programs designed to provide alternative or additional federal disaster assistance programs (6 U.S.C. 776–777).

C. Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the McKinney Act), 42 U.S.C. 3544, authorizes HUD to require applicants or participants in any HUD program involving review of an applicant's or participant's income to sign a consent form authorizing HUD, the public housing agency, or the owner to verify income information. Pursuant to section 239 of Public Law 111–8, Omnibus Appropriations Act, 2009, 123 Stat. 981, March 11, 2009, the Disaster Housing Assistance Programs administered by HUD are considered a HUD program under section 904 of the McKinney Act for the purpose of income verification and matching.

D. The appropriations acts that authorize and appropriate supplemental CDBG–DR assistance lay out specific requirements, some of which may vary by appropriation. These appropriations acts impose requirements related to the prevention of fraud, waste, and abuse, order of assistance, and prevention of duplication of benefits on CDBG–DR grantees. Legal authority for CDBG–DR assistance is derived from title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*), subsequent appropriations acts making available CDBG–DR assistance, the following prior appropriations acts—Public Laws 115–72, 115–56, 115–31, 114–254, 114–223, 114–113, 113–2, 112–55, 111–212, 110–329, 110–252, 110–116, 109–234, 109–148, 108–324, 107–206, 107–117, 107–73, 107–38, 106–31, 105–277, 105–276, 105–174, 105–18, 104–134, 104–19, 103–327, 103–211, 103–75, and 103–50—and by the notices published in the **Federal Register** that govern CDBG–DR grant assistance, including the Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees at 76 FR 71,060 (November 16, 2011).

E. HUD regulation at (24 CFR 982.352(c)) prohibits a family from receiving the benefit of Section 8 tenant-based assistance under the Housing Choice Voucher Program while also receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

1. Public or Indian housing assistance;

2. Other Section 8 assistance (including other tenant-based assistance);

3. Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

4. Section 101 rent supplements;

5. Section 236 rental assistance payments;

6. Tenant-based assistance under the HOME program;

7. Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

8. Any local or state rent subsidy;

9. Section 202 supportive housing for the elderly;

10. Section 811 supportive housing for persons with disabilities;

11. Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

12. Any other duplicative federal, state, or local housing subsidy, as determined by HUD. For this purpose, ''housing subsidy'' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Purpose(s)

The purpose of this matching program is to establish or verify initial or continuing eligibility for DHS/FEMA disaster assistance; prevent duplicative disaster assistance payments; or recoup duplicative payments and delinquent debts under the programs referenced in this Agreement, which will result in individuals being quickly and effectively transitioned from temporary relief programs administered by DHS/FEMA into long-term relief programs administered by HUD.

This program also enables HUD's Community Development Block Grant Disaster Recovery (CDBG–DR) grantees, including states, local governments, and Indian tribes (as directed by the applicable appropriations act), to use FEMA data to determine the correct award amount for eligible program beneficiaries by identifying unmet needs of FEMA applicants; prevent the duplication of benefits; implement the statutory requirement that CDBG–DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA; and implement the statutory requirement to establish procedures to detect and prevent waste, fraud, and abuse of funds. To accomplish this purpose, this program permits HUD to provide data to CDBG–DR allocatees before the grant agreement is signed, so long as the state, local government, or Indian tribe that is awarded the CDBG–DR allocation has entered an information sharing agreement with HUD. For purposes of this program, the term ''CDBG–DR grantee(s)'' includes CDBG–DR allocatees.

In sum, the following programs are covered under this computer matching agreement:

1. DHS/FEMA housing assistance provided through its Individuals and Households Program (IHP) under Section 408(f) of the Stafford Act, 42 U.S.C. 5174(f)(2)

2. HUD rental assistance programs identified at 24 CFR 5.233 and the Disaster Housing Assistance Program.

3. CDBG–DR assistance authorized and appropriated from time to time under various appropriations acts.

Categories of Individuals

Categories of individuals covered under this matching agreement include individuals seeking federal disaster relief assistance.

Categories of Records

Data elements disclosed in this matching program include the following:

- FEMA Registration ID.
- Disaster Number.
- Social Security Number (SSN)—the head of household SSN.
- First and Last Name and Middle Initial of the head of household.
- DOB—date of birth of head of household.
- Damaged Address Street Address—the head of household's damaged street address.
- Current Address and Phone Number—contact information for the head of household.
- Damaged Unit Information—information on the type and level of damage sustained.
- Assistance Received—information on the type and amount of assistance the household has received.

Data elements, along with the category of information (*e.g.* identification, damages, contact information, assistance, household characteristics), specifically shared between FEMA and HUD, and how they are matched between them, is outlined in Appendix A of the Computer Matching Agreement.

System(s) of Records

DHS/FEMA

The DHS/FEMA records reside in the National Emergency Management Information System—Individual Assistance System (NEMIS–IA System) and are covered by DHS/FEMA—008 Disaster Recovery Assistance Files System of Records, 78 FR 25,282 (April 30, 2013).

HUD

HUD records reside in HUD's Tenant Rental Assistance Certification System (TRACS) (HSNG/MF.HTS.02), 81 FR 56,684 (August 22, 2016); the Inventory Management System (IMS), also known as the Public and Indian Housing (PIH) Information Center (PIC) (HUD/PIH.01) 77 FR 22,337 (April 13, 2012); and the Enterprise Income Verification System (EIV) (HUD/PIH–5) 71 FR 45,066 (August 8, 2006), which was updated by 74 FR 45,235 (September 1, 2009). The results of the information comparison are maintained within the IMS/PIC system (HUD/PIH.01).

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2019–00768 Filed 1–31–19; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Naturalization Oath Ceremony

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0054 in the body of the letter, the agency name and Docket ID USCIS–2006–0055. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0055;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377. (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking

information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0055 in the search box. 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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regards to the respondent's ability to be naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–445 is 555,736 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 138,934 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00589 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0033]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Report of Medical Examination and Vaccination Record

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 4, 2019. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0033 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on October 16, 2018, at 83 FR 52228, allowing for a 60-day public comment period. USCIS received two comment(s) in connection with the 60-day notice.

You may access the information collection instrument with instructions,

or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0074 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–693; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The information on the Report of Medical Examination and Vaccination Record, Form I–693, will be used by USCIS when considering the eligibility for adjustment of status under 8 CFR 209.1(c), 209.2(d), 210.2(d), 245.5 and 245a.3(d)(4); and for V nonimmigrant status under 8 CFR 214.15(f). The information on the Report of Medical Examination and Vaccination Record, Form I–693, will be used by EOIR in considering the eligibility for immigration benefits in removal proceedings. The information on the Report of Medical Examination and Vaccination Record, Form I–693, may also be used by CBP in determining admissibility at a port of entry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–693 is 667,000 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,667,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $329,331,250.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00586 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0046]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Interagency Alien Witness and Informant Record

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0046 in the body of the letter, the agency name and Docket ID USCIS–2006–0062. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0062;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0062 in the search box. 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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Alien Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–854; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–854 is used by law enforcement agencies to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–854A is 82 and the estimated hour burden per response is 3 hours. The estimated total number of respondents for the information collection I–854B is 54 and the estimated hour burden per response is 1 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 300 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00584 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0049]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for Verification of Naturalization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 4, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0049 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 13, 2018, at 83 FR 46509, allowing for a 60-day public comment period. USCIS received two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0036 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–25; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–25 is 1,000 and the estimated hour burden per response is 0.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $500.00.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00601 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0037]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Refugee/Asylee Relative Petition

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 4, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0037 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on August 31, 2018, at 83 FR 44643, allowing for a 60-day public comment period. USCIS received two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0030 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Primary: Individuals or households. Form I–730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–730 is 13,000 and the estimated hour burden per response is 0.667 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,671 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,592,500.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00602 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0136]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 4, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0136 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on October 16, 2018, at 83 FR 52229, allowing for a 60-day public comment period. USCIS received two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2016–0005 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–941; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Primary: Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–941 is 2,940 and the estimated hour burden per response is 4.7 hours. The estimated total number of respondents for the biometric processing is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 17,258 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,440,600.

Dated: January 28, 2019.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00587 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0023]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application To Register Permanent Residence or Adjust Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the

respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0023 in the body of the letter, the agency name and Docket ID USCIS–2009–0020. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0020;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377. (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comment

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0020 in the search box. 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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–485; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information on Form I–485 is used to request and determine eligibility for adjustment of permanent residence status. Supplement A is used to adjust status under section 245(i) of the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–485 is 577,000 and the estimated hour burden per response is 3,606,250 hours. The estimated total number of respondents for the information collection I–485, Supplement A is 29,213 and the estimated hour burden per response is 36,516 hours. The estimated total number of respondents for the information collection I–485, Supplement J is 37,358 and the estimated hour burden per response is 37,358 hours. The estimated total number of respondents for the information collection of Biometrics is 577,000 and the estimated hour burden per response is 675,090 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,355,214 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $197,911,000.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00592 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0107]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: H–2 Petitioner's Employment Related or Fee Related Notification

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 4, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the

OMB Control Number 1615–0107 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **FEDERAL REGISTER** on October 3, 2018, at 83 FR 49940, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0015 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–2 Petitioner's Employment Related or Fee Related Notification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. The notification requirement is necessary to ensure that alien workers maintain their nonimmigrant status and will help prevent H–2 workers from engaging in unauthorized employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection H–2 Petitioner's Employment Related or Fee Related Notification is 1,700 and the estimated hour burden per response is .5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 850 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $8,500.

Dated: January 28, 2019.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00598 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0050]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Hearing on a Decision in Naturalization Proceedings Under Section 336

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0050 in the body of the letter, the agency name and Docket ID USCIS–2007–0020. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0020;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377. (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking

information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0020 in the search box. 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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–336; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–336 is used by an individual whose Form N–400, Application for Naturalization, was denied to request a hearing before an immigration officer on the denial of the N–400. USCIS uses the information submitted on Form N–336 to locate the requestor's file and schedule a hearing in the correct jurisdiction. It allows USCIS to determine if there is an underlying Form N–400, Application for Naturalization, that was denied to warrant the filing of Form N–336. The information collected also allows USCIS to determine if a member of the U.S. armed forces has filed the appeal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–336 (paper filing) is 4,500 and the estimated hour burden per response is 2.75 hours; the estimated total number of respondents for the information collection N–336 (e-filing) is 500 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 13,625 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,221,875.00.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00600 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0056]

Agency Information Collection Activities: Extension, Without Change, of a Currently Approved Collection: Application To Preserve Residence for Naturalization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0056 in the body of the letter, the agency name and Docket ID USCIS–2006–0030. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0030;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377. (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking

information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0030 in the search box. 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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–470; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–470 is 120 and the estimated hour burden per response is 0.6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 72 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $14,700.

Dated: January 28, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–00591 Filed 1–31–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2018–N149; FF09L00200–FX–LE18110900000; OMB Control Number 1018–0012]

Agency Information Collection Activities; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 2, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a

declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses, individuals, or government agencies importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form, as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion, are available for electronic submission at *https://edecs.fws.gov.* These forms are also available in fillable format at *http://www.fws.gov/forms/.* The information that we collect is unique to each wildlife shipment and enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Businesses or individuals must file FWS Forms 3–177 and 3–177a with us at the time when and at the port where they request clearance of the import or export of wildlife or wildlife products. Our regulations allow certain species of wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present. In these instances, importers and exporters may file the forms with U.S. Customs and Border Protection. We collect the following information:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the shipment containing the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

In 2009, we implemented a new user fee system intended to recover the costs of the compliance portion of the wildlife inspection program. Since that time, we have been made aware that we may have placed an undue economic burden on businesses that exclusively trade in small volumes of low-value, non-federally protected wildlife parts and products. To address this issue, we implemented a program that exempts certain businesses from the designated port base inspection fees as an interim measure while we reassess the current user fee system. Businesses that possess a valid Service import/export license may request to participate in the fee exemption program through our electronic filing system (eDecs). Qualified licensees must create an eDecs filer account as an importer or exporter, if they do not already have one, and file their required documents electronically.

To be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business must certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 and 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business also must certify that it will exclusively import or export the above types of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is $5,000 or less. Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a notice of violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program.

We are also requesting OMB's continued approval for electronic collection of data through U.S. Customs and Border Protection's Automated Commercial Environment (ACE) as an alternative electronic option for importers and exporters to eDecs. The Safe Port Act requires the Service to participate in the International Trade Data System, and the Executive Order on Streamlining Exports and Imports establishes ACE as the primary means for collection of international trade data by the government. The latter includes the use of Census's Automated Export System (AES) to collect agency licenses and other permissions for exports. Although the Service does not mandate importers or exporters to use ACE and AES to file Service data at this time, we will begin collection of data in ACE as an alternative to eDecs. If importers file in ACE, they will not file in eDecs.

Title of Collection: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61–14.64 and 14.94(k)(4).

OMB Control Number: 1018–0012.

Form Number: 3–177 and 3–177a.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; and government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response (minutes)	Total annual burden hours *
3–177 Hard Copy—Upon Import (and accompanying documents)				
Individuals	5,405	6,485	15	1,621
Private Sector	193	746	15	187
Government	0	0	15	0
Subtotals:	*5,598*	*7,231*	.....	*1,808*

Requirement	Annual number of respondents	Total annual responses	Completion time per response (minutes)	Total annual burden hours *
3–177 Hard Copy—Upon Export (and accompanying documents)				
Individuals	442	523	15	131
Private Sector	96	731	15	183
Government	0	0	15	0
Subtotals:	*538*	*1,254*		*314*
3–177 eDecs/ACE—Upon Import (and Accompanying Documents)				
Individuals	1,054	22,455	10	3,743
Private Sector	5,968	114,812	10	19,135
Government	2	139	10	23
Subtotals:	*7,024*	*137,406*		*22,901*
3–177 eDecs—Upon Export (and Accompanying Documents)				
Individuals	449	2,114	10	352
Private Sector	1,373	32,952	10	5,492
Government	2	109	10	18
Subtotals:	*1,824*	*35,175*		*5,863*
eDecs—Confirmation Number (Automated Export System (AES))				
Private Sector	1,824	35,175	1	586
Automated Commercial Environment (ACE)/AES Disclaimer (and Accompanying Documents)				
Private Sector	5,000	500,000	1	8,333
eDecs—Fee Exemption Certification				
Private Sector	33	2,221	1	37
Total	21,841	718,462		39,841

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: January 29, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–00622 Filed 1–31–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.19.GG00.996.00 OMB Control Number 1028–0051/Renewal]

Agency Information Collection Activities; Earthquake Hazards Program Research and Monitoring

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection as part of our continuing efforts to reduce paperwork and respondent burden. This collection is set to expire on April 30, 2019.

DATES: Interested persons are invited to submit comments on or before April 2, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0051 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jill M. Franks, by email at *jfranks@usgs.gov* or by telephone at 703–648–6716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: Research and monitoring findings are essential to fulfilling the U.S. Geological Survey's (USGS) responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and record earthquake activity nationwide. Residents, emergency responders, and engineers rely on the USGS for this accurate and scientifically sound information. The USGS Earthquake Hazards Program funds external investigators to carry out these important activities. In response to our Program Announcements, investigators submit proposals for research and monitoring activities on earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS's Earthquake Hazards Program objectives. Final reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards of a two- to five-year duration. Final reports are made available to the public at the website *http://earthquake.usgs.gov/research/external/.*

Title of Collection: Earthquake Hazards Program Research and Monitoring.

OMB Control Number: 1028–0051.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Research scientists, engineers, and the general public.

Total Estimated Number of Annual Respondents: 370.

Total Estimated Number of Annual Responses: 370 in total, consisting of 250 applications and narratives and 120 final and annual reports.

Estimated Completion Time per Response: 45 hours per proposal application response and 12 hours per final or annual progress report.

Total Estimated Number of Annual Burden Hours: 12,450 (11,250 hours per application and 1,200 hours per final or annual progress report).

Respondent's Obligation: Final reports of research and monitoring findings are required to obtain future awards. Annual progress reports for multi-year awards are required to obtain funding for the following year.

Frequency of Collection: Final reports are required once at the end of the awards period of performance. Progress reports are required annually for awards of a two- to five-year duration.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour cost'' burdens associated with this IC.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Trent Richardson,

Deputy Associate Director, Natural Hazards Mission Area.

[FR Doc. 2019–00607 Filed 1–31–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 573 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes. The list is updated from the notice published on July 23, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 3645–MIB, 1849 C Street NW, Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8. Published below is an updated list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska. Amendments to the list include formatting edits, name changes, and name corrections. The list is updated from the notice published on July 23, 2018 (83 FR 34863).

To aid in identifying Tribal name changes and corrections, the Tribe's previously listed or former name is included in parentheses after the correct current Tribal name. We will continue to list the Tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes. We have continued the practice of listing the Alaska Native entities separately for the purpose of facilitating identification of them.

Dated: December 20, 2018.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)
Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)
Alabama-Quassarte Tribal Town
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapaho Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California

Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahto Tribe of the Laytonville Rancheria
Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation
Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickahominy Indian Tribe
Chickahominy Indian Tribe—Eastern Division
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)
Chitimacha Tribe of Louisiana
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish and Kootenai Tribes of the Flathead Reservation
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
Cowlitz Indian Tribe
Coyote Valley Band of Pomo Indians of California
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Crow Tribe of Montana
Delaware Nation, Oklahoma
Delaware Tribe of Indians
Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians
Eastern Shawnee Tribe of Oklahoma
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)
Houlton Band of Maliseet Indians
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)

Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)
Jamestown S'Klallam Tribe
Jamul Indian Village of California
Jena Band of Choctaw Indians
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation
Karuk Tribe (previously listed as the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Klamath Tribes
Kletsel Dehe Band of Wintun Indians (previously listed as the Cortina Indian Rancheria and the Cortina Indian Rancheria of Wintun Indians of California)
Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)
Los Coyotes Band of Cahuilla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation
Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)
Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.)
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut)
Monacan Indian Nation
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)
Nansemond Indian Nation (previously listed as the Nansemond Indian Tribe)
Narragansett Indian Tribe
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho)
Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)
Nooksack Indian Tribe
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie))
Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)
Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)
Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)
Oneida Indian Nation (previously listed as the Oneida Nation of New York)
Onondaga Nation
Otoe-Missouria Tribe of Indians, Oklahoma
Ottawa Tribe of Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California)
Pamunkey Indian Tribe
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California

Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Nation (previously listed as the Penobscot Tribe of Maine)
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)
Potter Valley Tribe, California
Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation
Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
Rappahannock Tribe, Inc.
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Sac & Fox Tribe of the Mississippi in Iowa
Saginaw Chippewa Indian Tribe of Michigan
Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians
of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe
Sault Ste. Marie Tribe of Chippewa Indians, Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shinnecock Indian Nation
Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
Shoshone-Bannock Tribes of the Fort Hall Reservation
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
Skull Valley Band of Goshute Indians of Utah
Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation
Squaxin Island Tribe of the Squaxin Island Reservation
St. Croix Chippewa Indians of Wisconsin
Standing Rock Sioux Tribe of North & South Dakota
Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)
Stockbridge Munsee Community, Wisconsin
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation
Susanville Indian Rancheria, California
Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria (previously listed as the Table Mountain Rancheria of California)

Tejon Indian Tribe
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
The Chickasaw Nation
The Choctaw Nation of Oklahoma
The Modoc Tribe of Oklahoma
The Muscogee (Creek) Nation
The Osage Nation (previously listed as the Osage Tribe)
The Quapaw Tribe of Indians
The Seminole Nation of Oklahoma
Thlopthlocco Tribal Town
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Timbisha Shoshone Tribe (previously listed as the Death Valley Timbi-sha Shoshone Tribe and the Death Valley Timbi-Sha Shoshone Band of California)
Tohono O'odham Nation of Arizona
Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)
Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)
Tule River Indian Tribe of the Tule River Reservation, California
Tunica-Biloxi Indian Tribe
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Mattaponi Tribe
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah)
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Algaaciq Native Village (St. Mary's)
Allakaket Village
Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)
Angoon Community Association
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Atqasuk Village (Atkasook)
Beaver Village
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes
Chalkyitsik Village
Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Chuloonawick Native Village
Circle Native Community
Craig Tribal Association (previously listed as the Craig Community Association)
Curyung Tribal Council
Douglas Indian Association
Egegik Village
Eklutna Native Village
Emmonak Village
Evansville Village (aka Bettles Field)
Galena Village (aka Louden Village)
Gulkana Village Council (previously listed as Gulkana Village)
Healy Lake Village
Holy Cross Tribe (previously listed as the Holy Cross Village)
Hoonah Indian Association
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council
Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)
Kaguyak Village
Kaktovik Village (aka Barter Island)
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Koyukuk Native Village
Levelock Village
Lime Village
Manley Hot Springs Village
Manokotak Village
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Naknek Native Village
Native Village of Afognak
Native Village of Akhiok
Native Village of Akutan
Native Village of Aleknagik
Native Village of Ambler
Native Village of Atka
Native Village of Barrow Inupiat Traditional Government
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Native Village of Chignik Lagoon
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Native Village of Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Native Village of Eagle

Native Village of Eek
Native Village of Ekuk
Native Village of Ekwok (previously listed as Ekwok Village)
Native Village of Elim
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hamilton
Native Village of Hooper Bay
Native Village of Kanatak
Native Village of Karluk
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kivalina
Native Village of Kluti Kaah (aka Copper Center)
Native Village of Kobuk
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut (aka Nooiksut)
Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Native Village of Ouzinkie
Native Village of Paimiut
Native Village of Perryville
Native Village of Pilot Point
Native Village of Pitka's Point
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin
Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Tyonek
Native Village of Unalakleet
Native Village of Unga
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Nikolai Village
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunakauyarmiut Tribe
Organized Village of Grayling (aka Holikachuk)
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmiut Traditional Native Council (previously listed as Orutsararmuit Native Village (aka Bethel))
Oscarville Traditional Village
Pauloff Harbor Village
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Platinum Traditional Village
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Salamatof Tribe (previously listed as the Village of Salamatoff)
Seldovia Village Tribe
Shageluk Native Village
Sitka Tribe of Alaska
Skagway Village
South Naknek Village
Stebbins Community Association
Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)
Takotna Village
Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Telida Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Village
Umkumiut Native Village (previously listed as Umkumiute Native Village)
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmautluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Red Devil
Village of Sleetmute
Village of Solomon
Village of Stony River
Village of Venetie (See Native Village of Venetie Tribal Government)
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe
Yupiit of Andreafski

[FR Doc. 2019–00897 Filed 1–30–19; 4:15 pm]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.18X.LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by March 4, 2019.

ADDRESSES: You may obtain a copy of the plats from the Alaska Public Information Center at the BLM Alaska State Office, 222 W 7th Avenue, Anchorage, AK 99513, upon required payment. You may view the plats at this location at no cost. Please use this address when filing written protests.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of

Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

T. 9 N, R. 2 W, accepted September 28, 2018
T. 12 N, R. 8 E, accepted November 8, 2018

Fairbanks Meridian, Alaska

T. 1 N, R. 24 W, accepted November 14, 2018
T. 1 N, R. 25 W, accepted November 14, 2018
T. 1 N, R. 26 W, accepted November 14, 2018
T. 2 N, R. 26 W, accepted November 14, 2018
T. 3 N, R. 26 W, accepted November 14, 2018
T. 4 N, R. 26 W, accepted November 14, 2018
T. 5 N, R. 18 W, accepted November 14, 2018
T. 5 N, R. 19 W, accepted November 14, 2018
T. 7 S, R. 25 E, accepted November 14, 2018

Seward Meridian, Alaska

T. 22 S, R. 50 W, accepted November 8, 2018

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2019–00724 Filed 1–31–19; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–TUSK–27017; PX.XLKTUSK15.00.1]

Request for Nominations for the Tule Springs Fossil Beds National Monument Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Tule Springs Fossil Beds National Monument Advisory Council (Council).

DATES: Written nominations must be postmarked by March 4, 2019.

ADDRESSES: Nominations should be sent to Diane Keith, Superintendent, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, Nevada 89005, via telephone (702) 515–5462, or email at *tusk_information@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Keith, Superintendent, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 515–5462, or email at *tusk_information@nps.gov.*

SUPPLEMENTARY INFORMATION: The Council was established by section 3092(a)(6) of Public Law 113–291, and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The purpose of the Council is to provide the Secretary of the Interior (Secretary) and NPS guidance for the management of the Monument.

The Council is composed of 10 members, appointed by the Secretary to 3-year terms, and consists of the following members: One representative of the County Commission; one representative appointed by the city council of Las Vegas, Nevada; one representative appointed by the city council of North Las Vegas, Nevada; one member appointed by the tribal council of the Las Vegas Paiute Tribe; one representative of the conservation community in southern Nevada; one representative of Nellis Air Force Base; one member who resides in the County and has a background that reflects the purpose for which the Monument was established; and two members who reside in the County or adjacent counties, both of whom shall have experience in the field of paleontology, obtained through higher education, experience, or both.

We are currently seeking members in all categories. Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Council and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the same nomination process. Members may not appoint deputies or alternates.

Members of the Council serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Council as approved by the Designated Federal Officer, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of Title 5 of the United States Code.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination 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.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2019–00703 Filed 1–31–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Sinclair Broadcast Group, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and a Competitive Impact Statement as to Nexstar Media Group, Inc. (''Nexstar'') have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Sinclair Broadcast Group, Inc., et al.,* Civil Action No. 1:18–cv–2609. On December 13, 2018, the United States filed an Amended Complaint alleging that Nexstar, Sinclair Broadcast Group, Inc., Raycom Media, Inc., Tribune Media Company, Meredith Corporation, Griffin Communications, LLC, and Dreamcatcher Broadcasting, LLC violated Section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing to unlawfully exchange station-specific, competitively sensitive information regarding spot advertising revenues. The proposed Final Judgment as to Nexstar, filed at the same time as the Complaint, prohibits sharing of competitively sensitive information, require Nexstar to implement antitrust compliance training programs, and impose cooperation and reporting requirements on Nexstar.

Copies of the Amended Complaint, proposed Final Judgment, Stipulation and Competitive Impact Statement as to Nexstar are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Owen Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202–616–5935).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

United States of America, 450 Fifth Street NW, Washington, DC 20530; Plaintiff, v. *Sinclair Broadcast Group, Inc., 10706 Beaver Dam Road, Hunt Valley, Maryland 21030; Raycom Media, Inc., 201 Monroe Street, Montgomery, AL 36104; Tribune Media Company, 435 North Michigan Avenue, Chicago, IL 60611; Meredith Corporation, 1716 Locust Street, Des Moines, IA 50309; Griffin Communications, LLC, 7401 N Kelley Avenue, Oklahoma City, OK 73111; Dreamcatcher Broadcasting, LLC, 2016 Broadway, Santa Monica, CA 90404;* and *Nexstar Media Group, Inc., 545 E John Carpenter Freeway, Suite 700, Irving, TX 75062,* Defendants.

Case No. 1:18–cv–2609–TSC

AMENDED COMPLAINT

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendants Sinclair Broadcast Group, Inc. (''Sinclair''), Raycom Media, Inc. (''Raycom''), Tribune Media Company (''Tribune''), Meredith Corporation (''Meredith''), Griffin Communications, LLC (''Griffin''), Dreamcatcher Broadcasting, LLC (''Dreamcatcher''), and Nexstar Media Group, Inc. (''Nexstar'') alleging as follows:

I. NATURE OF THE ACTION

1. This action challenges under Section 1 of the Sherman Act Defendants' agreements to unlawfully exchange competitively sensitive information among broadcast television stations.

2. Sinclair, Raycom, Tribune, Meredith, Griffin, Dreamcatcher, and Nexstar (''Defendants'') and certain other television broadcast station groups (''Other Broadcasters'') compete in various configurations in a number of designated marketing areas (''DMAs'') in the market for broadcast television spot advertising. Certain national sales representation firms (''Sales Rep Firms'') represent broadcast station groups, including the Defendants, in their sales of spot advertising to advertisers. Defendants', Other Broadcasters', and Sales Rep Firms' concerted behavior in exchanging competitively sensitive information has enabled the Defendants and Other Broadcasters to reduce competition in the sale of broadcast television spot advertising where they purport to compete head to head.

3. Defendants' agreements are restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court should therefore enjoin Defendants from exchanging competitively sensitive information with and among competing broadcast television stations.

II. JURISDICTION AND VENUE

4. Each Defendant sells spot advertising to advertisers throughout the United States, or owns and operates broadcast television stations in multiple states or in DMAs that cross state lines. Sales Rep Firms represent broadcast stations throughout the United States, including each of the Defendants, in the sale of spot advertising to advertisers throughout the United States. Such activities, including the exchanges of competitively sensitive information featured in this Complaint, are in the flow of and substantially affect interstate commerce. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. § 4, and under 28 U.S.C. §§ 1331 and 1337, to prevent and restrain the Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. Defendants have consented to venue and personal jurisdiction in this District. Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391.

III. DEFENDANTS

6. Defendant Sinclair is a Maryland corporation with its principal place of business in Hunt Valley, Maryland. Sinclair owns or operates 130 television stations in 87 DMAs and had over $2.7 billion in revenues in 2017.

7. Defendant Raycom is a Delaware corporation with its principal place of business in Montgomery, Alabama. Raycom owns or operates 55 television stations in 43 DMAs and had over $670 million in revenues in 2017.

8. Defendant Tribune is a Delaware corporation with its principal place of business in Chicago, Illinois. Tribune owns or operates 41 television stations in 31 DMAs and had over $1.8 billion in revenues in 2017.

9. Defendant Meredith is an Iowa corporation with its principal place of business in Des Moines, Iowa. Meredith owns or operates 17 television stations in 12 DMAs and had over $1.7 billion in revenues in 2017.

10. Defendant Griffin is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. Griffin owns or operates four television stations in two DMAs and had over $60 million in revenues in 2017.

11. Defendant Dreamcatcher is a Delaware corporation with its principal place of business in Santa Monica, California. Dreamcatcher owns or operates three television stations in two DMAs and had over $50 million in revenues in 2017.

12. Defendant Nexstar is a Delaware corporation with its principal place of business in Irving, Texas. Nexstar owns or operates 105 television stations in 93 DMAs and had over $1.2 billion in revenues in 2017.

IV. INDUSTRY BACKGROUND

13. Broadcast television is important to both viewers and advertisers. For viewers, broadcast stations, including local affiliates of ABC, CBS, FOX, and NBC (collectively, the ''Big 4'' stations), offer not only highly rated entertainment and sports programming, but also local reporting of the news and events in their own communities and

regions. The wide popularity of broadcast station programming—and the concomitant opportunity to reach a large local audience—also make broadcast television critical to advertisers, including local businesses that seek to reach potential customers in their own communities.

14. Broadcast stations sell advertising ''spots'' during breaks in their programming. An advertiser purchases spots from a broadcast station to communicate its message to viewers within the DMA in which the broadcast television station is located.

15. Broadcast stations typically divide their sale of spot advertising into two categories: local sales and national sales. Local sales are sales a broadcast station makes through its own local sales staff, typically to advertisers located within the DMA. National sales are sales a broadcast station makes through either a Sales Rep Firm or through a centrally located broadcast group staff, typically to regional or national advertisers.

16. Sales Rep Firms represent broadcast stations in negotiations with advertisers' or advertisers' agents regarding the sale of broadcast stations' spot advertising. There are two primary Sales Rep Firms in the United States. Often a Sales Rep Firm represents two or more competing stations in the same DMA. In those cases, the Sales Rep Firms purportedly erect firewalls to prevent coordination and information sharing between sales teams representing competing stations.

V. THE UNLAWFUL AGREEMENTS

17. Defendants and Other Broadcasters have agreed in many DMAs across the United States to reciprocally exchange revenue pacing information. Certain Defendants also engaged in the exchange of other forms of competitively sensitive sales information in certain DMAs. Pacing compares a broadcast station's revenues booked for a certain time period to the revenues booked for the same point in time in the previous year. Pacing indicates how each station is performing versus the rest of the market and provides insight into each station's remaining spot advertising inventory for the period.

18. Defendants' exchange of competitively sensitive information has taken at least two forms.

19. First, Defendants and Other Broadcasters regularly exchanged pacing information through the Sales Rep Firms. At least once per quarter, but frequently more often, the Sales Rep Firms representing the Big 4 stations in a DMA exchanged real-time pacing information regarding each station's revenues, and reported the information to the Defendants and the other Big 4 station owners in the DMA. Typically, the exchanges included data on individual stations' booked sales for current and future months as well as a comparison to past periods. To the extent a Sales Rep Firm represents more than one Big 4 station in a DMA through sales teams separated by a supposed firewall, the exchange of pacing and other competitively sensitive information occurred between the sales teams and through those firewalls. Once given to the Defendants and Other Broadcasters in the DMA, the competitors' pacing information was then disseminated to the stations' sales managers and other individuals with authority over pricing and sales for the broadcast stations. These exchanges occurred with Defendants' knowledge and frequently at Defendants' instruction, and occurred in DMAs across the United States.

20. Second, in some DMAs, Defendants and Other Broadcasters exchanged competitively sensitive information, including real-time pacing information for booked sales for current and future months, directly between broadcast station employees. These exchanges predominantly concerned local sales, but sometimes pertained to all sales or national sales.

21. These exchanges of pacing information allowed stations to better understand, in real time, the availability of inventory on competitors' stations, which is often a key factor affecting negotiations with buyers over spot advertising prices. The exchanges also helped stations to anticipate whether competitors were likely to raise, maintain, or lower spot advertising prices. Understanding competitors' pacing can help stations gauge competitors' and advertisers' negotiation strategies, inform their own pricing strategies, and help them resist more effectively advertisers' attempts to obtain lower prices by playing stations off of one another. Defendants' information exchanges therefore distorted the normal price-setting mechanism in the spot advertising market and harmed the competitive process.

22. Defendants' and Other Broadcasters' regular information exchanges, directly and through the Sales Rep Firms, reflect concerted action between horizontal competitors in the broadcast television spot advertising market.

VI. VIOLATION ALLEGED

(Violation of Section 1 of the Sherman Act)

23. The United States repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

24. Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing to exchange competitively sensitive information, either directly or through Sales Rep Firms. Defendants' exchange of pacing information resulted in anticompetitive effects in the broadcast television spot advertising markets in many DMAs throughout the United States.

25. The scheme consists of exchanges between Defendants and Other Broadcasters, either directly or through the Sales Rep Firms, in many DMAs, of their stations' revenue pacing information or, for certain Defendants in certain DMAs, other competitively sensitive information concerning spot advertising sales.

26. These unlawful information sharing agreements between Defendants, Other Broadcasters, and Sales Rep Firms have had, and likely will continue to have, anticompetitive effects in spot advertising markets by disrupting the normal mechanisms for negotiating and setting prices and harming the competitive process.

27. Defendants' agreements to exchange competitively sensitive information are unreasonable restraints of interstate trade and commerce. This offense is likely to continue and recur unless the requested relief is granted.

VII. REQUESTED RELIEF

28. The United States requests that the Court:

a. adjudge that the information sharing agreements unreasonably restrain trade and are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. permanently enjoin and restrain Defendants from sharing pacing or other competitively sensitive information or agreeing to share such information with any other broadcast station or broadcast station group, directly or indirectly, and requiring Defendants to take such internal measures as are necessary to ensure compliance with that injunction;

c. award the United States the costs of this action; and

d. award such other relief to the United States as the Court may deem just and proper.

Dated: December 13, 2018

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA,

Makan Delrahim (D.C. Bar #457795),

Assistant Attorney General for Antitrust.

William J. Rinner,

Acting Chief of Staff and Senior Counsel.

Patricia A. Brink,

Director of Civil Enforcement.

Owen M. Kendler,

Chief, Media, Entertainment & Professional Services Section

Yvette Tarlov (D.C. Bar #442452),

Assistant Chief, Media, Entertainment & Professional Services Section.

Lee F. Berger (D.C. Bar #482435), Richard A. Hellings, Jr., Gregg Malawer (D.C. Bar # 481685), Bennett J. Matelson (D.C. Bar #454551),

Monsura A. Sirajee,

United States Department of Justice, Antitrust Division, Media, Entertainment & Professional Services Section, 450 Fifth Street NW, Suite 4000, Washington, DC 20530, Telephone: (202) 514–0230, Facsimile: (202) 514–7308.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.,* Defendants.

Case No. 1:18–cv–2609
Judge: Tanya S. Chutkan

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Amended Complaint on December ___, 2018, alleging that Defendant Nexstar Media Group, Inc., among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or

admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. *See* 28 U.S.C. § 1331.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Advertiser'' means an advertiser, an advertiser's buying agent, or an advertiser's representative.

B. ''Agreement'' means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. ''Communicate,'' ''Communicating,'' and ''Communication(s)'' means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. ''Competitively Sensitive Information'' means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. ''Cooperative Agreement'' means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. ''Defendant'' means Nexstar Media Group, Inc., a Delaware corporation with its headquarters in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. ''DMA'' means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018.*

H. ''Management'' means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant's business or operations related to the sale of spot advertising on any Station.

I. ''Non-Public Information'' means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station's future holding capacity is Non-Public Information, but measurement or quantification of a Station's past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. ''Sales Representative Firm'' means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. ''Sales Representative Firm Manager'' means, for each of Defendant's Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. ''Sales Staff'' means Defendant's employees with responsibility for the sale of spot advertising on any Station.

N. ''Station'' means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

III. APPLICABILITY

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant's actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

IV. PROHIBITED CONDUCT

A. Defendant's Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant's Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant's instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgement of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgement of Applicability may agree to void the Acknowledgement of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant's Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably

necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;

ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and

iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

i. identify and describe, with specificity, the collaboration to which it is ancillary;

ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;

iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;

iv. contain a specific termination date or event; and

v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a ''legitimate competitor collaboration'' under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgement, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to

comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgement, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and V(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of ''Defendant'' in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term ''potential violation'' as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work product doctrine, to the United States regarding the Communicating of Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII

shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment no longer is necessary or in the public interest.

XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant):

Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, DC 20530

XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this ____ day of _____, 201____.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

EXHIBIT 1

[Company Letterhead]
[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

Employee Certification

I, _____ [name], _____ [position] at _____ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name:
Date:

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.,* Defendants.

Case No. 1:18–cv–2609
Judge: Tanya S. Chutkan

ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [*Full Buyer Name*], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees (''Acquirer''), following consummation of the Acquirer's acquisition of [*insert names of station or stations acquired*] (each, an ''Acquired Station''), is bound by the Final Judgment entered by this Court on [date] (''Final Judgment''), as if the Acquirer were a Defendant under the Final Judgment, as follows:

1. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

2. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final

Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

3. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

4. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

5. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2),VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

6. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

[Counsel for Acquirer]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Sinclair Broadcast Group, Inc., Raycom Media, Inc., Tribune Media Company, Meredith Corporation, Griffin Communications, LLC, Dreamcatcher Broadcasting, LLC,* and *Nexstar Media Group, Inc.,* Defendants.

Case No. 1:18–cv–2609–TSC
Judge: Tanya S. Chutkan

COMPETITIVE IMPACT STATEMENT AS TO DEFENDANT NEXSTAR MEDIA GROUP, INC.

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment against Defendant Nexstar Media Group, Inc. (''Nexstar''), submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 13, 2018, the United States filed a civil antitrust complaint alleging that six Defendants agreed among themselves and other broadcast television stations in many local markets to reciprocally exchange station-specific, competitively sensitive information regarding spot advertising revenues. The Complaint alleges those Defendants' agreements are unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to prevent those Defendants from exchanging competitively sensitive information with and among competing broadcast television stations. On December 13, 2018, the United States filed an Amended Complaint, adding Nexstar as a Defendant. Besides this addition, the Amended Complaint is the same as the Complaint in all material respects.

Along with the Amended Complaint, the United States filed a proposed Final Judgment for Nexstar. The proposed Final Judgment prohibits sharing of competitively sensitive information, requires Nexstar to implement antitrust compliance training programs, and imposes cooperation and reporting requirements.

The United States and Nexstar have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. *Industry Background*

Broadcast television stations sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television ''spot'' advertising,[1] which typically comprises the majority of a station's revenues, is sold directly by the station itself or through its sales representatives to advertisers who want to target viewers in specific geographic areas called Designated Market Areas (''DMAs'').[2]

Broadcast stations typically make their spot advertising sales through two channels: (1) local sales, which are sales made by the station's own local sales staff to advertisers who are usually located within the DMA; and (2) national sales, which are sales made either by the broadcast group's national sales staff or by a national sales representative firm (''Sales Rep Firm'') to regional or national advertisers.

Nexstar owns or operates 105 broadcast television stations in 93 DMAs.

Nexstar, along with certain other television broadcast station groups, compete in various configurations in multiple DMAs across the United States. Nexstar sells spot advertising time to advertisers that seek to target viewers in the DMAs in which Nexstar operates. Prices are individually negotiated with advertisers, and advertisers are able to ''play off'' the stations against each other to obtain competitive rates.

There are two primary Sales Rep Firms in the United States today, and each represents hundreds of television stations throughout the country in the sale of national advertising time. It is common for one Sales Rep Firm to represent multiple competing stations in the same DMA. In such cases, the stations and the Sales Rep Firms purportedly create firewalls to prevent coordination and information sharing between the sales teams representing competing stations.

B. The Exchanges of Competitively Sensitive Information

The Amended Complaint alleges that Nexstar and other broadcasters have agreed in many DMAs to reciprocally exchange station-specific revenue pacing data. Revenue pacing data compares a station's revenues booked for a certain time period to the revenues booked for the same point in time in the previous year, indicating how each station is performing versus the rest of the market and providing insight into each station's remaining spot advertising inventory for the current period or future periods. The exchanges were systematic and typically included non-public pacing data on national revenues, local revenues, or both, depending on the DMA. The Amended Complaint further alleges that Nexstar engaged in the exchange of other forms of competitively sensitive information relating to spot advertising in certain DMAs.

The Amended Complaint alleges that Nexstar exchanged pacing information in at least two ways. First, Nexstar and other television broadcast stations exchanged information through the Sales Rep Firms. The information was passed both within and between Sales Rep Firms representing competing stations, and was done with Nexstar's knowledge and frequently at Nexstar's instruction. Second, in some DMAs, Nexstar and other broadcasters exchanged pacing information directly between local station employees.

The Amended Complaint alleges that these exchanges of pacing information allowed stations to better understand, in real time, the availability of inventory on competitors' stations, which is often a key factor affecting negotiations with buyers over spot advertising prices. The exchanges also helped stations to anticipate whether competitors were likely to raise, maintain, or lower spot advertising prices. Understanding competitors' pacing can help stations gauge competitors' and advertisers' negotiation strategies, inform their own pricing strategies, and help them resist more

[1] Spot advertising differs from other types of television advertising, such as network and syndicated television advertising, which are sold by television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired.

[2] A DMA is a geographical unit designated by the A.C. Nielsen Company, a company that surveys television viewers and furnishes data to aid in evaluating television audiences. There are 210 DMAs in the United States. DMAs are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition.

effectively advertisers' attempts to obtain lower prices by playing stations off of one another. Nexstar's information exchanges therefore distorted the normal price-setting mechanism in the spot advertising market and harmed the competitive process within the affected DMAs.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment closely track the relief sought in the Amended Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Nexstar and its employees and sales representatives will not impede competition by sharing competitively sensitive information, directly or indirectly, including through Sales Rep Firms, with its rival broadcast television stations. The requirements and prohibitions in the proposed Final Judgment will terminate Nexstar's illegal conduct, prevent recurrence of the same or similar conduct, ensure that Nexstar establishes an antitrust compliance program, and provides the United States with cooperation in its ongoing investigation. The proposed Final Judgment protects competition and consumers by putting a stop to the anticompetitive information sharing alleged in the Amended Complaint.

A. *Prohibited Conduct*

The proposed Final Judgment broadly prohibits Nexstar from sharing competitively sensitive information with rival broadcast television stations in the same DMA. Specifically, Section IV ensures that Nexstar will not, directly or indirectly, communicate competitively sensitive information, including pricing or pricing strategies, pacing, holding capacity, revenues, or market shares, to broadcast television stations in the same DMA or to those stations' sales representatives and agents.

The proposed Final Judgment provides that its provisions will apply to stations owned by Nexstar even if Nexstar sells those stations to new buyers. In particular, Paragraph IV(C) provides that Nexstar may not sell any stations it owns as of October 1, 2018, unless the buyer has executed an Acknowledgement that each station will continue to be bound by the terms of the proposed Final Judgment. The United States, in its discretion, may waive this requirement on a station-by-station basis, or alternatively the buyer and the United States may agree to void the Acknowledgement after the sale has been consummated.

B. *Conduct Not Prohibited*

Section V makes clear that the proposed Final Judgment does not prohibit Nexstar from sharing or receiving competitively sensitive information in certain specified circumstances where the information sharing appears unlikely to cause harm to competition. Paragraph V(A) allows Nexstar to communicate competitively sensitive information to advertising customers or prospective customers. Paragraph V(B) allows for the communication of competitively sensitive information with other broadcasters (i) for purposes of evaluating or effectuating a transaction, such as the purchase or sale of a station; or (ii) when reasonably necessary for achieving the efficiencies of a legitimate collaboration among competitors, such as a lawful joint venture.[3] Paragraph V(C) confirms that the proposed Final Judgment does not prohibit petitioning conduct protected by the Noerr-Pennington doctrine. Paragraph V(D) permits the exchange of competitively sensitive information through certain third-party aggregation services under the conditions listed in that paragraph, including that the aggregated data does not permit individual stations to identify, deduce, or estimate the prices or pacing of their competitors.

C. *Antitrust Compliance Obligations*

Under Section VI of the proposed Final Judgment, Nexstar must designate an Antitrust Compliance Officer who is responsible for implementing training and antitrust compliance programs and ensuring compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment and ensure that training on the Final Judgment and the antitrust laws is provided to Nexstar's management and sales staff. Section VI also requires Nexstar to establish an antitrust whistleblower policy and remedy and report violations of the Final Judgment. Under Paragraph VI(D)(4), Nexstar, through its CEO, General Counsel, or Chief Legal Officer, must certify annual compliance with the Final Judgment. This compliance program is necessary in light of the extensive history of communications among rival stations that facilitated Nexstar's agreements.

D. *Defendants' Cooperation*

As outlined in Section VII, Nexstar must cooperate fully and truthfully with the United States in any investigation or litigation relating to the sharing of competitively sensitive information in the broadcast television industry. The required cooperation may include providing sworn testimony, employee interviews, and/or documents and data.

Paragraph VII(C) provides that, subject to Nexstar's truthful and continuing cooperation as defined in Paragraphs VII(A) and (B), the United States will not bring further civil actions or criminal charges against Nexstar for any agreement to share competitively sensitive information with any other station or Sales Rep Firm when the agreement: (1) was entered into and terminated before the date of the filing of the Complaint and (2) does not constitute or include an agreement to fix prices or divide markets.

[3] Paragraph V(B)(5) states that, for purposes of Paragraph V(B) only, certain types of Joint Sales Agreements, Local Marketing Agreements, and similar agreements qualify as a ''legitimate competitor collaboration'' under Paragraph V(B)(b). Paragraph V(B)(5) was included in recognition of the fact that some broadcasters have entered into a number of these agreements in various DMAs. The question of whether these agreements have any effect on competition was outside the scope of the United States' investigation in this matter. Accordingly, Paragraph V(B)(5) should not be read as an admission that such agreements otherwise comply with the antitrust laws, and the United States takes no position on that question for purposes of this proceeding.

E. *Enforcement of Final Judgment*

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Nexstar has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Nexstar has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph X(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition the United States alleged was harmed by Nexstar's challenged conduct. Nexstar agrees that it will abide by the proposed Final Judgment, and that it may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face, and as interpreted in light of this procompetitive purpose.

Paragraph X(C) further provides that, should the Court find in an enforcement proceeding that Nexstar has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph X(C) provides that in any successful effort by the United States to enforce the Final Judgment against Nexstar, whether litigated or resolved before litigation, Nexstar agrees to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section XI of the proposed Final Judgment provides that the Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Nexstar that the continuation of the Final Judgments is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the

proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Nexstar.

V. Procedures Available for Modification of the Proposed Final Judgments

The United States and Nexstar have stipulated that the Court may enter the proposed Final Judgment after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Owen M. Kendler, Chief, Media, Entertainment, & Professional Services Section, Antitrust Division, United States Department of Justice, 450 5th Street NW, Suite 4000, Washington, DC 20530

Under Section IX, the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking injunctive relief against Nexstar's conduct through a full trial on the merits. The United States is satisfied, however, that the relief sought in the proposed Final Judgment will terminate the anticompetitive conduct alleged in the Complaint and more quickly restore the benefits of competition to advertisers. Thus, the proposed Final Judgment would achieve the relief the United States might have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgments

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.,* 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes

[4] *See also BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76. *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 13, 2018

Respectfully submitted,

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[5] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gray Television, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gray Television, Inc., et al.,* Civil Action No. 1:18–cv–2951 (CRC). On December 14, 2018, the United States filed a Complaint alleging that the proposed merger between Gray Television, Inc., and Raycom Media, Inc., would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Gray and Raycom to divest certain broadcast television stations in Waco-Temple-Bryan, Texas; Tallahassee, Florida-Thomasville, Georgia; Toledo, Ohio; Odessa-Midland, Texas; Knoxville, Tennessee; Augusta, Georgia; Panama City, Florida; Dothan, Alabama; and Albany, Georgia.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *https://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Owen Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202–305–8376).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, 450 Fifth Street NW, Washington, DC 20530. Plaintiff, v. *GRAY TELEVISION, INC. 4370 Peachtree Road NE Atlanta, Georgia 30319; and RAYCOM MEDIA, INC. RSA Tower 20th Floor 201 Monroe Street Montgomery, Alabama 36104 Defendants.*

Case No. 1:18–cv–2951
Judge Christopher R. Cooper

COMPLAINT

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action against Gray Television, Inc. (''Gray'') and Raycom Media, Inc. (''Raycom'') to enjoin Gray's proposed merger with Raycom. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an Agreement and Plan of Merger dated June 23, 2018, Gray plans to acquire Raycom through a merger transaction for approximately $3.6 billion in cash and stock.

2. The proposed merger would combine two of the largest independent local television station owners in the United States and would combine many popular local television stations that compete against each other today in several markets, likely resulting in significant harm to competition.

3. In nine Designated Market Areas (''DMAs''), Gray and Raycom each own at least one broadcast television station that is an affiliate of one of the ''Big 4'' television networks: NBC, CBS, ABC, or FOX.

4. These nine ''Overlap DMAs'' are: (i) Waco-Temple-Bryan, Texas; (ii) Tallahassee, Florida-Thomasville, Georgia; (iii) Toledo, Ohio; (iv) Odessa-Midland, Texas; (v) Knoxville, Tennessee; (vi) Augusta, Georgia; (vii) Panama City, Florida; (viii) Dothan, Alabama; and (ix) Albany, Georgia.

5. In each Overlap DMA, the proposed merger would eliminate competition between Gray and Raycom in (i) the licensing of Big 4 network content (''retransmission consent'') to cable, satellite, and fiber optic television providers (referred to collectively as multichannel video programming distributors, or ''MVPDs''), for distribution to their subscribers; and (ii) the sale of spot advertising to advertisers interested in reaching viewers in the DMA.

6. By eliminating a major competitor, the merger would likely give Gray the power to charge MVPDs higher fees for its programming—fees that those companies would likely pass on, in large measure, to their subscribers. Additionally, the merger would likely allow Gray to charge local businesses and other advertisers higher prices to reach audiences in the Overlap DMAs.

7. As a result, the proposed merger of Gray and Raycom likely would substantially

lessen competition in the markets for licensing Big 4 television retransmission consent in the Overlap DMAs, and selling broadcast television spot advertising in the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. THE DEFENDANTS

8. Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 92 television stations in 56 DMAs, of which 83 stations are Big 4 affiliates. In 2017, Gray reported revenues of $883 million.

9. Raycom is a Delaware corporation with its headquarters in Montgomery, Alabama. Raycom owns 51 television stations in 43 DMAs, of which 45 stations are Big 4 affiliates. In 2017, Raycom earned revenues of more than $1 billion.

III. JURISDICTION AND VENUE

10. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Defendants license Big 4 television retransmission consent to MVPDs, and sell broadcast television spot advertising to businesses (either directly or through advertising agencies), in the flow of interstate commerce, and such activities substantially affect interstate commerce.

13. Gray and Raycom have consented to venue and personal jurisdiction in this judicial district. Both companies transact business in this district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(1) and (c).

IV. BIG 4 TELEVISION RETRANSMISSION CONSENT MARKETS

A. Background

14. MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers is set forth in a retransmission agreement. Retransmission agreements are negotiated directly between a broadcast station group, such as Gray or Raycom, and a given MVPD, and these agreements cover all of the station group's stations located in the MVPDs service area, or ''footprint.''

15. Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result is a ''blackout'' of the broadcast group's stations from the particular MVPD—*i.e.,* an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

B. Relevant Markets

1. Product Market

16. Big 4 broadcast content has unique appeal to television viewers, as compared to the other content that is available through broadcast and cable stations. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another.

17. Because of Big 4 stations' popular national content and valued local coverage, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers.

18. Non-Big-4 broadcast stations are typically not close substitutes for viewers of Big 4 stations. Stations that are affiliates of networks other than the Big 4, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news or sports—or, in the case of Telemundo, aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

19. If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MPVD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost.

20. Due to the limited programming typically offered by non-Big-4 stations, viewers are much less likely to switch to a non-Big-4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big-4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations.

21. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content. This is primarily because cable channels offer different content. For example, cable channels generally do not offer local news, which offers a valuable connection to the local community that is important to viewers of Big 4 stations.

22. Because viewers do not regard non-Big-4 broadcast stations, or cable networks, as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a hypothetical monopolist of Big 4 television retransmission consent would likely increase the retransmission consent fees it charges to MVPDs by at least a small but significant amount.

23. The licensing of Big 4 television retransmission consent therefore constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Markets

24. A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

25. In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, Big 4 viewers in one DMA cannot switch to Big 4 programming in another DMA in the face of a blackout. Therefore, substitution from outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA. Each DMA thus constitutes a relevant geographic market for the licensing of Big 4 television retransmission consent within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Likely Anticompetitive Effects

26. The more concentrated a market would be as a result of a proposed merger, the more likely it is that the proposed merger would substantially lessen competition. Concentration can be measured by the widely used Herfindahl-Hirschman Index (''HHI'').[1] Under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, mergers that result in highly concentrated markets (*i.e.,* with an HHI over 2,500) and that increase the HHI by more than 200 points are presumed likely to enhance market power.

27. The chart below summarizes Defendants' approximate Big 4 television retransmission consent market shares, based on revenue, and the result of the transaction on the HHI in each Overlap DMA.[2]

[1] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (30^2+ 30^2+ 20^2+ 20^2= 2,600). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[2] In this chart and the one below, sums that do not agree precisely reflect rounding.

Overlap DMA	Gray share (percent)	Raycom share (percent)	Merged share (percent)	Pre-merger HHI	Post-merger HHI	HHI increase
Augusta, GA	50	24	74	3,741	6,119	2,379
Panama City, FL	50	24	73	3,731	6,095	2,363
Dothan, AL	49	24	73	3,692	6,065	2,373
Tallahassee, FL-Thomasville, GA	33	32	65	3,338	5,448	2,110
Albany, GA	33	32	65	3,339	5,440	2,101
Toledo, OH	25	24	49	2,504	3,710	1,206
Waco-Temple-Bryan, TX	25	24	49	2,503	3,687	1,184
Knoxville, TN	25	24	49	2,503	3,681	1,178
Odessa-Midland, TX	24	24	48	2,504	3,660	1,156

28. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold. Thus, the proposed merger presumptively violates Section 7 of the Clayton Act in each Overlap DMA.

29. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would also enable Gray to black out more Big 4 stations simultaneously in each of the Overlap DMAs than either Gray or Raycom could black out independently today, increasing Gray's bargaining leverage against any MVPD whose footprint includes any of the Overlap DMAs, and likely leading to increased retransmission consent fees charged to such MVPDs.

30. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills. Broadcasters typically charge MVPDs uniform retransmission consent fees across an MVPD's entire footprint. Thus, higher fees resulting from increased leverage in the Overlap DMAs will likely be experienced by subscribers in any DMA where an affected MVPD retransmits at least one Gray Big 4 station, not just by those subscribers who live in the Overlap DMAs.

31. For these reasons, the proposed merger of Gray and Raycom likely would substantially lessen competition in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

V. BROADCAST TELEVISION SPOT ADVERTISING MARKETS

A. Background

32. Broadcast television stations sell advertising ''spots'' during breaks in their programming. An advertiser purchases spots from a broadcast station to communicate to viewers within the DMA in which the broadcast television station is located.

33. Gray and Raycom compete to sell broadcast television spot advertising in each of the Overlap DMAs.

B. Relevant Markets

1. Product Market

34. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. Additionally, broadcast television spot advertising reaches a large percentage of an advertisers' potential customers in a DMA, making it especially effective for promoting brand awareness.

35. Advertisers want to advertise on broadcast stations because they offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive in reaching a broad demographic base and a large audience of viewers. Typically, an advertiser purchases broadcast advertising spots as one component of an advertising strategy that also includes other components—such as cable advertisements, newspaper advertisements, billboards, radio spots, and digital advertisements. Each component of the advertising budget targets a particular audience and serves a distinct purpose.

36. MVPDs sell spot advertising to be shown during breaks in cable network programming. For the following reasons, cable television spot advertising is an ineffective substitute for broadcast television spot advertising.

37. First, broadcast television spot advertisements typically penetrate about ninety percent of the households in a DMA, while cable television spot advertisements penetrate many fewer homes. A significant and growing number of television households do not subscribe to an MVPD at all, instead receiving broadcast television signals over the air for free. These households cannot see cable television spot advertisements. Even in households that do subscribe to cable television, the tier of service they receive almost always includes all broadcast channels but often excludes many cable channels. As a result, some cable television spot advertisements cannot be seen even by households that subscribe to MVPDs.

38. Moreover, households that have access to cable networks are divided among multiple MVPDs within a DMA. Although some MVPDs sell some spot advertising through consortia called ''interconnects''—thereby allowing a cable television spot advertisement to reach more television households than it would through a single MVPD—household reach of cable television spot advertisements remains limited because not all MVPDs participate in interconnects.

39. Second, for many advertisers broadcast television spot advertising is a more efficient option than cable television spot advertising. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more ''ratings points'') than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable channels with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population.

40. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger inventory. Due to the limited inventories and lower ratings associated with cable television spot advertisements, these advertisements cannot offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising. Because of these limitations, MVPDs and interconnects would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

41. Digital media advertising also is not an effective substitute for broadcast television spot advertising. Digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable. Although online video advertisements do allow for a combination of sight, sound, and motion, these advertisements face certain challenges. For example, they can be skipped, minimized, or blocked.

42. Digital advertisements also serve a different purpose from broadcast advertising. Whereas advertisers use broadcast television spots to reach a large percentage of the population in a given DMA to build widespread brand awareness, advertisers use digital advertising to target narrow demographic subsets of a population and often to generate an immediate response to the advertisement.

43. Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not combine sight, sound, and motion, and they consequently lack television's ability to capture consumers with emotive storytelling. In addition, these forms of media do not reach as many local viewers or drive brand

awareness to the same extent as broadcast television does.

44. For all of these reasons, advertisers likely would not respond to a small but significant non-transitory increase in the price of broadcast television spot advertising by switching to other forms of advertising—such as cable, digital, print, radio, or billboard advertising—in sufficiently large numbers to make the price increase unprofitable.

2. Geographic Markets

45. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience, because their signals generally do not reach any significant portion of the target DMA. Because advertisers cannot advertise on stations outside a DMA to reach viewers inside the DMA, a hypothetical monopolist of broadcast television spot advertising on stations in a given DMA would likely implement at least a small but significant non-transitory price increase.

46. Each of the Overlap DMAs accordingly constitutes a relevant geographic market for the sale of broadcast television spot advertising within the meaning of Section 7 of the Clayton Act, 15 § U.S.C. 18.

C. Likely Anticompetitive Effects

47. The chart below summarizes Defendants' approximate market shares and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Gray share (percent)	Raycom share (percent)	Merged share (percent)	Pre-merger HHI	Post-merger HHI	HHI increase
Albany, GA	11	71	82	5,407	7,007	1,600
Dothan, AL	65	15	80	4,866	6,778	1,912
Toledo, OH	38	37	75	3,088	5,872	2,784
Panama City, FL	54	10	64	4,220	5,274	1,054
Augusta, GA	44	17	61	3,695	5,197	1,503
Tallahassee, FL-Thomasville, GA	48	16	64	3,267	4,759	1,492
Odessa-Midland, TX	30	35	65	2,563	4,688	2,125
Waco-Temple-Bryan, TX	41	19	60	2,988	4,564	1,576
Knoxville, TN	28	10	38	2,791	3,367	576

48. Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Raycom each own at least one Big 4 station, and often own one or more non-Big-4 network affiliates, which also sell spot advertising.

49. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA.

50. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would combine Gray's and Raycom's Big 4 broadcast television stations, which are close substitutes and generally vigorous competitors in the sale of broadcast television spot advertising. The merger would also combine the Defendants' non-Big-4 programming streams in the Overlap DMAs, which are also used to sell spot advertising.

51. In each Overlap DMA, Defendants' broadcast stations compete head to head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups—''buying around'' the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

52. If Gray acquires Raycom's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices.

53. For these reasons, the proposed merger likely would substantially lessen competition in the sale of broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. ABSENCE OF COUNTERVAILING FACTORS

54. Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects in the relevant markets. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

55. Defendants cannot demonstrate merger-specific, verifiable efficiencies sufficient to offset the proposed merger's likely anticompetitive effects.

VII. VIOLATIONS ALLEGED

56. The United States repeats and realleges the allegations of paragraphs 1 through 56 as if fully set forth herein.

57. The proposed merger of Gray and Raycom likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The merger likely would have the following effects, among others:

a. competition in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs likely would be substantially lessened;

b. competition between Gray and Raycom in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs would be eliminated;

c. the fees charged to MVPDs for the licensing of retransmission consent in each of the Overlap DMAs and throughout each MVPD's footprint likely would increase;

d. competition in the sale of broadcast television spot advertising in each of the Overlap DMAs likely would be substantially lessened;

e. competition between Gray and Raycom in the sale of broadcast television spot advertising in each of the Overlap DMAs would be eliminated; and

f. prices for spot advertising on broadcast television stations in each of the Overlap DMAs likely would increase.

VIII. RELIEF REQUESTED

58. The United States requests that:

a. the Court adjudge the proposed merger to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. the Court enjoin and restrain Defendants from carrying out the merger, or entering into any other agreement, understanding, or plan by which Gray would merge with, acquire, or be acquired by Raycom, or Gray and Raycom would combine any of their respective Big 4 stations in the Overlap DMAs;

c. the Court award the United States the costs of this action; and

d. the Court award such other relief to the United States as the Court may deem just and proper.

Dated: December 14, 2018

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Gray Television, Inc.,* and *Raycom Media, Inc.,* Defendants.

Case No. 1:18–cv–2951
Judge Christopher R. Cooper

PROPOSED FINAL JUDGMENT

Whereas, Plaintiff, United States of America, filed its Complaint on December 14, 2018, and Defendant Gray Television, Inc., and Defendant Raycom Media, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means Scripps, TEGNA, Lockwood, Marquee, or any other entity or entities to which Defendants divest any of the Divestiture Assets.

B. ''Divestiture Assets'' means the Divestiture Stations and all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property relating to the Divestiture Stations; all licenses, permits, and authorizations issued by, and applications submitted to, the FCC and other government agencies relating to the Divestiture Stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants relating to the Divestiture Stations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the Divestiture Stations; all customer lists, contracts, accounts, and credit records related to the Divestiture Stations; and all logs and other records maintained by Defendants in connection with the Divestiture Stations. Divestiture Assets does not include Excluded Assets.

C. ''Divestiture Stations'' means WTNZ, WTOL, KXXV, KRHD–CD, WTXL–TV, WFXG, KWES–TV, WPGX, WSWG, and WDFX–TV.

D. ''DMA'' means Designated Market Area as defined by The Nielsen Company (US), LLC, based upon viewing patterns and used by BIA Advisory Services' Investing in Television Market Report 2018 (1st edition). DMAs are ranked according to the number of television households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

E. ''Excluded Assets'' means

(1) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KWES–TV and/or the Odessa-Midland, Texas, DMA;

(2) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KWES–TV and/or the Odessa-Midland, Texas, DMA;

(3) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KXXV; and

(4) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, related in all cases to WSWG.

F. ''FCC'' means the Federal Communications Commission.

G. ''Gray'' means Defendant Gray Television, Inc., a Georgia corporation headquartered in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''KRHD–CD'' means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Raycom.

I. ''KWES–TV'' means the NBC-affiliated broadcast television station bearing that call sign located in the Odessa-Midland, Texas, DMA, owned by Raycom.

J. ''KXXV'' means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Raycom.

K. ''Lockwood'' means Greensboro TV, LLC, a Virginia limited liability company headquartered in Hampton, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, members, officers, managers, agents, and employees.

L. ''Marquee'' means Marquee Broadcasting Georgia, Inc., a Georgia corporation headquartered in Lawrenceville, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

M. ''Raycom'' means Defendant Raycom Media, Inc., a Delaware corporation headquartered in Montgomery, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

N. ''Scripps'' means the E.W. Scripps Company, an Ohio corporation headquartered in Cincinnati, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

O. ''TEGNA'' means TEGNA Inc., a Delaware corporation headquartered in McLean, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. ''WDFX–TV'' means the FOX-affiliated broadcast television station bearing that call sign located in the Dothan, Alabama, DMA, owned by Raycom.

Q. ''WFXG'' means the FOX-affiliated broadcast television station bearing that call sign located in the Augusta, Georgia, DMA, owned by Raycom.

R. ''WPGX'' means the FOX-affiliated broadcast television station bearing that call sign located in the Panama City, Florida, DMA, owned by Raycom.

S. ''WSWG'' means the CBS-affiliated broadcast television station bearing that call sign located in the Albany, Georgia, DMA, owned by Gray.

T. ''WTNZ'' means the FOX-affiliated broadcast television station bearing that call sign located in the Knoxville, Tennessee, DMA, owned by Raycom.

U. ''WTOL'' means the CBS-affiliated broadcast television station bearing that call

sign located in the Toledo, Ohio, DMA, owned by Raycom.

V. ''WTXL–TV'' means the ABC-affiliated broadcast television station bearing that call sign located in the Tallahassee, Florida-Thomasville, Georgia, DMA, owned by Raycom.

III. APPLICABILITY

A. This Final Judgment applies to Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers.

C. If, prior to the entry of this Final Judgment, Defendants sell or otherwise dispose of business units that do not include any of the Divestiture Assets, then this Final Judgment shall not apply to such business units.

IV. DIVESTITURES

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

B. With respect to divestiture of the Divestiture Assets by Defendants, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until five (5) days after such order is issued. Defendants agree to use their best efforts to divest the Divestiture Assets and to obtain all necessary FCC approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

C. In the event that Defendants are attempting to divest the KXXV, KRHD–CD, or WTXL–TV Divestiture Assets to an Acquirer other than Scripps; the WTOL or KWES–TV Divestiture Assets to an Acquirer other than TEGNA; the WTNZ, WFXG, WPGX, or WDFX–TV Divestiture Assets to an Acquirer other than Lockwood; or the WSWG Divestiture Assets to an Acquirer other than Marquee:

(1) Defendants, in accomplishing the divestitures ordered by this Final Judgment, promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;

(2) Defendants shall inform any person making an inquiry regarding a possible purchase of the relevant Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;

(3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the relevant Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and

(4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide each Acquirer and the United States information relating to the personnel involved in the operation and management of the relevant Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by any Acquirer to employ or contract with any Defendant employee whose primary responsibility relates to the operation or management of the relevant Divestiture Assets.

E. Defendants shall permit the prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirers that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. At the option of the respective Acquirer, Defendants shall enter into a transition services agreement with each Acquirer for a period of up to six (6) months to facilitate the continuous operations of the relevant Divestiture Assets until the Acquirer can provide such capabilities independently. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion. The United States in its sole discretion may approve one or more extensions of this agreement for a total of up to an additional six (6) months.

I. In the case of Lockwood as the Acquirer of the WFXG and/or WDFX–TV Divestiture Assets and at the option of Lockwood, Defendants shall enter into an agreement with Lockwood to provide to WFXG and WDFX–TV (or, if Lockwood is purchasing just one of those stations, that station) substantially the same local news programming as the respective stations currently receive from other stations owned or operated by Raycom for one (1) year after the sale of the WFXG and/or WDFX–TV Divestiture Assets, respectively, to Lockwood, with such agreement to be terminable by Lockwood on no more than thirty (30) days' notice. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion. The United States in its sole discretion, and at the option of Lockwood, may approve one or more extensions of any such agreement for a total of up to an additional one (1) year.

J. In the case of Marquee as the Acquirer of the WSWG Divestiture Assets, the transition services agreement contemplated by Paragraph IV(H) shall include, at the option of Marquee, an agreement by Defendants to provide to WSWG substantially the same local news programming as that station currently receives from other stations owned or operated by Gray for at least ninety (90) days after the sale of the WSWG Divestiture Assets, with such agreement to be terminable by Marquee on no more than thirty (30) days' notice, except that such agreement may omit up to two (2) hours of the news programming currently provided to WSWG each week, the identification of the hours to be omitted to be determined by Marquee. For the avoidance of doubt, the terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion.

K. Defendants shall warrant to the Acquirers (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and (2) that, following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

L. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by each Acquirer as part of a viable, ongoing commercial television broadcasting business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable, and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether made pursuant to

Section IV or Section V of this Final Judgment:

(1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the commercial television broadcasting business; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between any Acquirer and Defendants give Defendants the ability unreasonably to raise the costs of the Acquirer, to lower the efficiency of the Acquirer, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A) and Paragraph IV(B), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets that have not yet been divested.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the relevant Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents, investment bankers, attorneys, accountants, or consultants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents, investment bankers, attorneys, accountants, or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the relevant Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets subject to sale by the Divestiture Trustee and based on a fee arrangement providing the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, agent, or consultant, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the relevant divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed on the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the relevant Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such reports shall not be filed on the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend that the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within (10) calendar days after notice of entry of this Final Judgment by the Court, or two (2) business days following execution of a definitive divestiture agreement, whichever is later, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who tendered an offer for, or expressed an interest in or desire to acquire, any ownership interest in the relevant Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated,

subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV and Section V of this Final Judgment, Defendants shall deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel or, subject to the approval of the United States, an officer of the Defendant, which shall describe the fact and manner of Defendants' compliance with Section IV and Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days after the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Paragraph IX(B) within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including agents and consultants retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION AND LIMITATIONS ON COLLABORATIONS

A. During the term of this Final Judgment, Defendants may not (1) reacquire any part of the Divestiture Assets; (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person; (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement (except as provided in this Paragraph XI(A) or in Paragraph XI(B)), or conduct other business negotiations jointly with any Acquirer with respect to the Divestiture Assets divested to such Acquirer; or (4) provide financing or guarantees of financing with respect to the Divestiture Assets. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.

B. Paragraph XI(A) shall not prevent Defendants from entering into agreements to provide news programming to broadcast television stations included in the Divestiture Assets, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

XII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this

Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, 450 Fifth Street NW, Washington, DC 20530. Plaintiff, v. *Gray Television, Inc., 4370 Peachtree Road NE, Atlanta, Georgia 30319;* and *Raycom Media, Inc., RSA Tower 20th Floor, 201 Monroe Street, Montgomery, Alabama 36104 Defendants.*

Case No. 1:18–cv–2951

Judge Christopher R. Cooper

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 23, 2018, Defendant Gray Television, Inc. (''Gray'') and Raycom Media, Inc. (''Raycom,'' and together with Gray, ''Defendants'') entered into an Agreement and Plan of Merger (the ''Merger Agreement'') pursuant to which Gray proposes to acquire Raycom for approximately $3.6 billion. The United States filed a civil antitrust Complaint on December 14, 2018, seeking to enjoin the proposed merger. The Complaint alleges that the proposed merger likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in nine local geographic markets, in (1) the licensing of the television programming of NBC, CBS, ABC, and FOX (''Big 4'') affiliate stations to cable, satellite, and fiber optic television providers (referred to collectively as multichannel video programming distributors, or ''MVPDs'') for retransmission to their subscribers (known as ''retransmission consent''), and (2) the sale of broadcast television spot advertising. The nine Designated Market Areas (''DMAs'') in which a substantial reduction in competition is alleged are: (i) Waco-Temple-Bryan, Texas; (ii) Tallahassee, Florida-Thomasville, Georgia; (iii) Toledo, Ohio; (iv) Odessa-Midland, Texas; (v) Knoxville, Tennessee; (vi) Augusta, Georgia; (vii) Panama City, Florida; (viii) Dothan, Alabama; and (ix) Albany, Georgia (collectively, ''the Overlap DMAs'').[1] The loss of competition alleged in the Complaint likely would result in an increase in retransmission consent fees charged to MVPDs, much of which would be passed through to subscribers, and higher prices for broadcast television spot advertising in each Overlap DMA.

Concurrent with the filing of the Complaint, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would have resulted from Gray's merger with Raycom. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest the following broadcast television stations (the ''Divestiture Stations'') to acquirers acceptable to the United States in its sole discretion: (i) KXXV and KRHD–CD, located in the Waco-Temple-Bryan, Texas, DMA; (ii) WTXL–TV, located in the Tallahassee, Florida-Thomasville, Georgia, DMA; (iii) WTOL, located in the Toledo, Ohio, DMA; (iv) KWES–TV, located in the Odessa-Midland, Texas, DMA; (v) WTNZ, located in the Knoxville, Tennessee, DMA; (vi) WFXG, located in the Augusta, Georgia, DMA; (vii) WPGX, located in the Panama City, Florida, DMA; (viii) WDFX–TV, located in the Dothan, Alabama, DMA; and (ix) WSWG, located in the Albany, Georgia, DMA. Under the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Stations will operate as independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestitures.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. *The Defendants and the Proposed Transaction*

Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 92 television stations in 56 DMAs, of which 83 are Big 4 affiliates.

Raycom is a Delaware corporation with its headquarters in Montgomery, Alabama. Raycom owns 51 television stations in 43 DMAs, of which 45 are Big 4 affiliates.

Pursuant to the Merger Agreement, Gray agreed to acquire Raycom for approximately $3.6 billion, through a merger transaction. This merger is the subject of the Complaint and proposed Final Judgment filed in this case.

B. *Big 4 Television Retransmission Consent*

1. *Background*

MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers is set forth in a retransmission agreement. Retransmission agreements are negotiated directly between a broadcast station group, such as Gray or Raycom, and a given MVPD, and these agreements cover all of the station group's stations located in the MVPDs service area, or ''footprint.''

Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result is a ''blackout'' of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

2. *Relevant Markets*

The licensing of Big 4 television retransmission consent constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Big 4 broadcast

[1] A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

content has unique appeal to television viewers, as compared to the other content that is available through broadcast and cable stations. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another. Due to these features, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers. Non-Big-4 broadcast stations are typically not close substitutes for viewers of Big 4 stations.

If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost. Due to the limited programming typically offered by non-Big-4 stations, viewers are much less likely to switch to a non-Big-4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big-4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content.

Because viewers do not regard non-Big-4 broadcast stations, or cable networks, as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big 4 affiliates would not cause enough MVPDs to forego carrying the content of the Big 4 affiliates to make such an increase unprofitable for the Big 4 affiliates.

The relevant geographic markets for the licensing of Big 4 television retransmission consent are the individual DMAs in which such licensing occurs. In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA, so substitution to stations in other DMAs cannot discipline a fee increase by stations within a given DMA.

3. *Anticompetitive Effects*

In each of the Overlap DMAs, Gray and Raycom each own at least one Big 4 affiliate broadcast television station. By combining the Defendants' Big 4 stations, the proposed merger would increase the Defendants' market shares in the licensing of Big 4 television retransmission consent in each Overlap DMA, and would increase the market concentration in that business in each Overlap DMA. The chart below summarizes the Defendants' approximate Big 4 retransmission consent market shares, and market concentrations measured by the widely used Herfindahl-Hirschman Index (''HHI'') [2], in each Overlap DMA, before and after the proposed merger.

Overlap DMA	Gray share (percent)	Raycom share (percent)	Merged share (percent)	Pre-merger HHI	Post-merger HHI	HHI increase
Augusta, GA	50	24	74	3,741	6,119	2,379
Panama City, FL	50	24	73	3,731	6,095	2,363
Dothan, AL	49	24	73	3,692	6,065	2,373
Tallahassee, FL-Thomasville, GA	33	32	65	3,338	5,448	2,110
Albany, GA	33	32	65	3,339	5,440	2,101
Toledo, OH	25	24	49	2,504	3,710	1,206
Waco-Temple-Bryan, TX	25	24	49	2,503	3,687	1,184
Knoxville, TN	25	24	49	2,503	3,681	1,178
Odessa-Midland, TX	24	24	48	2,504	3,660	1,156

As indicated by the preceding chart, in each Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.

In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would also enable Gray to black out more Big 4 stations simultaneously in each of the Overlap DMAs than either Gray or Raycom could black out independently today, increasing Gray's bargaining leverage and likely leading to increased retransmission consent fees to any MVPD whose footprint includes any of the Overlap DMAs. Retransmission consent fees—and thus the fee increases likely to be caused by the proposed merger—generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

C. *Broadcast Television Spot Advertising*

1. *Background*

Broadcast television stations sell advertising ''spots'' during breaks in their programming. An advertiser purchases spots from a broadcast station to communicate to viewers within the DMA in which the broadcast television station is located. Gray and Raycom compete to sell broadcast television spot advertising in each of the Overlap DMAs.

2. *Relevant Markets*

Broadcast television spot advertising constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. Additionally, broadcast television spot advertising reaches a large percentage of an advertisers' potential customers in a DMA, making it especially effective for promoting brand awareness. Advertisers want to advertise on broadcast stations because they offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive in reaching a broad demographic base and a large audience of viewers.

MVPDs sell spot advertising to be shown during breaks in cable network programming. However, cable television spot advertising is an ineffective substitute for broadcast television spot advertising. Cable television spot advertising reaches far fewer television households within a DMA, is limited in supply, and generally offers more specialized programs that appeal to niche audiences.

Digital media advertising is not an effective substitute for broadcast television spot advertising. Most forms of digital advertising lack the combination of sight, sound, and motion that characterize television advertising, and, while online video advertisements can combine sight, sound, and motion, these advertisements face challenges including the fact that they can be skipped, minimized, or blocked. Also, digital

[2] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

advertising serves a different purpose from broadcast advertising, as it typically targets narrow demographic subsets of a population and often seeks to generate an immediate response.

Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also are not effective substitutes. They do not combine sight, sound, and motion, and consequently lack television's ability to capture consumers with emotive storytelling. In addition, they do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does.

For these reasons, advertisers likely would not respond to a small but significant increase in the price of broadcast television spot advertising by switching to other forms of advertising in sufficiently large numbers to make the price increase unprofitable.

The relevant geographic markets for the sale of broadcast television spot advertising are the individual DMAs in which such advertising is sold. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience, because their signals generally do not reach any significant portion of the target DMA.

3. *Anticompetitive Effects*

By combining the broadcast television stations of Gray and Raycom under common ownership, the proposed merger would increase the combined entity's market shares of the broadcast television spot advertising business in each of the Overlap DMAs. The chart below summarizes Defendants' approximate market shares and the result of the transaction on HHIs in the sale of broadcast television spot advertising in each Overlap DMA.

Overlap DMA	Gray share (percent)	Raycom share (percent)	Merged share (percent)	Pre-merger HHI	Post-merger HHI	HHI increase
Albany, GA	11	71	82	5,407	7,007	1,600
Dothan, AL	65	15	80	4,866	6,778	1,912
Toledo, OH	38	37	75	3,088	5,872	2,784
Panama City, FL	54	10	64	4,220	5,274	1,054
Augusta, GA	44	17	61	3,695	5,197	1,503
Tallahassee, FL-Thomasville, GA	48	16	64	3,267	4,759	1,492
Odessa-Midland, TX	30	35	65	2,563	4,688	2,125
Waco-Temple-Bryan, TX	41	19	60	2,988	4,564	1,576
Knoxville, TN	28	10	38	2,791	3,367	576

Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Raycom each own at least one Big 4 station, and often own one or more non-Big-4 network affiliates, which also sell spot advertising.

As indicated by the preceding chart, in each Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines.*

In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers targeting viewers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups, allowing the advertisers to avoid the price increase or pressure the first station to lower its prices. The proposed merger would reduce the number of alternative sellers of broadcast television spot advertising to which such advertisers could turn to meet their needs, likely resulting in higher advertising prices.

D. *Entry*

Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. *The Divestitures*

The divestiture requirements of the proposed Final Judgment will eliminate the substantial anticompetitive effects of the merger in each Overlap DMA, by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Gray to divest the Big 4 affiliates owned by either Gray or Raycom in each of the Overlap DMAs, as shown in the following chart:

Overlap DMA	Divestiture stations	Big 4 affiliation of divestiture stations	Current owner of divestiture stations
Waco-Temple-Bryan, Texas	KXXV and KRHD–CD	ABC	Raycom.
Tallahassee, Florida-Thomasville, Georgia	WTXL–TV	ABC	Raycom.
Toledo, Ohio	WTOL	CBS	Raycom.
Odessa-Midland, Texas	KWES–TV	NBC	Raycom.
Knoxville, Tennessee	WTNZ	FOX	Raycom.
Augusta, Georgia	WFXG	FOX	Raycom.
Panama City, Florida	WPGX	FOX	Raycom.
Dothan, Alabama	WDFX–TV	FOX	Raycom.
Albany, Georgia	WSWG	CBS	Gray.

The Divestiture Stations must be divested in such a way as to satisfy the United States in its sole discretion that the Divestiture Stations (1) can and will be operated by the purchaser(s) as part of a viable, ongoing commercial television broadcasting business, and (2) are divested to acquirer(s) that have the intent and capability to compete effectively in that business. The proposed Final Judgment requires divestiture of all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations.

B. *The Excluded Assets*

Certain assets are excluded from the assets to be divested, as described in Definitions S and T of the proposed Final Judgment. The excluded assets relate to: (1) the Telemundo and CW programming streams currently broadcast on KWES–TV in the Odessa-Midland, Texas, DMA; (2) the Telemundo programming stream currently broadcast on KXXV in the Waco-Temple-Bryan, Texas, DMA; and (3) the CW programming stream currently broadcast on WSWG in the Albany, Georgia, DMA.

The excluded Telemundo and CW programming streams currently are derived

from separate network affiliations, and are broadcast from digital subchannels of the Divestiture Stations. As a result, the Defendants' retention of these Telemundo and CW programming streams will not prevent the divestiture buyers from operating the Divestiture Stations as viable, independent competitors. Nor will Defendants' retention of these assets substantially lessen competition. Divesting one of the Defendants' Big 4 affiliates in each Overlap DMA will ensure that competition in the granting of Big 4 television retransmission consent is not diminished. Also, nearly all of the merger-induced increase in concentration in the sale of broadcast television spot advertising in each Overlap DMA is avoided by the sale of one Defendant's Big 4 affiliates in each Overlap DMA.

C. *General Conditions and Proposed Buyers*

Under the proposed Final Judgment, Defendants agree to use their best efforts to divest the Divestiture Stations and to obtain any necessary FCC approvals as expeditiously as possible. The proposed Final Judgment contains requirements for Defendants to provide prospective purchasers of the Divestiture Stations with access to relevant personnel and information. Additionally, to facilitate the continuous operations of the Divestiture Stations until the acquirers can provide such capabilities independently, Paragraph IV(H) of the proposed Final Judgment provides that, at the option of an acquirer of a Divestiture Station, Defendants shall enter into a transition services agreement with the acquirer for a period of up to six months.

The United States has determined that the following companies are acceptable purchasers of Divestiture Stations: The E.W. Scripps Company; TEGNA Inc.; Greensboro TV, LLC, a member of the Lockwood Broadcast Group of companies; and Marquee Broadcasting Georgia, Inc. (respectively, together with their subsidiaries and affiliated entities and individuals, ''Scripps,'' ''TEGNA,'' ''Lockwood,'' and ''Marquee''). The following table sets out the proposed purchaser for each Divestiture Station.

Overlap DMA	Divestiture stations	Proposed purchaser
Waco-Temple-Bryan, Texas	KXXV and KRHD–CD	Scripps.
Tallahassee, Florida-Thomasville, Georgia	WTXL–TV	Scripps.
Toledo, Ohio	WTOL	TEGNA.
Odessa-Midland, Texas	KWES–TV	TEGNA.
Knoxville, Tennessee	WTNZ	Lockwood.
Augusta, Georgia	WFXG	Lockwood.
Panama City, Florida	WPGX	Lockwood.
Dothan, Alabama	WDFX–TV	Lockwood.
Albany, Georgia	WSWG	Marquee.

Under the proposed Final Judgment, in the event that Defendants attempt to divest KXXV, KRHD–CD, or WTXL–TV to an acquirer other than Scripps; WTOL or KWES–TV to an acquirer other than TEGNA; WTNZ, WFXG, WPGX, or WDFX–TV to an acquirer other than Lockwood; or WSWG to an acquirer other than Marquee, Defendants agree to cooperate with these prospective acquirers as contemplated in Paragraph IV(C) of the proposed Final Judgment.

D. *Conditions Specific to Certain Divestiture Stations*

The proposed Final Judgment also contains provisions that will ensure the efficient operation of the Divestiture Stations as they transition to new ownership and create new arrangements for their news programming. In the case of Lockwood as the acquirer of WFXG and/or WDFX–TV, Paragraph IV(I) of the proposed Final Judgment provides that, at the option of Lockwood, Defendants shall enter into an agreement with Lockwood to provide to WFXG and/or WDFX–TV substantially the same local news programming as the respective stations currently receive from other stations owned or operated by Raycom for a period of one year after the sale of WFXG and/or WDFX–TV, respectively, to Lockwood, with such agreement being subject to extensions for a total of up to one additional one year, at the approval of the United States, and at the option of Lockwood.

WFXG currently receives a portion of its news programming from Raycom's WTOC–TV in Savannah, Georgia. WDFX–TV currently receives its news programming from Raycom's WSFA in Montgomery, Alabama. Continuation of the provision of this news programming to WFXG and WDFX–TV for one year would provide Lockwood with enough time to take control of these stations, and make and implement plans for the replacement of this news programming with other sources of news. Allowing these transitional arrangements to be extended for up to one year provides a safety mechanism, in case Lockwood has not fully implemented its plans to replace the Defendants' news by the end of the one-year period.

In the case of Marquee as the Acquirer of WSWG, Paragraph IV(J) of the proposed Final Judgment provides that the transition services agreement contemplated by Paragraph IV(H) shall include, at the option of Marquee, an agreement by Defendants to provide to WSWG (with small exceptions) substantially the same local news programming as that station currently receives from other stations owned or operated by Gray for at least 90 days after the sale of WSWG.

WSWG currently receives its news programming from Gray's WCTV in the Tallahassee, Florida-Thomasville, Georgia, DMA. Marquee already operates an unaffiliated station in Albany, Georgia, which produces its own local news. Therefore, Marquee will likely require a relatively short transition period during which it continues to receive out-of-DMA news before implementing its plans for local news programming on WSWG. The agreement to continue supplying out-of-DMA news for at least 90 days is reasonably sufficient to allow Marquee to complete its transition.

E. *Timeline for Divestitures, Appointment of Divestiture Trustee, and Conditions To Ensure Independent Operation of the Divestiture Stations Post-Divestiture*

Under Paragraph IV(A) of the proposed Final Judgment, divestiture of each of the Divestiture Stations must occur within 90 calendar days after the filing of the Complaint, or five calendar days after notice of entry of the Final Judgment by the Court, whichever is later, to one or more acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total, and shall notify the Court in such circumstances. Paragraph IV(B) of the proposed Final Judgment provides for the tolling of deadlines for divestitures that would otherwise be required to meet those deadlines, in the case where a divestiture requires certain FCC action but the FCC has not taken such action by the time the deadline would otherwise occur.

To provide for the possibility that Defendants do not accomplish all required divestitures within the periods set forth in Paragraph IV(A) and Paragraph IV(B) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that in such a case the Court shall appoint a Divestiture Trustee, selected by the United States and approved by the Court, to effect the divestitures. The proposed Final Judgment provides that if a Divestiture Trustee is appointed, Defendants shall pay the costs and expenses of the Divestiture Trustee. The Divestiture Trustee's compensation is to be structured so as to provide an incentive based on the price obtained and the speed with which the divestitures are accomplished. After the appointment of the Divestiture Trustee becomes effective, the Divestiture Trustee is required to file monthly reports with the United States and, as appropriate, the Court, setting forth the Divestiture Trustee's efforts to accomplish the required divestitures. If the Divestiture Trustee has not accomplished the required divestitures within six months after

the Divestiture Trustee's appointment, the Divestiture Trustee must promptly file a report with the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which may include extending the term of the Divestiture Trustee's appointment by a period requested by the United States.

To ensure that the Divestiture Stations are operated independently from Defendants after the divestitures, Paragraph XI(A) of the proposed Final Judgment provides that during the term of the Final Judgment Defendants shall not (1) reacquire any part of the assets required to be divested; (2) acquire any option to reacquire any part of such assets or to assign them to any other person; (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement (except as provided in in Paragraph XI(A) or Paragraph XI(B)), or conduct other business negotiations jointly with any acquirer of any of the assets required to be divested with respect to those assets; or (4) provide financing or guarantees of financing with respect to the assets required to be divested.

The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion. Additionally, Paragraph XI(B) provides that the restrictions of Paragraph XI(A) do not prevent Defendants from entering into agreements to provide news programming to the Divestiture Stations, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

F. *Enforcement and Expiration of the Final Judgment*

The proposed Final Judgment contains provisions designed to promote compliance and make enforcement of Division consent decrees as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence, and Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition the United States alleged was harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation of violations of, and the enforcement of, the proposed Final Judgment, Paragraph XIII(C) provides that in connection with any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including the investigation of the potential violation.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

G. *Summary*

The divestiture provisions of the proposed Final Judgment will eliminate the substantial anticompetitive effects of the merger in the licensing of Big 4 television retransmission consent and the sale of broadcast television spot advertising in each of the Overlap DMAs.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the proposed Final Judgment upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Owen M. Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, United States Department of Justice, 450 5th Street, NW, Suite 4000, Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction to enable any party to the Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Gray's merger with Raycom. The United States is satisfied, however, that the divestiture of assets required by the proposed Final Judgment, together with the other restrictions contained in the proposed Final Judgment, will preserve competition in the licensing of Big 4 television retransmission consent and the sale of broadcast television spot advertising in the Overlap DMAs. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.,* 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments,[4] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76. *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[3] *See also. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[4] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

Dated: December 14, 2018.

Respectfully submitted,

Matthew D. Siegel *
Trial Attorney Media, Entertainment, and Professional Services Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, Suite 4000, Washington, DC 20530, *Phone:* 202–598–8303, *Email: Matthew.Siegel@usdoj.gov.*
* *Attorney of Record*

[FR Doc. 2019–00556 Filed 1–31–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On January 10, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Chrysler-Dodge-Jeep ''Ecodiesel'' Marketing, Sales Practices, and Products Liability Litigation,* Case No. 3:17–md–2777 EMC (JSC), resolving civil Clean Air Act claims and various California claims (including under the California Health and Safety Code) against Fiat Chrysler Automobiles, N.V., FCA US, LLC and others (''Fiat Chrysler''), concerning noncompliant 3.0 liter ''EcoDiesel'' vehicles (''Subject Vehicles''). In addition, on the same date, the private Plaintiffs' Steering Committee filed a proposed Consumer Class Action Settlement Agreement and Release (''Class Action Settlement'') with Fiat Chrysler with respect to the same EcoDiesel vehicles, and Customs and Border Protection entered into an administrative Settlement Agreement with Fiat Chrysler based on allegations of illegal importation of a portion of these noncompliant diesel vehicles (''CBP Agreement''). In addition to its joint settlement with the United States, on the same day, California entered into two additional settlements with the defendants concerning the Subject Vehicles. The First California Partial Consent Decree resolves California's claim for mitigation (and is discussed further below), and the Second California Partial Consent Decree resolves defendants' alleged violation of California consumer protection laws related to the Subject Vehicles. These five settlements resolve separate claims but offer coordinated relief.

On May 23, 2017, the United States, on behalf of the Environmental Protection Agency (''EPA'') filed a complaint against Fiat Chrysler Automobiles, N.V., FCA US LLC, V.M. Motori S.p.A., and V.M. North America, Inc. alleging that the defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act—42 U.S.C. 7522(a)(1), (2), (3)(A), and (3)(B)—with regard to approximately 104,000 model year 2014 to 2016 Jeep Cherokee and Ram 1500 vehicles containing 3.0 liter EcoDiesel engines. The United States' complaint alleges, among other things, that each Subject Vehicle contains computer software functions that are undisclosed Auxiliary Emission Control Devices (''AECDs'') and prohibited defeat devices that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. The complaint alleges that the defeat devices cause the vehicles, during normal vehicle operation and use, to emit excess oxides of nitrogen (''NO_X''). The complaint seeks, among other things, injunctive relief to remedy the violations, including mitigation of excess NO_X emissions, and civil penalties.

On January 9, 2019, the People of the State of California, by and through the California Air Resources Board, and Xavier Becerra, Attorney General of the State of California (collectively, ''California''), filed a complaint against the defendants alleging that, in connection with the certification, marketing, distribution, and sale of approximately 14,000 Subject Vehicles in California, the defendants violated Section 304(a)(1) of the Clean Air Act, 42 U.S.C. 7604(a)(1); California Health and Safety Code §§ 43016, 43017, 43151, 43152, 43153, 43154, 43205, 43211, and 43212; 13 C.C.R. §§ 1961, 1961.2, 1965, 1968.2, and 2037, and the 40 CFR sections incorporated therein by reference; and California Business and Professions Code §§ 17200 *et seq.,* 17500 *et seq.,* and 17580.5. California's complaint alleges that each Subject Vehicle contains, as part of the electronic control module, certain software functions and calibrations that cause the emission control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. California's complaint alleges that these software functions and calibrations are undisclosed AECDs in violation of California and federal law, and that they are also prohibited defeat devices. California's complaint alleges that the defeat devices and undisclosed AECDs cause the Subject Vehicles to emit NO_X in excess of CARB-compliant levels. California's complaint also alleges that defendants' actions violated California consumer protection laws. California's complaint seeks, among other things, civil penalties, injunctive relief to remedy the violations (including mitigation of excess NO_X emissions), costs, and other equitable relief.

The lodged Consent Decree is entered into between the United States, California, and the defendants (Fiat Chrysler Automobiles, N.V., FCA US LLC, V.M. Motori S.p.A., and V.M. North America, Inc.). The Decree provides a remedy for the vehicles on the road by requiring Fiat Chrysler to offer all Eligible Owners and Lessees of Eligible Vehicles (all as defined in the Decree) the Approved Emissions Modification and applicable warranties (as defined and described in the Decree). Fiat Chrysler must install the Approved Emissions Modification on at least 85% of the Subject Vehicles (as further described in the Decree) by no later than two years after the Decree is entered by the Court. If it fails to do so, Fiat Chrysler must make a payment to the United States of $5.5 million for each 1% that Fiat Chrysler falls short of the 85% rate. Fiat Chrysler must also achieve a separate 85% recall rate for vehicles in California, and must pay $825,000 to California for each 1% that it falls short of this target. See Decree Paragraph 41. For each Subject Vehicle that receives the Approved Emissions Modification, Fiat Chrysler must provide Eligible Owners and Lessees with an Extended Warranty. See Decree Paragraph 45. The Extended Warranty covers all components, parts, and associated labor described in Appendix E of the Decree. Fiat Chrysler must mail notice of the recall to all known Eligible Owners and Eligible Lessees. Fiat Chrysler may provide this notice through a Court-approved Class Action Settlement Notice or through an alternative means approved by the United States and California. See Decree Paragraph 43.

There is no end date for the emissions modification recall. Fiat Chrysler must offer the Approved Emissions Modification to Eligible Owners and Eligible Lessees for eighteen years after the Court enters the Decree (the ''Effective Date''); following the eighteenth anniversary of the Effective Date, Fiat Chrysler must make reasonable efforts to ensure that the Approved Emissions Modification remains available. See Decree Paragraph 39.

In addition, the Decree requires Fiat Chrysler to perform a mitigation program, which is estimated to mitigate the lifetime excess tons of NO_X caused by Defendants' violations in all 50 states, except California, by implementing a program to improve the efficiency of 200,000 aftermarket

catalytic converters that will be installed on light-duty gasoline motor vehicles nationwide (except in California, New York, and Maine, which already require the use of high-efficiency aftermarket catalytic converters). See Decree Section VI.D (Mitigation Program). Fiat Chrysler has entered into a separate agreement with California, which is estimated to mitigate the lifetime excess NO_X emissions from the Subject Vehicles in California—this program is set forth in a separate proposed consent decree between California and Fiat Chrysler.

Fiat Chrysler must also implement updated and improved corporate compliance and governance programs. See Decree Section VI.C (Corporate Compliance Requirements).

Finally, Fiat Chrysler must pay a civil penalty of $305 million to the United States and the State of California.

The publication of this notice opens a period for public comment on the Consent Decree. Comments on the Consent Decree (but not concerning the CBP Agreement, Class Action Settlement or California-only settlements) should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re: Chrysler-Dodge-Jeep ''Ecodiesel'' Marketing, Sales Practices, and Products Liability Litigation,* Case No. 3:17–md–2777 EMC (JSC), D.J. Ref. No. 90–5–2–1–11607.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

For the entire Consent Decree and its appendices, please enclose a check or money order for $56.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy of certain portions of the Consent Decree, please designate which portions are requested, and provide the appropriate amount of money. For the Consent Decree without the exhibits and signature pages, the cost is $36.25. For Appendix A (Adjustment Factors), the cost is $0.50. For Appendix B (CVN and CALID for the Final Carryback Configuration), the cost is $0.75. For Appendix C (documents related to the MY 2014 Field Fix), the cost is $11.50. For Appendix D (Approved Emissions Modification Disclosure), the cost is $0.50. For Appendix E (Extended Warranty description), the cost is $0.75. For Appendix F, the cost is $4.00 (list of Defendants affiliates, parents, and subsidiaries for purposes of the Effect of Settlement and Reservations of Rights).

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–00662 Filed 1–31–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On January 8, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Louisiana in the lawsuit entitled *United States of America* v. *Shell Offshore Inc.,* Civil Action No. 2:19-cv-122.

The Complaint in this Clean Water Act case was filed on behalf of the United States Coast Guard against Shell Offshore Inc. concurrently with the lodging of the proposed Consent Decree. The Complaint alleges that Shell is civilly liable for violation of Section 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1321. The Complaint seeks civil penalties and injunctive relief for the discharge of harmful quantities of crude oil into the Gulf of Mexico. In the Complaint, the United States alleges that Shell is liable under the Clean Water Act for the crude oil spill that began on the night of May 11, 2016, at Shell's Green Canyon Block 248 offshore production facility located 97 miles offshore in the Gulf of Mexico. The Complaint alleges the spill began when a 6-inch-diamater transfer pipeline at the sea floor cracked due to stress on a joint in the line. Shell caused this added stress by placing sediment and debris from other operations on top of the pipe, which caused the pipe to settle into the sea bed. As a result of the pipeline crack, approximately 1,900 barrels (approximately 80,000 gallons) of crude oil flowed into the ocean.

Under the Consent Decree, Shell is required to pay $2.2 million in civil penalties. In addition, Shell commits to improve its leak-detection training program across its operations in the Gulf of Mexico. Since the spill, Shell has provided enhanced training to its control room operators and subsea supervisors. Shell will now develop and conduct refresher training that focuses on leak detection and includes simulator-based exercises that incorporate conditions experienced during the May 2016 spill.

The penalties and remedial measures required by the Consent Decree are in addition to the costs the company has already incurred to clean up the oil spill and compensate the public for injuries to natural resources. In a separate settlement filed in July 2018 and approved by the court in August, Shell agreed to pay a total of $3.871 million to the United States and Louisiana for natural resource restoration projects and to reimburse all of the state and federal trustees' remaining unpaid past assessment costs related to the spill.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Shell Offshore Inc.,* D.J. Ref. No. 90–5–1–1–11920/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. Please enclose a check or money order for $6.00 (25 cents per page reproduction

cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–00546 Filed 1–31–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number 1105–0094]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Applications for Special Deputation

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on November 20, 2018, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 4, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension With Change, of a Previously Approved Collection.

(2) *The Title of the Form/Collection:* Applications for Special Deputation.

(3) *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number: USM–3A and USM–3C.

Component: U.S. Marshals Service, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal government and State/local government.

Abstract: The collection of information for these forms is authorized by 28 U.S.C. 562. The USMS is authorized to deputize selected persons to perform the functions of a Special Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 6,000 respondents will complete a 15 minute form (Form USM–3A) and 5,500 respondents will complete a 10 minute form (Form USM–3C).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 2,417 hours. It is estimated that applicants will take 15 minutes to complete a Form USM–3A and 10 minutes to complete a Form USM–3C. In order to calculate the public burden for Form USM–3A, USMS multiplied 15 by 6,000 and divided by 60 (the number of minutes in an hour), which equals 1,500 total annual burden hours. In order to calculate the public burden for Form USM–3C, USMS multiplied 10 by 5,500 and divided by 60 (the number of minutes in an hour), which equals 917 total annual burden hours. In sum there are an estimated 2,417 total annual public burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: January 29, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–00757 Filed 1–31–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be

obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 2, 2019.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax (202) 354–9647; or email to *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail/delivery, fax or email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* This information collection is used by OWCP examiners to ascertain the financial condition of the beneficiary to determine if the overpayment or any part can be recovered; to identify the possible concealment or improper transfer of assets; and to identify and consider present and potential income and current assets for enforced collection proceedings. The questionnaire provides a means for the beneficiary to explain why he/she is without fault in an overpayment matter. If this information were not collected BLBA, EEOICPA and FECA would have little basis to determine appropriate collection proceedings. This information collection is currently approved for use through April 30, 2019.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval of the extension of this currently approved information collection in order to determine whether or not the recovery of any BLBA, EEOICPA or FECA overpayments may be waived, compromised, terminated, or collected in full.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1240–0051.

Agency Number: OWCP–20.

Affected Public: Individuals and households.

Total Respondents: 1,894.

Total Responses: 1,894.

Time per Response: 1 hour.

Estimated Total Burden Hours: 1,894.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,003.

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

Dated: January 28, 2019.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2019–00614 Filed 1–31–19; 8:45 am]

BILLING CODE 4510–CR–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2015–7]

Section 512 Study: Announcement of Public Roundtable

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public roundtable.

SUMMARY: The U.S. Copyright Office is conducting a study to evaluate the impact and effectiveness of the Copyright Act's safe harbor provisions for online service providers. At this time, the Office is announcing that it will hold a one-day public roundtable to allow interested members of the public to address relevant domestic and international developments that have occurred since the close of the written comment period on February 6, 2017. The roundtable is not intended to allow participants to supplement the record with respect to events occurring before that date, and discussion will be limited to the specific topics set forth in this notice.

DATES: The public roundtable will be held on April 8, 2019 from 9:00 a.m. to approximately 5:00 p.m.

ADDRESSES: Library of Congress Madison Building, 101 Independence Avenue SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Cindy Abramson, Assistant General Counsel, at *ciab@copyright.gov;* Kevin Amer, Senior Counsel for Policy and International Affairs, at *kamer@copyright.gov;* or Kimberley Isbell, Senior Counsel for Policy and International Affairs, at *kisb@copyright.gov.* Each may be reached by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Enacted in 1998 as part of the Digital Millennium Copyright Act (''DMCA''), section 512 of Title 17 provides a system for copyright owners and internet service providers to address online infringement outside the context of litigation. This system includes a series of ''safe harbors'' through which an eligible service provider can limit its liability for copyright infringement by complying with certain requirements, generally consisting of implementing measures to expeditiously address online infringement.

At Congress's request, the U.S. Copyright Office is conducting a study to assess the impact and effectiveness of section 512. The Office published an initial Notice of Inquiry on December 31, 2015, seeking written comments to thirty questions covering eight categories of topics.[1] The Office received over 92,000 written submissions in response. Subsequently, in May 2016, the Office held two-day public roundtables in New York and San Francisco. The Office published a second Notice of Inquiry on November 8, 2016, seeking written comments to sixteen questions covering four topics, in addition to inviting the submission of empirical research studies assessing the operation of the safe harbor provisions

[1] *See* Section 512 Study: Notice and Request for Public Comment, 80 FR 81862 (Dec. 31, 2015).

on a quantitative or qualitative basis.[2] The Office received seventy-nine written comments and nine empirical studies in response. Information about the study, including the Notices of Inquiry, public comments, and transcripts of the public roundtables, may be accessed on the Copyright Office website at *https://www.copyright.gov/policy/section512/.*

The Office is now announcing that it will convene an additional roundtable to enable interested members of the public to address relevant domestic and foreign developments that have occurred since the close of the written comment period on February 6, 2017. Specifically, the roundtable will consider the following topics: (1) Recent domestic case law interpreting provisions of the DMCA safe harbor framework and (2) recent international legal and policy developments related to addressing liability for infringing content online.

Recent domestic case law has addressed various aspects of section 512. For example, in *BMG Rights Management (US) LLC* v. *Cox Communications, Inc.,* the U.S. Court of Appeals for the Fourth Circuit considered whether Cox reasonably implemented its repeat infringer policy for purposes of section 512(a). The court held that Cox failed to implement its policy in ''any consistent or meaningful way—leaving it essentially with no policy''—and thus could not qualify for the section 512(a) safe harbor.[3] Additionally, the U.S. Court of Appeals for the Ninth Circuit in *Mavrix Photographs LLC* v. *LiveJournal Inc.* held that there were genuine issues of material fact as to whether volunteer moderators who reviewed user-submitted content were agents of the service provider—an issue relevant to the provider's eligibility for the safe harbor protection under section 512(c).[4] Participants may discuss these cases as well as other recent domestic case law developments during the roundtable. The Office previously identified case law as a key issue in this study and is interested in stakeholder views as to whether recent cases indicate any emerging trends.

Since 2017, several other countries also have addressed issues of copyright infringement and online service provider liability. For example, in Europe, work towards a possible new Directive on Copyright in the Digital Single Market has been underway since 2016.[5] In September 2018, the European Parliament voted to approve a proposed Directive on Copyright in the Digital Single Market that, among other changes, would establish new obligations for online service providers that store and give public access to copyrighted works uploaded by users and that optimize and promote such works for profit-making purposes.[6] Further negotiations on the text via a ''trilogue'' process of negotiations between the European Commission, the European Parliament, and the Council of the European Union, are underway.[7] In addition, the Australian Parliament recently passed an amendment to its copyright law that provides copyright owners with additional tools to enforce their rights regarding infringing content online, including injunctions to block domain names.[8] The Office is aware that such proposals have generated widespread debate, with stakeholders expressing a variety of views concerning the potential implications for copyright owners, online service providers, and members of the public. At the roundtable, participants are invited to identify and discuss recent law and policy developments in other countries that bear on issues related to the effectiveness, ineffectiveness, and/or other impacts on online service provider liability.

II. Roundtable Subjects of Inquiry

The public roundtable will consist of two sessions: (1) Domestic case law developments since 2017 interpreting the section 512 safe harbors and (2) international legal and policy developments since 2017 relating to online service provider liability. The roundtable is not intended as an opportunity to supplement the written record with respect to matters outside these categories, and discussion will be limited to developments that have occurred after the close of the written comment period on February 6, 2017. The Copyright Office will not accept any written materials prior to or on the day of the roundtable. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Copyright Office website.

Members of the public who seek to participate in the roundtable should complete and submit the form available on the Copyright Office website at *https://www.copyright.gov/policy/section512/* no later than March 15, 2019. If you are unable to access a computer or the internet, please contact the Office using the contact information above for special instructions. Individuals selected for participation will be notified directly by the Office not later than March 29, 2019. In order to accommodate the expected level of interest, the Office expects to assign no more than one representative per organization to each session.

The roundtable hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the roundtable.

Dated: January 28, 2019.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2019–00573 Filed 1–31–19; 8:45 am]

BILLING CODE 1410–30–P

[2] *See* Section 512 Study: Request for Additional Comments, 81 FR 78636 (Nov. 8, 2016).

[3] *BMG Rights Mgmt. (US) LLC* v. *Cox Commc'ns, Inc.,* 881 F.3d 293, 303–05 (4th Cir. 2018).

[4] *Mavrix Photographs LLC* v. *LiveJournal Inc.,* 873 F.3d 1045, 1054–57 (9th Cir. 2017).

[5] *Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market,* COM(2016) 593 final (Sept. 14, 2016).

[6] Amendments Adopted by the European Parliament on 12 September 2018 on the Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, P8_TA–PROV(2018)0337, art. 2, ¶ 1, pt. 4b; art. 13 (Sept. 12, 2018).

[7] A trilogue meeting scheduled for January 21, 2019 was postponed as proposed compromise text was rejected by several countries. *See, e.g.,* Samuel Stolton, *Copyright directive faces further setback as final trilogue postponed,* EURACTIV (Jan. 21, 2019) *https://www.euractiv.com/section/digital/news/copyright-directive-faces-further-setback-as-final-trilogue-cancelled/.*

[8] Explanatory Memorandum, Copyright Amendment (Online Infringement) Bill 2018. (Austl.), *https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r6209_ems_b5e338b6-e85c-4cf7-8037-35f13166ebd4%22.*

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 18–CRB–0015–AU (Educational Media Foundation)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by noncommercial webcaster Educational Media Foundation concerning royalty payments it made pursuant to a statutory license.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case

management system, at *https://app.crb.gov/* and search for docket number 18–CRB–0015–AU (Educational Media Foundation).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a).[1]

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(c).

On December 20, 2018, SoundExchange filed with the Judges a notice of intent to audit licensee Educational Media Foundation for its transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2019–00654 Filed 1–31–19; 8:45 am]

BILLING CODE 1410–72–P

[1] Citations are to current sections of the CFR.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket Nos. 18–CRB–00014–AU (Entercom Communications Corp.) and 18–CRB–0013–AU (iHeartMedia)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2015, 2016, and 2017 statements of account submitted by commercial webcasters and broadcasters Entercom Communications Corp. and iHeartMedia concerning royalty payments each made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket numbers 18–CRB–0014–AU (Entercom Communications Corp.) and 18–CRB–0013–AU (iHeartMedia).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a).[1]

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(c).

On December 20, 2018, SoundExchange filed with the Judges notices of intent to audit licensees Entercom Communications Corp. and iHeartMedia for their transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notices of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2019–00653 Filed 1–31–19; 8:45 am]

BILLING CODE 1410–72–P

[1] Citations are to current sections of the CFR.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 18–CRB–0016–AU (AccuRadio, LLC)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by

commercial webcaster and eligible small webcaster AccuRadio, LLC concerning royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 18–CRB–0016–AU (AccuRadio, LLC).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a)[1].

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(c).

[1] Citations are to current sections of the CFR.

On December 20, 2018, SoundExchange filed with the Judges a notice of intent to audit licensee AccuRadio, LLC for its transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2019–00652 Filed 1–31–19; 8:45 am]

BILLING CODE 1410–72–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Proposed Collection; Comment Request; Information on Meetings With Outside Parties Pursuant to Executive Order 12866

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) is proposing to revise the information collection it uses to for members of the public who request a meeting with OIRA on rules under review at the time pursuant to Executive Order 12866. The information collected would be subject to the Paperwork Reduction Act (PRA) and this notice announces and requests comment on OIRA's proposal for such a collection.

DATES: Consideration will be given to all comments received by April 2, 2019.

ADDRESSES: Submit comments by one of the following methods:

- *Website: www.regulations.gov.* Direct comments to Docket ID OMB–2018–0011.
- *Email: Oira_submission@omb.eop.gov.* Please include in the subject line of the email, ''Executive Order 12866 Information Collection.''
- *Fax:* 202–395–5806.

Comments submitted in response to this notice may be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, 202–395–5897, *Oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information on Meetings With Outside Parties Pursuant to Executive Order 12866.

Abstract: Executive Order 12866, ''Regulatory Planning and Review,'' issued by President Clinton on September 30, 1993, establishes and governs the process under which OIRA reviews agency draft and proposed final regulatory actions. Consistent with the disclosure provisions of Executive Order 12866, OIRA provides information about its work related to regulatory reviews on *Reginfo.gov* at *www.Reginfo.gov* and on OIRA's website at *https://www.whitehouse.gov/omb/oira.* If the OIRA Administrator or his/her designee meets with outside parties during a review, the subject, date, and participants of the meeting are disclosed on the *Reginfo.gov* website, as well as any materials distributed at such meetings.

These meetings occur at the initiative and request of an outside party. Any member of the public may request a meeting about a regulatory action under OIRA review to present their views and may invite other outside parties to attend. OIRA invites representatives from the agency or agencies issuing the regulatory action. OIRA does not take minutes during the meeting but does, however, post on any written materials provided by outside parties during these meetings, including the initial meeting request.

To help ensure transparency associated with meetings pursuant to Executive Order 12866, OIRA is proposing to collect—and then post publicly—the following information from outside parties that request a meeting with OIRA to present their views on a regulatory action currently under review:

1. Names of all attendees who will be present at the meeting from the outside party or parties. Each attendee's organization or affiliation. If an attendee is representing another organization, please provide the name of the

organization the attendee is representing.

2. The name of the regulatory action under review on which the party would like to present its views.

3. Electronic copies of all of briefing materials that will be used during the presentation.

4. An acknowledgment by the requesting party that all information submitted to OIRA pursuant to this collection and meeting request will be made publically available at *Reginfo.gov.*

Additionally the contact information (phone number and email) for the requesting organization will also be collected in order to confirm the meeting with them, but will not be posted. This revision includes allowing outside parties to provide the information to OIRA through an electronic online form.

This revision to the information collection will streamline the current process for outside parties when requesting a meeting and will ensure transparency and accuracy of the docket that OIRA keeps in accordance with the disclosure provisions of Executive Order 12866. OIRA welcomes any and all public comments on the proposed collection of information such as the accuracy of OIRA's burden estimate, the practical utility of collecting this information, and whether there are additional pieces of information that could be collected from meeting requestors to further the disclosure provisions of Executive Order 12866.

Current actions: Proposal for revising an existing information collection requirement.

Type of review: Revision.

Affected public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Expected average annual number of respondents: 200.

Average annual number of responses per respondent: 2.

Total number of responses annually: 400.

Burden per response: 30 minutes.

Total average annual burden: 200 hours.

Request for comments: OMB anticipates that comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dominic J. Mancini,

Deputy Administrator.

[FR Doc. 2019–00701 Filed 1–31–19; 8:45 am]

BILLING CODE 3110–01–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: Electronic meeting of the Board of Trustees to be held via telephone 9:00 a.m. to 10:00 a.m. (PST—Pacific Standard Time), Tuesday, February 12, 2019. (This meeting was publicly noticed on the Morris K. Udall and Stewart L. Udall Foundation's website on Tuesday, January 29, 2019.)

PLACE: Board of Trustees Meeting held via telephone.

STATUS: This special meeting of the Board of Trustees, to be held electronically (in accordance with the Operating Procedures of the Udall Foundation's Board of Trustees), will be open to the public, unless it is necessary for the Board to consider items in Executive Session. Members of the public who would like to participate in the open session of this special meeting of the Board of Trustees should email Marc Rosen, General Counsel, Morris K. Udall and Stewart L. Udall Foundation, at *rosen@udall.gov.*

MATTERS TO BE CONSIDERED: (1) Vote to go into Executive Session to discuss matters 2–4; (2) Create the position of Acting Executive Director of the Morris K. Udall and Stewart L. Udall Foundation; (3) Discuss candidates for and select the Acting Executive Director; and (4) Establish the entire Board of Trustees as the final Interview and Selection Panel for the Morris K. Udall and Stewart L. Udall Foundation Executive Director Search.

PORTIONS OPEN TO THE PUBLIC: The vote to go into Executive Session to discuss matters 2–4 above.

PORTIONS CLOSED TO THE PUBLIC: Executive Session to discuss matters 2–4 above.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: January 30, 2019.

Elizabeth E. Monroe,

Executive Assistant, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2019–00875 Filed 1–30–19; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Museum Application Program (MAP) Application

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning the forms and instructions for the program

application for the Museum Assessment Program for the next three years.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the CONTACT section below on or before February 28, 2019.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: The Museum Assessment Program (MAP) is a technical assistance program that can help a museum attain excellence in operations and planning, through a confidential process of self-study and peer review. For over 30 years, MAP has helped over 5,000 small and mid-sized museums of all types through a confidential, consultative process of self-study and a site visit from an expert peer reviewer over one year. MAP helps museums strengthen operations, plan for the future and meet standards. MAP is currently administered by the American Alliance of Museums (Alliance) and supported through a cooperative agreement with the Institute of Museum and Library Services (IMLS).

This action is to create the forms and instructions for the program application for the Museum Assessment Program for the next three years.

Agency: Institute of Museum and Library Services.

Title: Museum Assessment Program Application.

OMB Number: 3137–0101.

Frequency: Once a year.

Affected Public: Museum staff.

Number of Respondents: 124.

Estimated Average Burden per Response: 7 hours.

Estimated Total Annual Burden: 868 hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: $23,784.

Dated: January 28, 2019.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2019–00544 Filed 1–31–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2019–2021 IMLS Grant Performance Report Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning the three year approval of the forms necessary to report on grant or cooperative agreement activities on an interim and final basis for all IMLS grant programs.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **CONTACT** section below on or before February 28, 2019.

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: To administer the IMLS processes of grants and cooperative agreements, IMLS uses standardized application forms, guidelines and reporting forms for eligible libraries, museums, and other organizations to apply for its funding. These forms submitted for public review in this Notice are the Interim Performance Report and the Final Performance Report, and the instructions associated with each one. The collection of information from these forms is a part of the IMLS grant performance reporting requirements and process.

Agency: Institute of Museum and Library Services.

Title: Grant Application Forms.

OMB Number: 3137–0100.

Frequency: Once per year.

Affected Public: Library and Museum grant applicants.

Number of Respondents: 976.

Estimated Average Burden per Response: 15.4 hours.

Estimated Total Annual Burden: 6,235 hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: $174,186.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Dated: January 28, 2019.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2019–00543 Filed 1–31–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Museum Capacity-Building Programs Assessment Project

AGENCY: Institute of Museum and Library Services.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 28, 2019.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Paula Gangopadhyay, Deputy Director, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. She can be reached by Telephone: 202–653–4717 Fax: 202–653–4608, or by email at *pgangopadhyay@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

Over its history, the Institute of Museum and Library Services (IMLS) has invested in a wide range of organizational capacity building and technical assistance for the museum sector through grant making and special initiatives. Through this project, IMLS seeks to strengthen the alignment of its investments, and other offerings in the sector, and understand the full scope of existing museum capacity building opportunities, including but not limited to organizational assessment, coaching, cohort learning, self-driven communities of practice, and self-serve resources. Through this assessment project, IMLS seeks to obtain a holistic view of the museum target audience and needs for capacity building support, identify potential gaps in the suite of current offerings, and define both opportunities and partnerships for new and expanded offerings. This action is to seek approval for the survey forms and instructions for the Museum Capacity-Building Assessment Programs for the next three years.

Agency: Institute of Museum and Library Services.

Title: Museum Capacity-Building Programs Assessment Project.

OMB Number: 3137–TBD.

Frequency: Once a year.

Affected Public: Museum staff.

Number of Respondents: TBD.

Estimated Average Burden per Response: TBD hours.

Estimated Total Annual Burden: TBD hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: $TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Dated: January 28, 2019.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2019–00582 Filed 1–31–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee Meeting

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Tuesday, February 12, 2019, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after April 1, 2019. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: January 28, 2019.

Elizabeth Voyatzis,

Committee Management Officer, Federal Council on the Arts and the Humanities & Deputy General Counsel, National Endowment for the Humanities.

[FR Doc. 2019–00588 Filed 1–31–19; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–455; NRC–2018–0246]

Exelon Generation Company, LLC, Byron Station, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The license amendment request was originally noticed in the **Federal Register** on November 6, 2018. The notice is being reissued in its entirety to include the revised scope, description of the amendment request, and proposed no significant hazards consideration determination. The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–66, issued to Exelon Generation Company, LLC, for operation of the Byron Station, Unit No. 2. The proposed amendment would revise technical specification 4.2.1 to authorize use of two lead test assemblies (LTAs) containing a limited number of accident tolerant fuel (ATF) lead test rods (LTRs) during Byron Station, Unit No. 2, refueling cycles 22, 23, and 24. The LTAs would be nonlimiting under steady state reactor conditions and will comply with fuel limits specified in the core operating limits report and technical specifications under all operational conditions.

DATES: Submit comments by March 4, 2019. Requests for a hearing or petition for leave to intervene must be filed by April 2, 2019.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0246. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6606 or email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0246 and NRC Docket No. STN 50–455, 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–2018–0246.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The 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.
- *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–2018–0246, facility name, unit number, plant docket number, application date, and subject 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 an amendment to Facility Operating License No. NPF–66, issued to Exelon Generation Company, LLC (EGC), for operation of the Byron Station, Unit No. 2, located in Ogle County, Illinois. The license amendment request, dated March 8, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18067A431), was originally noticed in the **Federal Register** on November 6, 2018 (83 FR 55573). Subsequently, EGC supplemented the request on July 2, 2018 (ADAMS Accession No. ML18184A270), December 18, 2018 (ADAMS Accession No. ML18352B117), and January 16, 2019 (ADAMS Accession No. ML19016A491). The January 16, 2019, supplement revised the scope of the request to eliminate the license condition and to include a revision to technical specification 4.2.1. The notice is being reissued in its entirety to include the revised scope, description of the amendment request, and proposed no significant hazards consideration determination. The proposed amendment would revise technical specification 4.2.1 to authorize use of two LTAs containing a limited number of ATF LTRs during Byron, Unit No. 2, refueling cycles 22, 23, and 24. The LTAs would be nonlimiting under steady state reactor conditions and will comply with fuel limits specified in the core operating limits report and technical specifications under all operational conditions.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), 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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves only a very small number of LTRs, which will be conservatively designed from a neutronic standpoint, and are thermal-hydraulically and mechanically compatible with all plant Systems, Structures and Components (SSCs). The fuel pellets and fuel rods themselves will have no impact on accident initiators or precursors. There will not be a significant impact on the operation of any plant SSC or on the progression of any operational transient or design basis accident. There will be no impact on any procedure or administrative control designed to prevent or mitigate any accident.

The Westinghouse ADOPT™ and EnCore® (with and without chromium-coated cladding, respectively) LTAs are of the same design as the co-resident fuel in the core, with the exception of containing a limited number of LTRs in place of the standard fuel rods. The LTAs will be placed in core locations that assure that the LTRs containing uranium silicide fuel pellets and standard UO2 fuel pellets with coated Optimized ZIRLO™ cladding are nonlimiting. The rods containing ADOPT™ pellets meet the fuel licensing limits under all conditions but are only nonlimiting in steady-state conditions. The Byron Station, Unit 2, Cycle, 22, 23 and 24 reload designs will meet all applicable design criteria. Evaluations of the LTAs will be performed as part of the cycle specific reload safety analysis to confirm that the acceptance criteria of the existing safety analyses will continue to be met. Operation of the Westinghouse EnCore® and ADOPT™ fuel will not significantly increase the predicted radiological consequences of accidents currently postulated in the Updated Final Safety Analysis Report.

Based on the above discussion, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves the use of a very small number of LTRs in two LTAs which are very similar in all aspects to the co-resident fuel, as noted in Question 1. The proposed change does not change the design function or operation of any SSC, and does not introduce any new failure mechanism, malfunction, or accident initiator not considered in the current design and licensing bases.

The Byron Station, Unit 2 reactor cores will be designed to meet all applicable design and licensing basis criteria. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. The reload core designs for the cycles in which the Westinghouse LTAs will operate (*i.e.,* Cycles 22, 23 and 24) will demonstrate that the use of the LTAs in the core is acceptable. The relevant design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of Westinghouse LTAs does not involve any alteration to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors.

Therefore, the proposed change will not create the possibility of a new or different kind of accident than those previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of Byron Station Unit 2 with two Westinghouse LTAs containing a limited number of LTRs does not change the performance requirements on any system or component such that any design criteria will be exceeded. The current limits on core operation defined in the Byron Station Technical Specifications will remain applicable to the subject LTAs during Cycles 22, 23, and 24. Westinghouse analytical codes and methods will be used, and supplemented as necessary using conservative assumptions, to confirm that all applicable limits associated with the LTAs (*e.g.,* fuel thermal mechanical limits, core thermal hydraulic limits, Emergency Core Cooling Systems limits, nuclear limits such as Shutdown Margin, transient analysis limits, and accident analysis limits) remain bounded by the current analysis of record. With respect to non-fuel SSCs, there is no reduction in the margin of safety for any safety limit, limiting safety system setting, limiting condition of operation, instrument setpoint, or any other design parameter.

Based on this evaluation, 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 persons (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 no later than 60 days from the date of publication of this notice. 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 email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 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 March 8, 2018, as supplemented on July 2, 2018, December 18, 2018, and January 16, 2019.

Dated at Rockville, Maryland, this 29th day of January 2019.

For the Nuclear Regulatory Commission.

David J. Wrona,

Branch Chief, Plant Licensing Branch III, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–00734 Filed 1–31–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Licensing Support Network Advisory Review Panel.

The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission (NRC) as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation and maintenance of the system. This electronic information management system was known as the Licensing

Support System (LSS). In November, 1998 the Commission approved amendments to title 10 *Code of Federal Regulations* Part 2 that renamed the Licensing Support System Advisory Review Panel as the Licensing Support Network Advisory Review Panel (LSNARP). The Licensing Support Network (LSN) was shut down in 2011 and the document collection was submitted to the Office of the Secretary. The document collection was made publically available in the NRC's Agencywide Documents Access and Management System in August 2016 and contains over 3.69 million documents associated the proposed high-level waste facility at Yucca Mountain.

Membership on the Panel will continue to be drawn from those whose interests could be affected by the use of the LSN document collection, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and nuclear industry groups. Federal agencies with expertise and experience in electronic information management systems may also participate on the Panel.

The NRC has determined that renewal of the charter for the LSNARP until January 3, 2021, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Russell E. Chazell, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–415–7469.

Dated: January 3, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–00599 Filed 1–31–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348; 50–364; License Nos. NPF–2; NPF–8; EA–18–032; NRC–2019–0038]

In the Matter of Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a confirmatory order (Order) to Southern Nuclear Operating Company, Inc., (the licensee), confirming the agreement reached in an Alternative Dispute Resolution mediation session held on September 21–22, 2018. This Order will ensure the licensee restores compliance with NRC regulations.

DATES: The confirmatory order was issued on January 29, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0038 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–2019–0038. Address questions about dockets in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; e-mail: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail 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.

- *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: Scott Sparks, Region II, U.S. Nuclear Regulatory Commission, Atlanta, Georgia 30303–1257; telephone: 404–997–4422; email: *Scott.Sparks@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Atlanta, Georgia, this 29th day of January 2019.

For the Nuclear Regulatory Commission.

Catherine Haney,

Regional Administrator.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of Southern Nuclear Operating Company, Inc., Joseph M. Farley Nuclear Plant

Docket Nos. 50–348; 50–364

License Nos. NPF–2; NPF–8

EA–18–032

CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE UPON ISSUANCE)

I

Southern Nuclear Operating Company, Inc., (SNC or Licensee) is the holder of Operating License Nos. NPF–2, NPF–8, DPR–57, NPF–5, NPF–68, NPF–81, and Combined Licenses NPF–91 and NPF–92, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to part 50 and part 52 of title 10 of the Code of Federal Regulations (10 CFR). The licenses authorize the operation of the Joseph M. Farley Nuclear Plant (FNP) Units 1 and 2, the Edwin I. Hatch Nuclear Plant, Units 1 and 2, the Vogtle Electric Generating Plant, Units 1 and 2, and the combined construction and operation of Vogtle Electric Generating Plant, Units 3 and 4, in accordance with conditions specified therein. These facilities are located in Columbia, Alabama, Baxley, Georgia, and Waynesboro, Georgia, respectively.

This Confirmatory Order (CO) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 21–22, 2018.

II

On April 21, 2017, the U. S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) initiated an investigation, to determine if a Force-on-Force/Target Set Coordinator, who was also a Safeguards Information (SGI) custodian at Farley Nuclear Plant (FNP), deliberately failed to properly secure SGI and follow plant procedures. The investigation was completed on March 29, 2018, and the results were documented in OI Report No. 2–2017–022.

The NRC conducted a review of the OI report, and documented the results of this review in NRC Inspection Report 05000348/2018411 and 05000364/2018411, dated July 27, 2018 (Agency-wide Documents Access and Management System (ADAMS)

accession number ML18208A305). The inspection report identified one apparent violation (AV), involving the licensee's failure to store SGI in a locked security storage container while unattended and the failure to maintain an inventory of SGI documents located inside a security storage container and to document the retrieval of SGI when in use. The specific AV (updated to reflect the correct title of the FNP employee involved) was stated as follows:

10 CFR 73.21(a)(1), Protection of Safeguards Information: Performance requirements, states, in part, Each licensee, or other person who produces, receives, or acquires Safeguards Information [SGI] shall ensure that it is protected against unauthorized disclosure. To meet this general performance requirement, such licensees, or other persons subject to this section shall: (i) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in 10 CFR 73.22 related to power reactors.

10 CFR 73.22(c)(2), Protection of Safeguards Information: Specific requirements, states in part, that while unattended, Safeguards information shall be stored in a locked security storage container.

Southern Nuclear Company (SNC) Procedure NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' Version 2.1, requires SGI custodians to maintain an inventory of documents inside a security storage container and log any retrieval of an SGI document for use. This procedure also requires that, while unattended, SNC Safeguards Information shall be stored in an approved Security Storage Container.

Contrary to the above, on multiple dates in August, 2016, the licensee failed to store SGI in a locked security storage container while unattended and failed to maintain an inventory of SGI located inside a security storage container and to document the retrieval of SGI when in use. Specifically, a former Force-on-Force/Target Set Coordinator, who served as an SGI custodian, failed to store SGI in a locked security storage container while unattended on the following occasions: 1) SGI was left unattended in the employee's private residence on or approximately August 18–20, 2016; 2) SGI was left unattended in a hotel room for approximately 1.5 hours on August 20, 2016; 3) SGI was left unattended in a rental car on August 25, 2016, for approximately 11 hours; and 4) A laptop computer containing SGI was left unattended in the employee's private residence on or approximately August 25–26, 2016. Additionally, the licensee failed to maintain an inventory and document the retrieval of SGI from the security storage container when the employee reproduced an SGI document, placed the SGI in a binder and removed it for use from the security storage container.

The NRC's inspection report of July 27, 2018, also documented that the OI investigation was conducted to determine whether the FNP employee deliberately failed to properly secure safeguards information (SGI) and follow plant procedures. In this case, the employee indicated his knowledge of regulatory and procedural requirements involving the handling of SGI. Additionally, the employee had received SGI training and had a clear understanding of SNC's SGI handling requirements. However, the Farley employee deliberately failed to follow SNC procedures, and his actions were determined by the NRC to be in violation of 10 CFR 50.5.

In response to the NRC's inspection report of July 27, 2018, SNC advised of its desire to participate in the Agency's ADR program to resolve the enforcement aspects of this matter.

III

On September 21–22, 2018, the NRC and SNC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This CO is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. The NRC and SNC agreed that the issue described in Section II of this CO represents a violation of regulatory requirements, the NRC and SNC concluded that the violation occurred due to the deliberate misconduct of a former Force-on-Force/Target Set Coordinator at FNP.

2. Based on a review of the incident, SNC completed a number of corrective actions and enhancements to preclude recurrence of the violation, including but not limited to the following:

a. Immediate/interim corrective actions included: initiated a corporate security investigation; stopped all transportation of SGI without approval from the site security manager; briefed all SGI custodians and verified their understanding of how to properly use and handle SGI; performed the SGI safe inventory at Farley Nuclear Plant; issued a security department instruction on NMP–AD–013–003 requirements for SGI on laptop hard drives; evaluated if gaps existed in their Behavior Observation Program as related to the individual; developed a communication strategy for both internal and external communications related to the issue; performed an assessment to determine how effectively FNP had responded and what additional actions should be taken by means of an external resource knowledgeable of security; and issued a security department instruction to revise the approval authority for off-site transport of SGI to the Fleet Security Director;

b. Other prompt/intermediate corrective actions included: revised the SGI procedures to address issues identified during the root cause evaluation; briefed all SNC Safeguards Information custodians on the findings of the root cause including Operating Experience (OE) and lessons learned; and conducted external benchmarking with other utilities regarding SGI controls during off-site transportation.

3. Based on SNC's review of the incident and NRC's concerns with respect to precluding recurrence of the violation, SNC agreed to implement the following corrective actions and enhancements:

a. Within 4 months of the issuance date of the Confirmatory Order (CO), SNC shall revise procedures to periodically and randomly audit SGI records to determine compliance with existing procedures and regulatory requirements. At a minimum, three random audits of SGI records shall be performed at each SNC nuclear plant each year, for a period of three years from the date of issuance of this CO. Identified deficiencies shall be entered into the CAP for tracking corrective actions to completion, consistent with existing SGI requirements. The audit shall be conducted by personnel knowledgeable of SGI, independent from the station. The results of such audits shall be made available for NRC review.

b. Upon issuance of the CO, SNC shall maintain applicable SGI procedures to provide specific direction for transporting SGI away from the Protected Area and Owner Controlled Area of an SNC facility, including packaging requirements and guidance on positive controls on business travel that may involve an overnight stay, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

c. Upon issuance of the CO, SNC shall maintain applicable SGI procedures to ensure that SGI handling requires the conduct of a pre-job brief for all qualified individuals requesting to check out SGI for use, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

d. Internal Communication:

i. Within 2 months of the issuance date of the Confirmatory Order, an SNC senior executive shall develop a Communication (either verbal, written, electronic, or video) describing the circumstances leading to this CO, explain that willful violations will not be tolerated, and, as a result, SNC shall be undertaking efforts to confirm whether individuals are engaging in such conduct at any of its sites. The Communication shall stress the importance of procedural use and adherence and ensuring that documents are complete and accurate. The Communication shall also stress the potential consequences for engaging in willful noncompliance. This message shall be balanced with the recognition that people do make mistakes, and when that happens action shall be taken by SNC to address the mistake. The contents of this communication shall be retained and made available for NRC review consistent with the terms of this CO.

ii. Within 6 months of the completion of Section III.3.d.i, this Communication will be distributed to all SNC employees and contractors with unescorted access authorization to the SNC operating sites. Each recipient of the Communication referenced in Section III.3.d.i shall read and sign a ''commitment to compliance'' statement included with the Communication (subject to any collective bargaining obligations that may apply).

iii. Within 2 months of the completion of Section III.3.d.i, and for three years following the issuance of this CO, this Communication will be provided to all individuals receiving unescorted access authorization to the SNC operating sites.

iv. With respect to the Vogtle 3&4 site:

1. Within 6 months of the completion of Section III.3.d.i, and for a period of 3 years from the date of the CO, SNC supervisors and above shall receive the Communication (referenced in Section III.3.d.i). Each recipient of the Communication referenced in Section III.3.d.i shall read and sign a ''commitment to compliance'' statement included with the Communication (subject to any collective bargaining obligations that may apply). During this 3 year period individuals promoted to a supervisory position shall receive the Communication and read and sign the ''commitment to compliance'' statement.

2. The contractor superintendents covered by this paragraph will include those who are superintendents when SNC initiates actions described in Section III.3.d.iv.1. Within a period of 6 months from the date of issuance of this CO, all contractor superintendents and above who have fitness for duty or unescorted access authorization to the controlled construction area will receive the Communication and read and sign the ''commitment to compliance'' statement included with the Communication referenced in Section III.3.d.i above. Additionally, contractor personnel covered by Section III.3.d.iv.2 shall commit to inform their reports of the contents of the Communication.

3. Within 2 months of completion of Section III.3.d.i and for three years following the issuance of this CO, all individuals receiving fitness for duty or unescorted access authorization to the controlled construction area will receive the Communication prior to the granting of access.

e. Within 6 months of the issuance date of the Confirmatory Order and at 12 month intervals thereafter, SNC shall complete retraining of all SNC SGI custodians regarding SGI control, access, receipt, transportation, inventory, transmittal, and storage.

f. Upon issuance of the CO, SNC shall maintain SGI procedures regarding storage of SGI originating from other permanent repositories and the inventory of SGI, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

g. Upon issuance of the CO, SNC shall maintain certain sections of SGI procedures as ''reference use'' (i.e., the procedure is required to be present when performing the associated action steps) consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1, and NMP–AD–013–005, ''Transmittal and Receipt of Safeguards Information (SGI),'' Revision 3.0.

h. Within 12 months from the date of this Confirmatory Order, SNC shall deliver a presentation describing the event that formed the basis for this violation to include corporate and site oversight, and accountability responsibilities. The presentation shall also emphasize procedural adequacy, procedural adherence, and the need for management ownership of integrity issues. The presentation shall be delivered at one of the following: the Nuclear Security Working Group Meeting, the Security/Emergency Preparedness Summit, the NRC's Regulatory Information Conference, the NEI Regulatory Affairs Forum, or the ANS Utility Working Group Conference. In the event that SNC cannot deliver a presentation at one of the aforementioned events, SNC shall seek approval from the NRC for an alternative venue. The presentation shall be made available for NRC review.

i. Within 4 months of the issuance date of the Confirmatory Order, SNC shall revise procedures to require that all transportation of SGI material outside of the owner controlled area shall require approval of an SNC Corporate Security Manager.

j. Within 3 months from the date of this Confirmatory Order, SNC shall revise procedures to provide additional instruction following an incident having the potential for a Part 73 violation of green or higher significance. The instruction shall require that an SNC Security organization not involved in the event provides oversight in determining the proper corrective action program response (e.g., corporate led security investigation or fact finding). Documentation shall be retained and made available for NRC review consistent with the terms of this CO.

k. Within 9 months of the issuance date of the Confirmatory Order, SNC shall conduct a benchmarking activity of at least two other non-SNC entities which handle SGI, for the purposes of determining best practices related to the SGI program. Based on the best practices identified by SNC, SNC shall revise program elements to facilitate SGI program improvements. The results of such benchmarking shall be made available for NRC review.

l. Within 6 months of the issuance date of the Confirmatory Order, SNC shall complete an independent assessment of the effectiveness of prior corrective actions since 2011 and an assessment of adverse trends that are associated with SGI incidents at SNC fleet facilities and the SNC corporate office. The results of this assessment shall be made available for NRC review.

m. At approximately 18 months after the issuance date of the CO, SNC shall conduct an effectiveness review of the required actions documented in Section V of this CO and those Corrective Action Reports (CARs) identified in Technical Evaluation (TE) 984092. SNC shall make available to the NRC the results of this review and its proposed actions to address any identified performance gaps.

4. For future NRC civil penalty assessment purposes, this CO shall be considered an escalated enforcement

action for the FNP (50–348, 50–364) dockets only.

5. The NRC concludes that the security significance of the SGI incident, including the deliberate aspects is consistent with escalated enforcement as described in the NRC Enforcement Policy. Additionally, a civil penalty would likely have been proposed, consistent with the Enforcement Policy civil penalty assessment approach. However, in consideration of the commitments delineated in Section V of this CO, the NRC agrees not to cite the violation, and agrees not to propose a civil penalty for all matters discussed in the NRC's IR to SNC dated July 27, 2018 (EA–18–032).

6. Upon completion of the terms of items of the CO, SNC shall provide the NRC with a letter discussing its basis for concluding that the CO has been satisfied.

7. The NRC and SNC agree that the above elements shall be incorporated into issuance of a Confirmatory Order.

8. This agreement is binding upon successors and assigns of SNC.

On January 9, 2019, SNC consented to issuance of this Confirmatory Order with the commitments, as described in Section V below. SNC further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Because SNC has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this CO.

I find that SNC's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that SNC's commitments be confirmed by this CO. Based on the above and SNC's consent, this CO is effective upon issuance.

V

Accordingly, pursuant to Sections 104b., 161b., 161i., 161o., 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, IT IS HEREBY ORDERED, THAT LICENSE NOS. NPF–2, NPF–8, DPR–57, NPF–5, NPF–68, NPF–81, NPF–91, AND NPF–92 ARE MODIFIED AS FOLLOWS:

1. SNC agrees to implement the following corrective actions and enhancements:

a. Within 4 months of the issuance date of the Confirmatory Order (CO), SNC shall revise procedures to periodically and randomly audit SGI records to determine compliance with existing procedures and regulatory requirements. At a minimum, three random audits of SGI records shall be performed at each SNC nuclear plant each year, for a period of three years from the date of issuance of this CO. Identified deficiencies shall be entered into the CAP for tracking corrective actions to completion, consistent with existing SGI requirements. The audit shall be conducted by personnel knowledgeable of SGI, independent from the station. The results of such audits shall be made available for NRC review.

b. Upon issuance of the CO, SNC shall maintain applicable SGI procedures to provide specific direction for transporting SGI away from the Protected Area and Owner Controlled Area of an SNC facility, including packaging requirements and guidance on positive controls on business travel that may involve an overnight stay, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

c. Upon issuance of the CO, SNC shall maintain applicable SGI procedures to ensure that SGI handling requires the conduct of a pre-job brief for all qualified individuals requesting to check out SGI for use, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

d. Internal Communication:

i. Within 2 months of the issuance date of the Confirmatory Order, an SNC senior executive shall develop a Communication (either verbal, written, electronic, or video) describing the circumstances leading to this CO, explain that willful violations will not be tolerated, and, that as a result, SNC shall be undertaking efforts to confirm whether individuals are engaging in such conduct at any of its sites. The Communication shall stress the importance of procedural use and adherence and ensuring that documents are complete and accurate. The Communication shall also stress the potential consequences for engaging in willful noncompliance. This message shall be balanced with the recognition that people do make mistakes, and when that happens action shall be taken by SNC to address the mistake. The contents of this communication shall be retained and made available for NRC review consistent with the terms of this CO.

ii. Within 6 months of the completion of Section V.1.d.i, this Communication will be provided to all SNC employees and contractors with unescorted access authorization to the SNC operating sites. Each recipient of the Communication referenced in Section V.1.d.i shall read and sign a ''commitment to compliance'' statement included with the Communication (subject to any collective bargaining obligations that may apply).

iii. Within 2 months of the completion of Section V.1.d.i, and for three years following the issuance of this CO, this Communication will be provided to all individuals receiving unescorted access authorization to the SNC operating sites.

iv. With respect to the Vogtle 3&4 site:

1. Within 6 months of the completion of Section V.1.d.i, and for a period of 3 years from the date of the CO, SNC supervisors and above shall receive the Communication referenced in Section V.1.d.i. Each recipient of the Communication referenced in Section V.1.d.i shall read and sign a ''commitment to compliance'' statement included with the Communication (subject to any collective bargaining obligations that may apply). During this 3 year period individuals promoted to a supervisory position shall receive the Communication and read and sign the ''commitment to compliance'' statement.

2. The contractor superintendents covered by this paragraph will include those who are superintendents when SNC initiates actions described in Section V.1.d.iv.1. Within a period of 6 months from the date of issuance of this CO, all contractor superintendents and above who have fitness for duty or unescorted access authorization to the controlled construction area will receive the Communication and read and sign the ''commitment to compliance'' statement included with the Communication referenced in Section V.1.d.i above. Additionally, contractor personnel covered by Section V.1.d.iv.2 shall commit to inform their reports of the contents of the Communication.

3. Within 2 months of the completion of Section V.1.d.i and for three years following the issuance of this CO, all individuals receiving fitness for duty or unescorted access authorization to the controlled construction area will receive the Communication prior to the granting of access.

e. Within 6 months of the issuance date of the Confirmatory Order and at 12 month intervals thereafter, SNC shall complete retraining of all SNC SGI custodians regarding SGI control,

access, receipt, transportation, inventory, transmittal, and storage.

f. Upon issuance of the CO, SNC shall maintain SGI procedures regarding storage of SGI originating from other permanent repositories and the inventory of SGI, consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1.

g. Upon issuance of the CO, SNC shall maintain certain sections of SGI procedures as ''reference use'' (i.e., the procedure is required to be present when performing the associated action steps) consistent with NMP–AD–013–003, ''Physical Protection of Safeguards Information (SGI),'' revision 5.1, and NMP–AD–013–005, ''Transmittal and Receipt of Safeguards Information (SGI),'' revision 3.0.

h. Within 12 months from the date of this Confirmatory Order, SNC shall deliver a presentation describing the event that formed the basis for this violation and including corporate and site oversight, and accountability responsibilities. The presentation shall also emphasize procedural adequacy, procedural adherence, and the need for management ownership of integrity issues. The presentation shall be delivered at one of the following: the Nuclear Security Working Group Meeting, the Security/Emergency Preparedness Summit, the NRC's Regulatory Information Conference, the NEI Regulatory Affairs Forum, or the ANS Utility Working Group Conference. In the event that SNC cannot deliver a presentation at one of the aforementioned events, SNC shall seek approval from the NRC for an alternative venue. The presentation shall be made available for NRC review.

i. Within 4 months of the issuance date of the Confirmatory Order, SNC shall revise procedures to require that all transportation of SGI material outside of the owner controlled area shall require approval by an SNC Corporate Security Manager.

j. Within 3 months from the date of this Confirmatory Order, SNC shall revise procedures to provide additional instruction following an incident having the potential for a Part 73 green or higher violation. The instruction shall require that an SNC Security organization not involved in the event provides oversight in determining the proper corrective action program response (e.g., corporate led security investigation or fact finding). Documentation shall be retained and made available for NRC review consistent with the terms of this order.

k. Within 9 months of the issuance date of the Confirmatory Order, SNC shall conduct a benchmarking activity of at least two other non-SNC entities which handle SGI, for the purposes of determining best practices related to the SGI program. Based on the best practices identified by SNC, SNC shall revise program elements to facilitate SGI program improvements. The results of such benchmarking shall be made available for NRC review.

l. Within 6 months of the issuance date of the Confirmatory Order, SNC shall complete an independent assessment of the effectiveness of prior corrective actions since 2011 and an assessment of adverse trends that are associated with SGI incidents at SNC fleet facilities and the SNC corporate office. The results of this assessment shall be made available for NRC review.

m. At approximately 18 months after the issuance date of the CO, SNC shall conduct an effectiveness review of the required actions documented in section 5 of this CO and those Corrective Action Reports (CARs) identified in Technical Evaluation (TE) 984092. SNC shall make available to the NRC the results of this review and its proposed actions to address any identified performance gaps.

2. Upon completion of the terms of items of the CO, SNC shall provide the NRC with a letter discussing its basis for concluding that the CO has been satisfied.

3. The NRC and SNC agree that the above elements shall be incorporated into issuance of a Confirmatory Order.

4. The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by SNC of good cause.

5. This agreement is binding upon successors and assigns of SNC.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this CO, other than SNC, may request a hearing within 30 calendar days of the date of issuance of this CO. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (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 NRC's public Web site at https://www.nrc.gov/site-help/e-submittals/getting-started.html. System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at https://www.nrc.gov/site-help/e-submittals.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in,

is available on the NRC's public Web site at https://www.nrc.gov/site-help/e-submittals.html.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE System. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at https://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC Web site at https://www.nrc.gov/site-help/e-submittals.html, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (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, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at https://adams.nrc.gov/ehd/, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. 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.

If a person (other than SNC) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this CO should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this CO without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

[FR Doc. 2019–00688 Filed 1–31–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; NRC–2016–0078]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Renewed Facility Operating License No. NPF–38 to Entergy Operations, Inc., (EOI), the operator of the Waterford Steam Electric Station, Unit 3 (WF3), and Entergy Louisiana, LLC, the owner of WF3 (together Entergy or the licensees). Renewed Facility Operating License No. NPF–38 authorizes EOI to operate WF3 at reactor core power levels not in excess of 3,716 megawatts thermal, in accordance with the provisions of the WF3 renewed license and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to renew Facility Operating License No. NPF–38.

DATES: The NRC issued the Renewed Facility Operating License No. NPF–38 on December 27, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0078 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–2016–0078. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' 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.

FOR FURTHER INFORMATION CONTACT: Phyllis M. Clark, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6447, email: *Phyllis.Clark@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Notice is hereby given that the NRC has issued Renewed Facility Operating License No. NPF–38 to Entergy Operations, Inc. (EOI), the operator of Waterford Steam Electric Station, Unit 3 (WF3), and Entergy Louisiana, LLC (together Entergy or the licensees). Renewed Facility Operating License No. NPF–38 authorizes EOI to operate WF3 at reactor core power levels not in excess of 3,716 megawatts thermal, in accordance with the provisions of the WF3 renewed license and technical specifications. The NRC's record of decision that supports the decision to issue Renewed Facility Operating License No. NPF–38 is available in ADAMS under Accession No. ML18275A234. The NRC documented its environmental review for the license renewal in the record of decision and in the final supplemental environmental impact statement (FSEIS), which was published as Supplement 59, ''Regarding Waterford Steam Electric Station, Unit 3, Final Report,'' November 20, 2018 (ADAMS Accession No. ML18323A103), to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants.'' As part of its environmental review, the NRC considered a range of reasonable alternatives to WF3 license renewal that included new nuclear power generation, supercritical pulverized coal (SCPC), natural gas combined-cycle (NGCC), and a combination alternative (NGCC, biomass, and demand-side management (DSM)). The NRC also considered the no-action alternative, or simply not issuing the renewed license. The FSEIS documents the environmental review, including the determination that the adverse environmental impacts of license renewal for WF3 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

WF3 is a pressurized-water reactor located in Killona, St. Charles Parish, Louisiana (25 miles west of New Orleans, LA). The application for the renewed license, ''License Renewal Application, Waterford Steam Electric Station, Unit 3 Facility Operating License MPF–38, March 2016,'' dated March 23, 2016 (ADAMS Package Accession No. ML16088A324), as supplemented by letters dated through June 26, 2018, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and the NRC's regulations in chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC has made appropriate findings, which it has set forth in the renewed license. The NRC published a public notice of the proposed issuance of the renewed license, which included an opportunity for a hearing, in the **Federal Register** on May 31, 2016 (81 FR 34379). No adjudicatory matters are pending before the Commission or the Atomic Safety and Licensing Board Panel regarding the WF3 license renewal application.

For further details with respect to this action, see: (1) Entergy's license renewal application for WF3 dated March 23, 2016 (ADAMS Package Accession No. ML16088A324), as supplemented by letters through June 26, 2018, (2) the NRC's safety evaluation report published on August 17, 2018 (ADAMS Accession No. ML18228A668), (3) the NRC's final supplemental environmental impact statement (NUREG–1437, Supplement 59) for WF3 published on November 20, 2018 (ADAMS Accession No. ML18323A103), and (4) the NRC's record of decision (ADAMS Accession No. ML18275A234).

II. Conclusion

As discussed in Chapter 5 of the final supplemental environmental impact statement for the WF3 license renewal (Supplement 59 to NUREG–1437), the NRC has determined that the adverse environmental impacts of license renewal for WF3 are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, (2) information provided in the environmental report submitted by Entergy, (3) consultation with Federal, State, local, and Tribal agencies, and (4) the NRC staff's independent environmental review.

Dated at Rockville, Maryland, this 28th day of January 2019.

For the Nuclear Regulatory Commission.

Joseph E. Donoghue,

Deputy Director, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–00585 Filed 1–31–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Renewal of a Previously Approved Information Collection: Interview Survey Form, INV 10

AGENCY: Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the National Background Investigations Bureau (NBIB), Office of Personnel Management (OPM) proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection, Interview Survey Form, INV 10.

DATES: Comments are encouraged and will be accepted until April 2, 2019. This process is conducted in accordance with 5 CFR 1320.8(d)(1).

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

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

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the National Background Investigations Bureau, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is soliciting comments for this collection as required by the Paperwork Reduction

Act of 1995, 44 U.S.C. 3506(c)(2). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Interview Survey Form, INV 10 is mailed by OPM, to a random sampling of record and personal sources who were contacted during the background investigation process by investigators performing fieldwork. The INV 10 is used as a quality control instrument designed to ensure the accuracy and integrity of the investigative product. The form queries the recipient about the investigative procedure exhibited by the investigator, the investigator's professionalism, and the information discussed and reported. In addition to the preformatted response options, OPM invites the recipients to respond with any other relevant comments or suggestions. OPM proposes no changes to the INV 10.

Analysis

Agency: NBIB, U.S. Office of Personnel Management.

Title: Interview Survey Form, INV 10.

OMB Number: 3206–0106.

Affected Public: A random sampling of record and personal sources contacted during background investigations when investigations have performed fieldwork.

Number of Respondents: 67,391.

Estimated Time Per Respondent: 6 minutes.

Total Burden Hours: 6,739.

U.S. Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–00547 Filed 1–31–19; 8:45 am]

BILLING CODE 6325–53–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2018; Order No. 4988]

Annual Compliance Report, 2018

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: In light of the lapse of appropriations resulting in suspension of Commission operations and to allow time for public comment, the Commission is extending the comment deadlines in this docket by two weeks.

DATES: *Comments are due:* February 14, 2019. *Reply Comments are due:* February 25, 2019.

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: On December 31, 2018, the Commission established Docket No. ACR2018 to consider matters raised by the United States Postal Service's FY 2018 Annual Compliance Report (ACR).[1] Shortly thereafter, on close of business January 11, 2019, the Commission suspended operations due to a lapse in appropriations. As a result of this lapse in appropriations, the Commission's electronic filing system was shut down and participants in this docket could not file documents. During this time period until the Commission resumed operations on January 28, 2019, the Commission was unable to continue its review of the Postal Service's ACR submission.

In light of the lapse of appropriations resulting in suspension of Commission operations and to allow time for public comment, the Commission is extending the comment deadlines in this docket by two weeks.[2] The Commission hereby extends the deadline for filing comments from January 31, 2019, to February 14, 2019. The deadline for filing reply comments is extended from February 11, 2019, to February 25, 2019.

The Commission may also toll the timeframe for its Annual Compliance Determination (ACD) by a period of up to two weeks if needed to complete its review of the FY 2018 ACR, comments, and other data and information submitted in this proceeding.

It is ordered:

1. Comments on the United States Postal Service's FY 2018 Annual Compliance Report to the Commission are due on or before February 14, 2019.

2. Reply comments are due on or before February 25, 2019.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–00743 Filed 1–31–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of Postal Service's Filing of Annual Compliance Report and Request for Public Comments, December 31, 2018 (Order No. 4960); United States Postal Service FY 2018 Annual Compliance Report, December 28, 2018 (FY 2018 ACR).

[2] On January 28, 2019, the day the Commission resumed operations, United Parcel Service, Inc. (UPS) filed a motion requesting a three-week extension of the deadlines for filing comments and reply comments in this docket. Motion of United Parcel Service, Inc. to Extend Filing Deadlines, January 28, 2019 (Motion). To the extent this order extends the deadline for filing comments and reply comments by two weeks, the Motion is moot. With respect to the additional week requested by UPS, the Motion is denied. The Commission finds insufficient support for an extension beyond the time the Commission suspended operations. A two-week extension will place all parties back to the status quo as if the suspension of operations did not occur.

RAILROAD RETIREMENT BOARD

Civil Monetary Penalty Inflation Adjustment

AGENCY: Railroad Retirement Board.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2019.

SUMMARY: As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2019 annual adjustment of civil penalties for inflation.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461

note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than July 1, 2016, and annual adjustments thereafter.

For the 2019 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's regulations at Title 20, Code of Federal Regulations, Part 356. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the Consumer Price Index (CPI–U) for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2018 and October 2017, as provided by Office of Management and Budget Memorandum M–19–04 (December 14, 2018) is 1.02522 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is $11,463 (the 2018 maximum penalty of $11,181 multiplied by 1.02522, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is $11,463 (the 2018 minimum penalty of $11,181 multiplied by 1.02522, rounded to the nearest dollar), and the new maximum penalty is $22,927 (the 2018 maximum penalty of $22,363 multiplied by 1.02522, rounded to the nearest dollar). The adjustments in penalties will be effective February 1, 2019.

By Authority of the Board.

Sylvia Zaragoza,

Acting Secretary to the Board.

[FR Doc. 2019–00729 Filed 1–31–19; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84997; File No. 4–678]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Amended Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, MIAX PEARL, LLC, and MIAX EMERALD, LLC.

January 29, 2019.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on December 20, 2018, Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX EMERALD, LLC (''MIAX EMERALD'') and the Financial Industry Regulatory Authority, Inc. (''FINRA'') (together, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') an amended plan for the allocation of regulatory responsibilities, dated December 19, 2018 (''17d–2 Plan'' or the ''Plan''). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On November 19, 2014, the Commission declared effective the Plan entered into between FINRA and MIAX for allocating regulatory responsibility pursuant to Rule 17d–2.[10] The Plan is intended to reduce regulatory duplication for firms that are common members of both MIAX and FINRA. The plan reduces regulatory duplication for firms that are members of MIAX and FINRA by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations. Included in the Plan is an exhibit that lists every MIAX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAX members that are also members of FINRA and the associated persons therewith. On January 12, 2017, the parties submitted a proposed amendment to the Plan to add MIAX PEARL as a Participant to the Plan.[11] On June 28, 2018, the parties submitted a proposed amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, as well as certain provisions of Regulation SHO.[12]

III. Proposed Amendment to Plan

On December 20, 2018, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX EMERALD as a Participant to the Plan. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

Agreement Among Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC [AND], MIAX Pearl, LLC *and Miax Emerald, LLC,* Pursuant To Rule 17d–2 Under The Securities Exchange Act of 1934

This Agreement, by and among the Financial Industry Regulatory Authority, Inc. (''FINRA''), Miami International Securities Exchange, LLC (''MIAX'') [and], MIAX PEARL, LLC (''MIAX PEARL''), *and MIAX Emerald, LLC (''MIAX Emerald'')* is made this [27th]*19th* day of [June]*December,* 2018 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA, MIAX [and], MIAX PEARL *and MIAX Emerald* may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates the agreement entered into between FINRA, MIAX and MIAX PEARL on [January 11, 2017]*June 27, 2018,* entitled ''Agreement between Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC and MIAX PEARL, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

Whereas, the parties desire to reduce duplication in the examination of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, the parties desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, Therefore, in consideration of the mutual covenants contained hereinafter, the parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*MIAX Rules,*'' ''*MIAX PEARL Rules*'', ''*MIAX Emerald Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of MIAX [or], MIAX PEARL *or MIAX Emerald,* respectively, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean MIAX Rules [and], MIAX PEARL Rules *and MIAX Emerald Rules* that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Common Member's activity, conduct, or output in relation to such provision or rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MIAX [or], MIAX PEARL *or MIAX Emerald,* (ii) incorporation by reference of MIAX [or], MIAX PEARL Rules *or MIAX Emerald Rules* that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by MIAX [or], MIAX PEARL *or MIAX Emerald,* (iv) prior written approval of MIAX [or], MIAX PEARL *or MIAX Emerald* and (v) payment of fees or fines to MIAX [or], MIAX PEARL *or MIAX Emerald.*

(c) ''*Common Members*'' shall mean members of FINRA and at least one of MIAX [or], MIAX PEARL *or MIAX Emerald.*

(d) ''*Effective Date*'' shall be the date this Agreement is approved by the Commission.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Common Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. The term ''Regulatory Responsibilities'' shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (''Rule 14e–4''), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).

2. **Regulatory and Enforcement Responsibilities.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Common Members. Attached as *Exhibit 1* to this Agreement and made part hereof, MIAX [and], MIAX PEARL *and MIAX Emerald* furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are MIAX Rules [and], MIAX PEARL

[10] *See* Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

[11] *See* Securities Exchange Act Release Nos. 79779 (January 12, 2017), 82 FR 6674 (January 19, 2017) (notice) and 79974 (February 6, 2017), 82 FR 10417 (February 10, 2017) (order).

[12] *See* Securities Exchange Act Release No. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018).

Rules *and MIAX Emerald Rules* are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in the rules of the parties, MIAX [and], MIAX PEARL *and MIAX Emerald* shall submit an updated list of Common Rules to FINRA for review which shall add MIAX Rules [or], MIAX PEARL Rules *or MIAX Emerald Rules* not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete MIAX Rules [or], MIAX PEARL Rules *or MIAX Emerald Rules* included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be MIAX Rules [or], MIAX PEARL Rules *or MIAX Emerald Rules* that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and MIAX [and], MIAX PEARL *and MIAX Emerald* shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving MIAX's [and], MIAX PEARL's *and MIAX Emerald's* own marketplace;

(b) registration pursuant to their applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of their duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any MIAX Rules [or], MIAX PEARL Rules *or MIAX Emerald Rules* that are not Common Rules as provided in paragraph 6.

3. **Common Members.** Prior to the Effective Date, MIAX [and], MIAX PEARL *and MIAX Emerald* shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once each quarter.

4. **No Charge.** There shall be no charge to MIAX [and], MIAX PEARL *and MIAX Emerald* by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide MIAX [and], MIAX PEARL *and MIAX Emerald* with ninety (90) days advance written notice in the event FINRA decides to impose any charges to MIAX [and], MIAX PEARL *and MIAX Emerald* for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, MIAX [and], MIAX PEARL *and MIAX Emerald* shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. **Applicability of Certain Laws, Rules, Regulations or Orders.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. **Notification of Violations.** In the event that FINRA becomes aware of apparent violations of any MIAX Rules [or], MIAX PEARL Rules *or MIAX Emerald Rules,* which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify MIAX [and], MIAX PEARL *and MIAX Emerald* of those apparent violations for such response as MIAX [and], MIAX PEARL *and MIAX Emerald* deem appropriate. In the event that MIAX [or], MIAX PEARL *or MIAX Emerald* becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, MIAX [and], MIAX PEARL *and MIAX Emerald* shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Common Member is the subject of an investigation relating to a transaction on MIAX [or], MIAX PEARL *or MIAX Emerald,* MIAX [and], MIAX PEARL *and MIAX Emerald* may in their discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. **Continued Assistance.**

(a) FINRA shall make available to MIAX [and], MIAX PEARL *and MIAX Emerald* all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish MIAX [and], MIAX PEARL *and MIAX Emerald* any information it obtains about Common Members which reflects adversely on their financial condition. MIAX [and], MIAX PEARL *and MIAX Emerald* shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. No party shall assert regulatory or other privileges as against any other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information among the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. **Statutory Disqualifications.** When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Common Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep MIAX [and], MIAX PEARL *and MIAX Emerald* advised of its actions in this regard for such subsequent proceedings as MIAX [and], MIAX PEARL *and MIAX Emerald* may initiate.

9. **Customer Complaints.** MIAX [and], MIAX PEARL *and MIAX Emerald* shall forward to FINRA copies of all customer complaints involving Common Members received by MIAX [and], MIAX PEARL *and MIAX Emerald* relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. **Advertising.** FINRA shall assume responsibility to review the advertising of Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members, as any party, in its sole discretion, shall deem appropriate or necessary.

12. **Termination.** This Agreement may be terminated by any party at any time upon the approval of the Commission after one (1) year's written notice to the other parties (or such shorter time as agreed by the parties), except as provided in paragraph 4.

13. **Arbitration.** In the event of a dispute among the parties as to the operation of this Agreement, the parties hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other parties. In the event of a dispute among the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. **Separate Agreement.** This Agreement is wholly separate from the following agreement: (1) The multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, MIAX, NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, ISE Gemini, LLC, EDGX Exchange, Inc., ISE Mercury, LLC and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered as approved by the SEC on February 2, 2017, and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., EDGX Exchange, Inc., BOX Options Exchange LLC, NASDAQ OMX BX, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX PHLX, Inc., MIAX and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on February 2, 2017, and as may be amended from time to time.

15. **Notification of Members.** The parties shall notify Common Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. **Amendment.** This Agreement may be amended in writing provided that the changes are approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. **Limitation of Liability.** None of the parties nor any of their respective directors, governors, officers or employees shall be liable to any other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by any party and caused by the willful misconduct of another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by any party hereto with respect to any of the responsibilities to be performed by them hereunder.

18. **Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA, MIAX [and], MIAX PEARL *and MIAX Emerald* join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve MIAX [and], MIAX PEARL *and MIAX Emerald* of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC

By: _____

Name:
Title:

MIAX PEARL, LLC

By: _____

Name:
Title:

MIAX EMERALD, LLC

By: _____

Name:
Title:

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By: _____

Name:
Title:

Exhibit 1

Miami International Securities Exchange, LLC [and], MIAX PEARL, LLC *and MIAX Emerald, LLC* Rules Certification for 17d–2 Agreement With FINRA

Miami International Securities Exchange, LLC (''MIAX'') [and], MIAX PEARL, LLC (''MIAX PEARL'') *and MIAX Emerald, LLC (''MIAX Emerald'')* hereby certify that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified (''Common Rules'').

MIAX rules	MIAX Pearl rules	*MIAX Emerald rules*	FINRA (NASD) rules, Exchange Act provision or SEC rule
Rule 301 Just and Equitable Principles of Trade [1].	Rule 301 Just and Equitable Principles of Trade [1].	*Rule 301 Just and Equitable Principles of Trade* [1].	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.
Rule 303 Prevention of the Misuse of Material Nonpublic Information [1] [#].	Rule 303 Prevention of the Misuse of Material Nonpublic Information [1] [#].	*Rule 303 Prevention of the Misuse of Material Nonpublic Information* [1] [#].	Section 15(g) of the Exchange Act and FINRA Rule 3110(b)(1) Supervision.
Rule 315 Anti-Money Laundering Compliance Program [#].	Rule 315 Anti-Money Laundering Compliance Program [#].	*Rule 315 Anti-Money Laundering Compliance Program* [1] [#].	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 318(a) Manipulation	Rule 318(a) Manipulation	*Rule 318(a) Manipulation*	FINRA Rule 2020 Use of Manipulative, Deceptive or other Fraudulent Devices.
Rule 318(b) Manipulation	Rule 318(b) Manipulation	*Rule 318(b) Manipulation*	FINRA Rule 6140(d) Other Trading Practices.
Rule 319 Forwarding of Proxy and Other Issuer-Related Materials.	Rule 319 Forwarding of Proxy and Other Issuer-Related Materials.	*Rule 319 Forwarding of Proxy and Other Issuer-Related Materials.*	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.
Rule 320 Trading Ahead of Research Reports.	Rule 320 Trading Ahead of Research Reports.	*Rule 320 Trading Ahead of Research Reports.*	FINRA Rule 5280 Trading Ahead of Research Reports.
Rule 800(a), (b) and (d) Maintenance, Retention and Furnishing of Books, Records and Other Information [1] [#].	Rule 800(a), (b) and (d) Maintenance, Retention and Furnishing of Books, Records and Other Information [1] [#].	*Rule 800(a), (b) and (d) Maintenance, Retention and Furnishing of Books, Records and Other Information* [1] [#].	FINRA Rule 4511 General Requirements* and Section 17 of the Exchange Act and the rules thereunder [#].
Rule 1304 Continuing Education for Registered Persons [#].	Rule 1304 Continuing Education for Registered Persons [#].	*Rule 1304 Continuing Education for Registered Persons.* [#].	FINRA Rule 1250(a)(1)–(4), (6) and (b) Continuing Education Requirements. [#]
Rule 1321 Transfer of Accounts	Rule 1321 Transfer of Accounts ..	*Rule 1321 Transfer of Accounts* ..	FINRA Rule 11870 Customer Account Transfer Contracts.
Rule 1325 Telemarketing	Rule 1325 Telemarketing	*Rule 1325 Telemarketing*	FINRA Rule 3230 Telemarketing.

[1] FINRA shall only have Regulatory Responsibilities regarding the rule and not the interpretations and policies.

[#] Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MIAX [or], MIAX PEARL *or MIAX Emerald,* (ii) incorporation by reference of MIAX [or], MIAX PEARL *or MIAX Emerald* Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by MIAX [or], MIAX PEARL *or MIAX Emerald,* (iv) prior written approval of MIAX [or], MIAX PEARL *or MIAX Emerald* and (v) payment of fees or fines to MIAX [or], MIAX PEARL *or MIAX Emerald.*

In addition, the following provisions shall be part of this 17d–2 Agreement:

SEA Rule 200 of Regulation SHO—Definition of ''Short Sale'' and Marking Requirements and

SEA Rule 201 of Regulation SHO—Circuit Breaker

SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements

SEA Rule 204 of Regulation SHO—Close-Out Requirement

SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers ^

^ FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e–4(a)(1)(ii)(D).

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act [13] and Rule 17d–2 thereunder,[14] after February 19, 2019, the Commission may, by written notice, declare the plan submitted by MIAX, MIAX PEARL, MIAX EMERALD, and FINRA, File No. 4–678, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve MIAX, MIAX PEARL, and MIAX EMERALD of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–678 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–678. 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/other.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,

[13] 15 U.S.C. 78q(d)(1).

[14] 17 CFR 240.17d–2.

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of MIAX, MIAX PEARL, MIAX EMERALD, and FINRA. 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 4–678 and should be submitted on or before February 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00725 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–258, OMB Control No. 3235–0268]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 2a–7

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 also imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''); establish written procedures to test periodically the ability of the fund to maintain a stable NAV based on certain hypothetical events (''stress testing''); review, revise, and approve written procedures to stress test a fund's portfolio; and create a report to the fund board documenting the results of stress testing. The board must also adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's investment adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes, including determinations to impose any liquidity fees or temporary suspension of redemptions. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, evaluations with respect to asset-backed securities not subject to guarantees, and determinations with respect to adjustable rate securities and asset-backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–CR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–CR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

A fund must also post certain periodic information on the its website including disclosure of portfolio holdings, disclosure of daily and weekly liquid assets and net shareholder flow, disclosure of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions. Lastly, for funds that elect to be retail funds, they must create written policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds and reduce the likelihood that a fund is unable to maintain a stable NAV.

Commission staff estimates that there are 433 money market funds (91 fund complexes), all of which are subject to rule 2a–7. Commission staff further estimates that there will be approximately 10 new money market funds established each year. Commission staff estimates that rule 2a–7 contains the following collection of information requirements:

- Record of credit risk analyses, and determinations regarding adjustable rate securities, asset-backed securities, asset-backed securities not subject to guarantees, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements. Commission staff estimates a total annual hour burden for 433 funds to be 294,440 hours.
- Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority. Commission staff estimates a total annual hour burden for 10 new money market funds to be 155 hours.
- Board review of procedures and guidelines of any investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a–7 and amendment of such procedures and guidelines. Commission staff estimates a total annual hour burden for 108 funds to be 540 hours.
- Records of the board's determination for imposing any liquidity fees or temporary suspension of redemptions. Commission staff estimates a total annual hour burden for 2 funds to be 14 hours.
- Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events (''stress testing''). Commission staff estimates a total annual hour burden for 10 new money market funds to be 220 hours.

[15] 17 CFR 200.30–3(a)(34).

• Review, revise, and approve written procedures to stress test a fund's portfolio. Commission staff estimates a total annual hour burden for 91 fund complexes to be 1,092 hours.

• Reports to fund boards on the results of stress testing. Commission staff estimates a total annual hour burden for 91 fund complexes to be 4,550 hours.

• Website disclosures of portfolio holdings, of daily and weekly liquid assets and net shareholder flow, of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees and the suspension and resumption of fund redemptions. Commission staff estimates a total annual hour burden for 433 funds to be 36,291 hours.

• For funds electing retail fund status, written policies and procedures limiting all beneficial owners of the fund to natural persons. Commission staff estimates a total annual hour burden for 2 funds to be 26 hours.

Thus, the Commission estimates the total annual burden of the rule's information collection requirements is 337,328 hours.[1]

The estimated total annual burden is being decreased from 632,725 hours to 337,328 hours. This net decrease of 295,397 hours [2] is attributable to a combination of factors, including a decrease in the number of money market funds and fund complexes, and updated information from money market funds regarding hourly burdens, including revised staff estimates of the burden hours required to comply with rule 2a–7 as a result of new information received from surveyed fund representatives.

Commission staff estimates that in addition to the burden hours described above, money market funds will incur costs to preserve records, as required under rule 2a–7.[3] These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[4] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on a cost of $0.0051295 per dollar of assets under management for small funds, $0.0005041 per dollar assets under management for medium funds, and $0.0000009 per dollar of assets under management for large funds, the staff estimates compliance with the record storage requirements of rule 2a–7 costs the fund industry approximately $35.31 million per year.[5]

Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000132 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from $0 for small funds to $40.9 million for all large funds.[6] Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($20.45 million) [7] and for record preservation ($17.65 million) [8] to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share. As a result, the estimated total annual cost is being decreased from $92.9 million to $38.11 million.[9] This net decrease of $54.79 million [10] is attributable to a reduction in the number of money market mutual funds, updated information from money market funds regarding assets under management, as well as deducting the $38.1 million [11] in capital and preservation costs a money market fund would incur absent the requirements of rule 2a–7.

These estimates of burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

The collection of information under Rule 2a–7 is mandatory. The information provided by the rule is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

[1] This estimate is based on the following calculation: 294,440 hours + 155 hours + 540 hours + 14 hours + 220 hours + 1,092 hours + 4,550 hours + 36,291 hours + 26 hours = 337,328 hours.

[2] This estimate is based on the following calculation: 632,725 hours − 337,328 hours = 295,397 hours.

[3] A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality (*e.g.* handwritten notes, computer disks, etc.). Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N–CR are included in the PRA burden estimate for that form.

[4] The vast majority of assets under management in individual money market funds range from approximately $50 million to approximately $144.7 billion. We further note that the assets under management figures were calculated based on net assets at the fund level and not the sum of the market values of the underlying funds.

[5] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $403.6 million under management in small funds, $60.4 billion under management in medium funds and $3.1 trillion under management in large funds, the costs of preservation were estimated as follows: ((0.0051295 × $403.6 million) + (0.0005041 × $60.4 billion) + (0.0000009 × $3.1 trillion) = $35.31 million. For purposes of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small-money market funds with $50 million or less in assets under management; (ii) medium-money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large-money market funds with more than $1 billion in assets under management.

[6] This estimate is based on the following calculation: $0.0000132 × $3.1 trillion in assets under management for large funds = $40.9 million.

[7] This estimate is based on the following calculation: $40.9 million in capital costs/2 = $20.45 million.

[8] This estimate is based on the following calculation: $35.31 million in record preservation costs/2 = $17.65 million.

[9] This estimate is based on the following calculation: $35.31 million in record preservation costs + $40.9 million in capital costs − $17.65 million in record preservation costs absent rule 2a–7 requirements − $20.45 million in capital costs absent rule 2a–7 requirements = $38.11 million.

[10] This estimate is based on the following calculation: $92.9 million − $38.11 million = $54.79 million.

[11] This estimate is based on the following calculation if rule 2a–7 compliance was not required for a money market fund: $20.45 million in capital costs + $17.65 million in record preservation = $38.1 million.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00626 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W.

SEC File No. 270–642, OMB Control No. 3235–0696.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citations associated with this collection of information are 17 CFR 240.15Fb1–1 through 240.15Fb6–2, and 17 CFR 249.1600, 249.1600a, 249.1600b, 249.1600c and 249.1601.

The Commission adopted Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W on August 5, 2015 to create a process to register SBS Entities. Forms SBSE, SBSE–A, and SBSE–BD and SBSE–C were designed to elicit certain information from applicants. The Commission uses the information disclosed by applicants through the SBS Entity registration rules and forms to: (1) Determine whether an applicant meets the standards for registration set forth in the provisions of the Exchange Act; and (2) develop an information resource regarding SBS Entities where members of the public may obtain relevant, up-to-date information about SBS Entities, and where the Commission may obtain information for examination and enforcement purposes. Without the information provided through these SBS Entity registration rules and forms, the Commission could not effectively determine whether the applicant meets the standards for registration or implement policy objectives of the Exchange Act.

The information collected pursuant to Rule 15Fb3–2 and Form SBSE–W allows the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal. Without this information, the Commission would be unable to effectively determine whether it was appropriate to allow an SBS Entity to withdraw. In addition, it would be more difficult for the Commission to properly regulate SBS Entities if it were unable to quickly identify those that have withdrawn from the security-based swap business.

In 2017 there were approximately 55 entities that may need to register as SBS Entities. The Commission estimates that these Entities likely would incur a total burden of 9,825 hours per year to comply with Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W.

In addition, Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W may impose certain costs on non-resident persons that apply to be registered with the Commission as SBS Entities, including an initial and ongoing costs associated with obtaining an opinion of counsel indicating that it can, as a matter of law, provide the Commission with access to its books and records and submit to Commission examinations, and an ongoing cost associated with establishing and maintaining a relationship with a U.S. agent for service of process.

The staff estimates, based on internet research,[1] that it would cost each nonresident SBS Entity approximately $176 annually to appoint and maintain a relationship with a U.S. agent for service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately $3,872 per year.

Non-resident SBS Entities also would incur outside legal costs associated with obtaining an opinion of counsel. The staff estimates that each of the estimated 22 non-resident persons that likely will apply to register as SBS Entities with the Commission would incur, on average, approximately $25,000 in outside legal costs to obtain the opinion of counsel necessary to register, and that the total annualized cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately $183,333. Nonresident SBS Entities would also need to obtain a revised opinion of counsel after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. We do not believe this would occur frequently, and therefore estimate that one non-resident entity may need to recertify annually. Thus, the total ongoing cost associated with obtaining a revised opinion of counsel regarding the new regulatory regime would be approximately $25,000 annually. Consequently, the total annualized cost burden associated with Rules 15Fb1–1 through 15Fb6–2 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W would be approximately $212,205 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Abate, Lindsay M. EOP/OMB *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00628 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

[1] *See, e.g., http://www.incorp.com/registered-agent-resident-agent-services.aspx* (as of September 21, 2018, $99 per state per year), *https://ct.wolterskluwer.com/registered-agent-services?mm_campaign=Enter_Campaign_Code_Here&keyword=registered%20agent&utm_source=Google&utm_medium=CPC&utm_campaign=RegisteredAgent&jadid=695631&23457&jap=1t3&jk=registered%20agent&jkId=gc:a8a8ae4cd4a6542cf014a97541e8d183e:t1_p:k_registered%20agent:pl_&jp=&js=1&jsid=35672&jt=1* (as of September 21, 2018, $279 per year), and *https://www.ailcorp.com/services/registered-agent* (as of September 21, 2018, $149 per year). The staff sought websites that provided pricing information and a comprehensive description of their registered agent services. We calculated our estimate by averaging the costs provided on these three websites—($99 + $279 + $149) ÷ 3 = $176.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84992; SR–CboeEDGX–2018–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Adopt Complex Reserve Order Functionality

January 28, 2019.

On November 8, 2018, Cboe EDGX Exchange, Inc. 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 adopt Complex Reserve Order functionality. The proposed rule change was published for comment in the **Federal Register** on November 27, 2018.[3] On December 19, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to February 25, 2019.[4] The Commission received no comment letters regarding the proposed rule change.

On January 9, 2019, the Exchange withdrew the proposed rule change(SR–CboeEDGX–2018–049).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00590 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84642 (November 21, 2018), 83 FR 60911.

[4] *See* Securities Exchange Act Release No. 84868, 83 FR 66800 (December 27, 2018).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–774, OMB Control No. 3235–0727]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rules 400–404 of Regulation Crowdfunding (Intermediaries)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rules 300–304 of Regulation Crowdfunding.[1]

The collections of information required under Rules 400 through 404 is mandatory for all funding portals. Form Funding Portal helps ensure that the Commission can make information about funding portals transparent and easily accessible to the investing public, including issuers and obligated persons who engage funding portals; investors who may purchase securities through offerings on funding portals; and other regulators. Further, the information provided on Form Funding Portal expands the amount of publicly available information about funding portals, including disciplinary history. Consequently, the rules and forms allows issuers and the investing public, as well as others, to become more fully informed about funding portals in a more efficient manner.

Rule 400 requires each person applying for registration with the Commission as a funding portal to file electronically with the Commission Form Funding Portal. Rule 400(a) requires a funding portal to become a member of a national securities association registered under Section 15A of the Exchange Act. Rule 400(b) requires a funding portal to file an amendment to Form Funding Portal if any information previously submitted on Form Funding Portal becomes inaccurate for any reason. Rule 400(c) provides that a funding portal can succeed to the business of a predecessor funding portal upon the successor filing a registration on Form Funding Portal and the predecessor filing a withdrawal on Form Funding Portal.

Rule 400(d) requires a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal. Rule 400(e) states that duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member. Rule 400(f) requires a nonresident funding portal to: (1) Obtain a written consent and power of attorney appointing an agent for service of process in the United States; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, and will provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member.[2]

Rule 403(a) requires a funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal. Rule 403(b) provides that a funding portal must comply with privacy rules. Rule 404 requires all registered funding portals to maintain certain books and records relating to their funding portal activities, for not less than five years, the first two in an easily accessible place. Rule 404(e) requires funding portals to furnish promptly to the Commission, its representatives, and the registered national securities association of which the funding portal is a member true, correct, complete and current copies of such records of the funding portal that are requested by the representatives of the Commission and the registered national securities association.

The Commission staff estimates that annualized industry burden would be 17,554.35 hours to comply with Rules 400–404. The Commission staff estimates that the costs associated with complying with Rules 400–404 are estimated to be approximately a total amount of $308,729.

[1] *See Regulation Crowdfunding,* Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71387 (Nov. 16, 2015) (Final Rule) (''Regulation Crowdfunding'').

[2] Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other requirements under [the Exchange Act] as the Commission determines appropriate.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Abate, Lindsay M. EOP/OMB *Lindsay.M.Abate@omb.eop.gov* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00629 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–123, OMB Control No. 3235–0105]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form T–3.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 is filed on occasion. The information required by Form T–3 is mandatory. This information is publicly available on EDGAR. Form T–3 takes approximately 43 hours per response to prepare and is filed by approximately 16 respondents. We estimate that 25% of the 43 hours per response (11 hours) is prepared by the filer for a total annual reporting burden of 176 hours (11 hours per response × 16 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00625 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–446, OMB Control No. 3235–0503]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of FOIA Services 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–6

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–6 (17 CFR 239.17c and 274.11d) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.'' Form N–6 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable life insurance contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–6 also requires separate accounts organized as unit investment trusts that offer variable life insurance policies to provide investors with a prospectus and a statement of additional information (''SAI'') covering essential information about the separate account when it makes an initial or additional offering of its securities.

The Commission estimates that approximately 388 registration statements (8 initial registration statements plus 380 post-effective amendments) are filed on Form N–6 annually. The estimated hour burden per portfolio for preparing and filing an initial registration statement on Form N–6 is 770.25 hours. The estimated annual hour burden for preparing and filing initial registration statements is 6,162 hours (8 initial registration statements annually times 770.25 hours per registration statement). The Commission estimates that the hour burden for preparing and filing a post-effective amendment on Form N–6 is 67.5 hours. The total annual hour burden for preparing and filing post-effective amendments is 25,650 hours (380 post-effective amendments annually times 67.5 hours per amendment). The frequency of response is annual. The total annual hour burden for Form N–6, therefore, is estimated to be 31,812 hours (6,162 hours for initial registration statements plus 25,650 hours for post-effective amendments).

The Commission estimates that the cost burden for preparing an initial Form N–6 filing is $26,169 per portfolio and the current cost burden for preparing a post-effective amendment to a previously effective registration statement is $9,493 per portfolio. The Commission estimates that, on an annual basis, 8 portfolios will be referenced in an initial Form N–6 and 380 portfolios will be referenced in a post-effective amendment of Form N–6.

Thus, the total cost burden allocated to Form N–6 would be $3,816,692.

The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00630 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–5 (17 CFR 239.24 and 274.5) is the form used by small business investment companies (''SBICs'') to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''). Form N–5 is the registration statement form adopted by the Commission for use by an SBIC that has been licensed as such under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration (''SBA'') and has been notified by the SBA that the company may submit a license application Form N–5 is an integrated registration form and may be used as the registration statement under both the Securities Act and the Investment Company Act. The purpose of Form N–5 is to meet the filing and disclosure requirements of both the Securities Act and Investment Company Act, and to provide investors with information sufficient to evaluate an investment in an SBIC. The information that is required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The Commission did not receive any filings on Form N–5 in the last three years (and in the three years before that, received only one Form N–5 filing). Nevertheless, for purposes of this PRA, we conservatively estimate that at least one Form N–5 will be filed in the next three years, which translates to about 0.333 filings on Form N–5 per year. The currently approved internal burden of Form N–5 is 352 hours per response. We continue to believe this estimate for Form N–5's internal hour burden is appropriate. Therefore, the number of currently approved aggregate burden hours, when calculated using the current estimate for number of filings, is about 117 internal hours per year. The currently approved external cost burden of Form N–5 is $30,000 per filing. We continue to believe this estimate for Form N–5's cost burden is appropriate. Therefore, we estimate that the aggregate cost burden, when calculated using the Commission's estimate of 0.333 filings per year, is about $10,000 in external costs per year.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form N–5 is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00631 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form N–4, SEC File No. 270–282, OMB Control No. 3235–0318.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The collection of information is entitled: ''Form N–4 (17 CFR 239.17b) under the Securities Act of 1933 and (17 CFR 274.11c) under the Investment Company Act of 1940, registration statement of separate accounts organized as unit investment trust.'' Form N–4 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable

annuity contracts to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and/or to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the registration statement be effective before any securities are sold, and Section 8 of the Investment Company Act (15 U.S.C. 80a–8) provides for the registration of investment companies. Pursuant to Form N–4, separate accounts organized as unit investment trusts that offer variable annuity contracts provide investors with a prospectus and a statement of additional information covering essential information about a separate account. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to or at the time of sale or delivery of securities.

The purpose of Form N–4 is to meet the filing and disclosure requirements of the Securities Act and the Investment Company Act and to enable filers to provide investors with information necessary to evaluate an investment in a security. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The estimated annual number of filings on Form N–4 is 35 initial registration statements and 1,326 post-effective amendments. The estimated average number of portfolios per filing is one, both for initial registration statements and post-effective amendments on Form N–4. Accordingly, the estimated number of portfolios referenced in initial Form N–4 filings annually is 35 and the estimated number of portfolios referenced in post-effective amendment filings on Form N–4 annually is 1,326. The estimate of the annual hour burden for Form N–4 is approximately 278.5 hours per initial registration statement and 197.25 hours per post-effective amendment, for a total of 271,301 hours ((35 initial registration statements × 278.5 hours) + (1,326 post-effective amendments × 197.25 hours)).

The current estimated annual cost burden for preparing an initial Form N–4 filing is $24,858 per portfolio and the current estimated annual cost burden for preparing a post-effective amendment filing on Form N–4 is $23,561 per portfolio. The Commission estimates that, on an annual basis, 35 portfolios will be referenced in initial Form N–4 filings and 1,326 portfolios will be referenced in post-effective amendment filings on Form N–4. Thus, the estimated total annual cost burden allocated to Form N–4 would be $32,111,916 ((35 × $24,858) + (1,326 × $23,561)).

Providing the information required by Form N–4 is mandatory. Responses will not be kept confidential. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 29, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–00627 Filed 1–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 31, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matters of the closed meeting will be: Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings; Resolution of litigation claims; and Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: January 28, 2019.

Brent J. Fields,

Secretary.

[FR Doc. 2019–00956 Filed 1–30–19; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10521]

60-Day Notice of Proposed Information Collection: Employment Application for Locally Employed Staff or Family Member

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 2, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by

going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0036'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

- *Email: HR–OE–LEStaff@state.gov.*
- *Regular Mail:* Send written comments to: HR/OE, 1800 G Street NW, Suite 3100, Washington, DC 20006.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Daniele Schoenauer, who may be reached on 202–663–1966 or at *schoenauerda@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Employment Application for Locally Employed Staff or Family member.
- *OMB Control Number:* 1405–0189.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Office of Overseas Employment (HR/OE).
- *Form Number:* DS–0174.
- *Respondents:* The respondents are locals who live in the 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, respondents include family members who are accompanying their partners to assignments in the U.S. Embassies, Consulates or Mission abroad.
- *Estimated Number of Respondents:* 1,000,000.
- *Estimated Number of Responses:* 1,000,000.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 250,000 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information solicited is used to establish eligibility and qualifications at U.S. Embassies, Consulates, and Missions abroad. The respondents are locals who live in the 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, respondent include family members who are accompanying their partners to assignments in the U.S. Embassies, Consulates or Mission abroad. The authority is the Foreign Service Act of 1980, as amended, and 22 U.S.C. 2669(c).

Methodology

Candidates for employment use the DS–0174 to apply for Mission-advertised positions around the world. Mission recruitments generate approximately 1 million applications per year, the majority of which are collected electronically using an applicant management system, Electronic Recruitment Application (ERA). Data that HR and hiring officials extract from the DS–0174 determine employment eligibility and qualifications for the position, and selections according to Federal Policies.

John K. Moyer,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 2019–00620 Filed 1–31–19; 8:45 am]

BILLING CODE 4710–15–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board (Board) has received a request from The Chicago Region Environmental and Transportation Efficiency Program (WB18–36—11/5/18) for permission to use data from the Board's 2005, 2010, 2015, and 2017 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB18–36.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–00651 Filed 1–31–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 751]

Filings Submitted or Due To Be Submitted During the Partial Federal Government Shutdown

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board provides notice that any material due to be submitted to the Board during the partial Federal government shutdown period (including comments on environmental documents) will now be due no later than February 4, 2019, unless otherwise ordered by the Board. Further, filings (including recordations) that were submitted during the shutdown will be considered filed on January 28, 2019, provided all filing requirements have been met.

DATES: January 28, 2019.

FOR FURTHER INFORMATION CONTACT: Ryan Lee, (202) 245–0394. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: During the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, all deadlines requiring the submission of material to the Board were tolled. The Board is now providing notice that any material due to be submitted to the Board during the shutdown period (including comments on environmental documents) is due no later than February 4, 2019, unless otherwise ordered by the Board. Should a party to a proceeding believe that further modification to a procedural schedule is necessary, the party should request an extension in that case docket. Filings submitted during the shutdown should not be resubmitted. All filings (including recordations) submitted during the shutdown will be considered filed on January 28, 2019, provided all filing requirements have been met.

Decided: January 28, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Raina Contee,

Clearance Clerk.

[FR Doc. 2019–00721 Filed 1–31–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–93]

Petition for Exemption; Summary of Petition Received; Kaleidoscope Charter Services Corp.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1031 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Clarence Garden, (202) 267–7489, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 21, 2018.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–1031.

Petitioner: Kaleidoscope Charter Services Corp.

Section(s) of 14 CFR Affected: 135.335(b)(3).

Description of Relief Sought: Kaleidoscope Charter Services Corp. requests an exemption to 14 CFR 135.335 to allow the use of a full flight simulator representing a Hawker 125–800 series to provide training and checking for pilots operating the Hawker 125–700 airplane.

[FR Doc. 2019–00733 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Survey of Airmen Satisfaction With Aeromedical Certification Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves soliciting feedback from airmen on service quality of Aeromedical Certification Services. The information to be collected will be used to inform improvements in Aeromedical Certification Services.

DATES: Written comments should be submitted by April 2, 2019.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0707.

Title: Survey of Airmen Satisfaction with Aeromedical Certification Services.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The Federal Aviation Administration (FAA), through the Office of Aerospace Medicine (OAM), is responsible for the medical certification of pilots and certain other personnel under 14 CFR 67 to ensure they are medically qualified to operate aircraft and perform their duties safely. In the accomplishment of this responsibility, OAM provides a number of services to pilots, and has established goals for the performance of those services. This is a biennial survey designed to meet the requirement to survey stakeholder satisfaction under Executive Order No. 12862, ''Setting Customer Service Standards,'' and the Government Performance and Results Act of 1993 (GPRA).

The survey of airman satisfaction with Aeromedical Certification Services assesses airman opinion of key dimensions of service quality. These dimensions, identified by the OMB Statistical Policy Office in the 1993 ''Resource Manual for Customer Surveys,'' are courtesy, competence, reliability, and communication. The survey also provides airmen with the

opportunity to provide feedback on the services and a medical certificate application tool they use. This information is used to inform improvements in Aeromedical Certification Services. The survey was initially deployed in 2004, and deployed again in 2006, 2008, 2012, 2014, and 2016 (OMB Control No. 2120–0707). Across collections, minor revisions have been made to the survey items and response options to reflect changes in operational services and survey technology. In the current collection, format changes have been made to accommodate multiple administration modes (*i.e.,* paper, desktop computer, and mobile device), reduce the burden on the individual respondent, and potentially improve the response rate.

Respondents: Airmen.

Frequency: Information is collected biennially.

Estimated Average Burden per Response: 10–15 minutes.

Estimated Total Annual Burden: 10–15 minutes per respondent, 1,226 total burden hours.

Issued in Washington, DC, on January 28, 2019.

Barbara L. Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2019–00722 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–90]

Petition for Exemption; Summary of Petition Received; Bryan A. Gutraj

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0966 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Lane, (202) 267–7280, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 21, 2018.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0966.

Petitioner: Bryan A. Gutraj.

Section(s) of 14 CFR Affected: 61.49(b)(2) and 61.183(i)(2).

Description of Relief Sought: The petitioner is requesting relief from the requirement to demonstrate stall awareness, spin entry, spins, and spin recovery instructional procedures in an airplane or glider upon retest of a flight instructor certificate practical test. The petitioner also requests relief from the regulatory requirement to bring an aircraft to the retest that is of the appropriate aircraft category for the rating sought and is certificated for spins.

[FR Doc. 2019–00741 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; James M. Cox—Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 14.32 acres of airport land from aeronautical use to non-aeronautical use at James M. Cox—Dayton International Airport, Dayton, OH. The aforementioned land is not needed for aeronautical use.

The property is a portion of the land used by a former air cargo facility located on the north side of the James M. Cox—Dayton International Airport. The land is currently improved with a 38,000 square foot building, associated parking and former aircraft ramp. The property proposed for release was acquired by the City of Dayton under FAA Grant Number: 3–39–0029–03. The City wishes to lease this parcel for non-aeronautical purposes at Fair Market Value. The proposed non-aeronautical land use is consistent with a compatible commercial/industrial development.

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Alex Erskine, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone: (734) 229–2927/Fax: (734) 229–2950 and City of Dayton Department of Aviation Offices, 3600 Terminal Drive, Suite 300, Vandalia, OH, Ms. Suzanne Beck. Telephone: (937) 454–8216.

Written comments on the Sponsor's request must be delivered or mailed to: Alex Erskine, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, Telephone Number: (734) 229–2915/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Alex Erskine, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South

Wayne Road, Suite 107, Romulus, MI 48174, Telephone Number: (734) 229–2927/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is currently improved land being used on an interim basis by a trucking business. The proposed non-aeronautical land use would be for compatible commercial/industrial development, allowing the airport to become more self-sustaining. The airport will receive Fair Market Value for the lease of the land.

The lease revenue will be used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the James M. Cox—Dayton International Airport, Dayton, OH, from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Property Description

Situated in the City of Dayton, County of Montgomery, and State of Ohio:

And known as being situated in Sections 5, 6, 7, and 8, Township 3, Range 6 East, City of Dayton, County of Montgomery, State of Ohio and being a part of Lot Numbers 81143 and 81150 of the Consecutive numbers of lots on the revised plat of said City of Dayton, the same being part of those tracts of land conveyed by deed to the City of Dayton, Ohio as recorded in Deed Microfiche No. 81–041A01 and Deed Microfiche No. 81–101C07 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Montgomery County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Beginning at the intersection of the centerline of Peters Pike and the South right of way line of Old Springfield Road, said intersection being South 05 deg. 18′03″ East a distance of 30.07 feet from a railroad spike (found) at the centerline intersection of said Peters Pike and Old Springfield Road;

Thence along the South right-of-way of vacated Old Springfield Road, South 79 deg. 45′06″ West a distance of 380.96 feet;

Thence departing the South right of way line of said vacated Old Springfield Road and over said City of Dayton land, on new division lines for the following seven (7) courses:

(1) South 33 deg. 31′39″ East a distance of 591.66 feet to a point;

(2) South 56 deg. 28′21″ West a distance of 682.23 feet to a point;

(3) North 33 deg. 31′40″ West a distance of 268.74 feet to a point;

(4) South 56 deg. 38′32″ West a distance of 89.30 feet to a point;

(5) North 71 deg. 15′16″ West a distance of 196.91 feet to a point;

(6) North 33 deg. 19′07″ West a distance of 316.07 feet to a point;

(7) North 13 deg. 34′34″ West a distance of 215.42 feet to a point;

Thence along said South Right of Way line of Old Springfield Road North 79 deg. 45′06″ East a distance of 889.80 feet to the TRUE POINT OF BEGINNING;

SAID PARCEL OF LAND CONTAINING 14.32 ACRES, MORE OR LESS, HOWEVER TO ALL COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS CONTAINING IN ANY INSTRUMENT OF RECORD PERTAINING TO THE ABOVE DESCRIBED TRACT OF LAND. THIS DESCRIPTION WAS PREPARED FROM A FIELD SURVEY PERFORMED BY STEVEN J. LEESMAN OHIO LICENSE #8352.

Issued in Romulus, Michigan, on December 20, 2018.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2019–00760 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Cuyahoga County Airport, Richmond Heights, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 7.6 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Cuyahoga County Airport, Richmond Heights, Ohio. The aforementioned land is not needed for aeronautical use.

The parcels for release are located in the northwest corner of the airport property, east of Richmond Road and north of Swetland Parkway. The property is currently designated as aeronautical use with an existing office building and parking lot. The proposed non-aeronautical use of the property is for the existing development.

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Evonne M. McBurrows, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone: (734) 229–2945, Fax: (734) 229–2950 and Cuyahoga County, Department of Public Works, 2079 East Ninth, Cleveland, Ohio 44115.

Written comments on the Sponsor's request must be delivered or mailed to: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2945/ FAX Number: (734)229–2950.

FOR FURTHER INFORMATION CONTACT: Evonne M. McBurrows, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2945/ FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The existing property does not have an aeronautical use; it is currently developed with a parking lot and office building. This land was acquired with local funds. Cuyahoga County is proposing to keep the existing development as is for non-aeronautical use. The County will continue to lease the land and receive fair market value.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Cuyahoga County Airport, Richmond Heights, Ohio from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change

in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description for a 5.3476 Acre Parcel Carved Out From the Original FAA Parcel 53

Situated in the City of Richmond Heights, County of Cuyahoga, State of Ohio, known as being a part of Original Euclid Township Tract 13, also being a part of land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio by deed recorded on July 28, 1967 as recorded in Volume 12141, Page 149 of Cuyahoga County Recorder's Records further bounded and described as follows:

Commencing at an iron pin in monument box found marking the intersection of the Northern line of said Tract 13 with the centerline of Richmond Road, having a 60-foot wide Right-of-Way;

Thence along the Northern line of said Tract 13, bearing South 89°37′58″ East, a distance of 235.60 feet to a point thereon, the same being the Northeast corner of land conveyed to Bret Smith and Deborah Lynn Smith by deed recorded on April 14, 2009 as recorded in Document No. 200904140309 and the TRUE PLACE OF BEGINNING of the parcel herein described;

Thence continuing along the Northern line of said Tract 13 and the Northern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing South 89°37′58″ East, a distance of 1071.43 feet to a point thereon;

Thence, bearing South 48°49′44″ West, a distance of 364.22 feet to a point;

Thence, bearing South 41°10′16″ East, a distance of 2.08 feet to a point in the Southern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio;

Thence along the Southern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing South 89°19′08″ West, a distance of 800.23 feet to a point thereon;

Thence, bearing North 00°20′54″ East, a distance of 257.72 feet to the TRUE PLACE OF BEGINNING, containing 5.3476 acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Legal Description for a 1.8496 Acre Parcel Carved Out From the Original FAA Parcel 54

Situated in the City of Richmond Heights, County of Cuyahoga, State of Ohio, known as being a part of Original Euclid Township Tract 13, also being a part of land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio by deed recorded on October 20, 1967 as recorded in Volume 12167, Page 183 of Cuyahoga County Recorder's Records further bounded and described as follows:

Commencing at an iron pin in monument box found marking the intersection of the Northern line of said Tract 13 with the centerline of Richmond Road, having a 60-foot wide Right-of-Way;

Thence along the centerline of said Richmond Road, bearing South 11°13′06″ West, a distance of 267.74 feet to a point thereon, the same being the Northwest corner of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio;

Thence along the Northern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing North 89°19′08″ East, a distance of 286.14 feet to a point thereon, and the TRUE PLACE OF BEGINNING of the parcel herein described;

Thence continuing along the Northern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing North 89°19′08″ East, a distance of 800.23 feet to a point thereon;

Thence, bearing South 41°10′16″ East, a distance of 136.92 feet to a point;

Thence, bearing South 48°49′44″ West, a distance of 12.83 feet to a point in the Southern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio;

Thence along the Southern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing South 89°22′34″ West, a distance of 318.54 feet to a point in the Easterly Right-of-Way line of Swetland Court, having a 60-foot wide Right-of-Way as shown by the Dedication Plat as recorded in Map Volume 255, Page 8 of Cuyahoga County Recorder's Records;

Thence along the Easterly Right-of-Way line of said Swetland Court along a tangent curve to the left with a radius of 95.00 feet, a tangent length of 21.56 feet, a delta of 25°34′21″, the chord which bears North 76°49′37″ West for a distance of 42.05 feet, along said arc for a distance of 42.40 feet to a point of tangency;

Thence along the Northerly Right-of-Way line of said Swetland Court, bearing North 89°36′47″ West, a distance of 200.00 feet to a point of curvature;

Thence along the Northerly Right-of-Way line of said Swetland Court along a tangent curve to the right with a radius of 860.00 feet, a tangent length of 145.24 feet, a delta of 19°10′20″, the chord which bears North 80°01′37″ West for a distance of 286.43 feet, along said arc for a distance of 287.77 feet to a point of reverse curvature;

Thence along the Northerly Right-of-Way line of said Swetland Court along a tangent curve to the left with a radius of 1076.95 feet, a tangent length of 20.71 feet, a delta of 02°12′13″, the chord which bears North 71°32′34″ West for a distance of 41.41 feet, along said arc for a distance of 41.42 feet to a point thereon;

Thence, bearing North 00°20′54″ East, a distance of 31.82 feet to the TRUE PLACE OF BEGINNING, containing 1.8496 acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Legal Description for a 0.4032 Acre Parcel Carved Out From the Original FAA Parcel 55

Situated in the City of Richmond Heights, County of Cuyahoga, State of Ohio, known as being a part of Original Euclid Township Tract 13, also being a part of land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio by deed recorded on February 10, 1967 as recorded in Volume 11894, Page 97 of Cuyahoga County Recorder's Records further bounded and described as follows:

Commencing at an iron pin in monument box found marking the intersection of the Northern line of said Tract 13 with the centerline of Richmond Road, having a 60-foot wide Right-of-Way;

Thence along the centerline of said Richmond Road, bearing South 11°13′06″ West, a distance of 381.46 feet to a point thereon, the same being the Northwest corner of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio;

Thence along the Northern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing North 89°22′34″ East, a distance of 870.43 feet to a point thereon, the same being a point in the Easterly Right-of-Way line of Swetland Court, having a 60-foot wide Right-of-Way as shown by the Dedication Plat as recorded in Map Volume 255, Page 8 of Cuyahoga County Recorder's Records, and the TRUE PLACE OF BEGINNING of the parcel herein described;

Thence continuing along the Northern line of said land conveyed to the Board of County Commissioners of Cuyahoga County, Ohio, bearing North 89°22′34″ East, a distance of 318.54 feet to a point thereon;

Thence, bearing South 48°49′44″ West, a distance of 114.63 feet to a point;

Thence, bearing North 89°36′47″ West, a distance of 179.96 feet to a point in the Easterly line of Right-of-Way line of said Swetland Court;

Thence along the Easterly Right-of-Way line of said Swetland Court along a tangent curve to the left with a radius of 95.00 feet, a tangent length of 49.64 feet, a delta of 55°10′43″, the chord which bears North 36°27′04″ West for a distance of 87.99 feet, along said arc for a distance of 91.49 feet to the TRUE PLACE OF BEGINNING, containing 0.4032 acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Issued in Romulus, Michigan, on December 20, 2018.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2019–00761 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0001]

Notice and Request for Comments

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

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by April 2, 2019.

ADDRESSES: You may submit comments [identified by Docket No. DOT–NHTSA–2019–0001] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeremiah Kinsman, Office of Emergency Medical Services (NPD–400), Room W44–321, 1200 New Jersey Avenue SE, Washington, DC 20590. Mr. Kinsman's telephone number is (202) 366–2795. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: *Title:* National Emergency Medical Services Information System (NEMSIS)—State Submission to National EMS Database

OMB Control Number: 2127–0717.

Type of Request: Collection of Emergency Medical Services Data.

Abstract: The U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA) was established by Congress to save lives, prevent injuries, and reduce economic costs due to motor vehicle crashes through education, research, safety standards, and enforcement activity. Within NHTSA, the Office of Emergency Medical Services is responsible for advancing a national vision for emergency medical services (EMS) through the development and implementation of targeted projects to benefit patient care, EMS practitioner safety and support of EMS research. The NHTSA Office of EMS also coordinates with the Federal and state highway safety community to ensure that EMS is equipped and prepared to carry out its mission of preventing death and reducing serious injuries after traffic crashes. NHTSA is proposing to continue voluntary collection of limited EMS information from U.S. States and Territories. There are no Federal mandates or requirements for submission of EMS information from U.S. States and Territories. The information is transmitted from local EMS agencies to State EMS data systems, and then onto NHTSA's National EMS Database via an automated ''machine-to-machine'' process that uses Web Services. The information is transmitted from the point-of-care to states and NHTSA's National EMS Database in near real-time. The information collected by the National EMS Database is a de-identified subset of the data already being collected for use by state and territorial EMS Offices. The National EMS Database collects information that describes EMS agencies, the activation and response of individual EMS units to an emergency, emergency care provided on scene and during transport to a health facility, transport decision, disposition of the patient and incident, and EMS system times such as response time. Personal identifiable information (PII) such as the patient's name, patient's home address, patient's date of birth, patient's social security number, and patient's medical record number are not collected by the National EMS Database. The information collected by the National EMS Database is available to the public. The National EMS Database provides NHTSA's Office of EMS with information necessary to inform national EMS and first responder programs, projects, and initiatives; and determine the impact EMS has on highway safety and post-crash care. The information is also used by EMS and public health researchers to develop evidence for best practices in EMS operations and prehospital clinical care, and by local EMS agencies and state offices of EMS for performance improvement and benchmarking.

Affected Public: State Governments.

Estimated Number of Respondents: 56.

Frequency: Annually.

Number of Responses: N/A.

Estimated Total Annual Burden Hours: 1008.00.

Estimated Total Annual Burden Cost: $49,624.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: 44 U.S.C. Section 3506 (c)(2)(A).

Issued in Washington, DC, on January 29, 2019.

Jon Krohmer,

Acting Associate Administrator, Research and Program Development.

[FR Doc. 2019–00623 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2018–0094]

Paperwork Reduction Act 60-Day Notice; Request for Comments

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

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Comments must be received on or before April 2, 2019.

ADDRESSES: You may submit comments [identified by Docket No. DOT–NHTSA–2018–0094] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Rhea, State Data Reporting Systems Division (NSA–120), Room W53–304, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Rhea can also be reached via email at *barbara.rhea@dot.gov* or via phone at 202–366–2714. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Fatality Analysis Reporting System (FARS) Information Collection.

OMB Control Number: 2127–0006.

Type of Request: Extension of a currently approved collection of information.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112) the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect accident data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce fatalities and the property damage associated with motor vehicle crashes. NHTSA established cooperative agreements with the 50 States, the District of Columbia and Puerto Rico to report a standard set of data on each fatal accident. State employees extract and transcribe information from existing State files including police accident crash reports as well as driver license, vehicle registration, highway department, and vital statistics files. This information comprises a national database, Fatality Analysis Reporting System (FARS), that is NHTSA's and many States' principal means of tracking trends in fatalities and quantifying problems or potential problems in highway safety.

Because FARS is an on-going data acquisition system, reviews are conducted yearly to determine whether the data acquired are responsive to the total user population needs. FARS data are used extensively by all the NHTSA program and research offices and other DOT modes such as Federal Highway Administration and Federal Motor Carrier Safety Administration. Annual changes in the data collected in FARS are minor in terms of operation and method of data acquisition and do not affect the reporting burden of the respondent (State employees utilize existing State crash files). The changes usually involve clarifying adjustments to aid statisticians in conducting more precise analyses and to remove potential ambiguity for the respondents.

Affected Public: State, Local and Tribal Government.

Estimated Number of Respondents: 52.

Frequency: On-going.

Estimated Total Annual Burden Hours: 106,244 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (i) whether the proposed collection of information is necessary for the Department's performance; (ii) if the information will have practical utility; (iii) the accuracy of the estimated burden of the proposed information collection; (iv) ways to enhance the quality, utility and clarity of the information to be collected; and (v) 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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Cem Hatipoglu,

Acting Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2019–00744 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2018–0093]

Paperwork Reduction Act 60-Day Notice; Request for Comments

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

ACTION: Notice and request for comments on the extension of a previously approved collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extension and reinstatement of previously approved collections.

DATES: Comments must be received on or before April 2, 2019.

ADDRESSES: You may submit comments [identified by Docket No. DOT–NHTSA–2018–0093] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1 (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9

a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Frank Subalusky, NHTSA, 1200 New Jersey Avenue, SE Room W55–333, NSA–200, Washington, DC 20590.

Mr. Subalusky's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: 23 CFR part 1327 Procedures for Participating In and Receiving Information from the National Driver Register.

OMB Control Number: 2127–00010.

Type of Review: Extension of a previously approved information collection.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Affected Public: State and DC.

Estimated Number of Respondents: The number of respondents is 51— the 50 States and the District of Columbia.

Estimated Annual Burden: 1,742 hours.

Estimated Cost: There are no annual costs.

Frequency: On a daily basis.

Form Numbers: This collection of information uses no standard form.

Public Comments Invited: You are invited to comment on any aspect of this information collection, including whether (i) the proposed collection of information is necessary for the Department's performance; (ii) the information will have practical utility; (iii) the accuracy of the estimated burden of the proposed information collection; (iv) ways to enhance the quality, utility and clarity of the information to be collected; and (v) 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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Cem Hatipoglu,

Acting Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2019–00742 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0202]

Privacy Act of 1974; Department of Transportation, Office of the Secretary of Transportation; DOT/OST–008, Departmental Advisory Committee Files

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of Privacy Act system of records and rescission of one system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Transportation proposes to reissue, with updates, a system of records, ''Department of Transportation/OST–008 Departmental Advisory Committee Files.'' This system of records allows the Department to collect and maintain records submitted to the Department by or in connection with applicants for members on a Department of Transportation advisory committees to enable the Department to make decisions about committee membership and manage committees. The Department also consolidating an existing system of records notice, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' with this system and rescinding the notice for DOT/RSPA 08.

DATES: Written comments should be submitted on or before March 4, 2019. The Department may publish an amended Systems of Records Notice in light of any comments received. This system will be effective March 4, 2019.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2018–0202 by any of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2018–0202. All comments received will be posted without change to *https://www.regulations.gov*, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, Department of Transportation, Washington, DC 20590; *privacy@dot.gov*; or 202.527.3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Office of the Secretary (OST) proposes to reissue and update a system of records titled, ''Department of Transportation/OST–008, Departmental Advisory Committee Files.'' The Department also intends to rescind the following legacy notice, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' and consolidate records managed under that Notice with this updated System.

The DOT sponsors advisory committees in accordance with the Federal Advisory Committee Act when DOT or Congress deems it would be beneficial to obtain advice or recommendations on issues or policies under consideration by DOT. The composition of an advisory committee is determined by DOT, or statute, and may include special government employees, Federal employees, or representatives of outside organizations, such as trade

groups or industry. Individuals interested in serving on an advisory committee may apply directly to DOT for consideration, or be recommended by others. The DOT collects information about applicants to assess their qualifications to serve as a committee member, such as employment and educational experiences, references, and other information relevant to the applicant's qualifications, which may include a criminal background check and credit check. This system was originally established in the mid-1970s; however, the Department later determined that files about advisory committee applicants and members were not retrievable by individual name or personal identifier. As a result, the Department retired this notice in 2000. The Department is updating its processes for evaluating applications for membership on advisory committees and for managing records about committee applicants and members. As these records will be retrievable by applicant/member name, the Department is reinstating the notice, with updates to reflect changes in the location of the Department's headquarters and incorporation of all applicable DOT general routine uses.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DOT proposes two routine uses for this system, in addition to the general routine uses applicable this system and described below. The DOT may disclose information to OMB, the Executive Office of the President, or the General Services Administration, when necessary and relevant to DOT's management of the advisory committee, including as needed in DOT's consideration of applicants for membership on an advisory committee, or to comply with any obligations to report information about advisory committees to those entities. This use is compatible with the purpose of the collection, which is to administer advisory committees in accordance with the Federal Advisory Committee Act. In addition, DOT may disclose information from this system to the public to inform the public about the identity and qualifications of individuals selected to serve as members of advisory committees. As one of the purposes of the Federal Advisory Committee Act is to ensure transparency to the public about advisory committee advice and activities, a routine use permitting disclosure of information about advisory committee members is compatible with the purpose of the collection.

We also are consolidating an existing system of records notices, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' into this system of records and retiring the notice for DOT/RSPA 08. This system was established for the Pipeline and Hazardous Materials Safety Administration to maintain information about applicants and members of the Pipeline Safety Committees for Natural Gas and Hazardous Liquids. As this type of information also be covered by this System, the Department determined that separate notices are not needed and, therefore, is retiring the notice for DOT/RSPA–08.

Finally, we have updated the format and included the relevant and compatible Departmental General Routine Uses to conform to Office of Management and Budget Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

This updated system will be included in DOT's inventory of record systems. This Notice does not apply to records covered by other System of Records Notices.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER

Department of Transportation (DOT)/OST–008, Federal Advisory Committee Files

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the Department of Transportation headquarters in Washington, DC.

SYSTEM MANAGER AND ADDRESS:

Committee Management Officer, U.S. Department of Transportation, Office of the Secretary, Office of the Executive Secretariat, 1200 New Jersey Ave. SE, Washington, DC 20950, (202) 366–4277.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, Public Law 92–463, as amended.

PURPOSE(S):

The information in this system is used to evaluate and select individuals for membership on advisory committees within the jurisdiction of the Department, and for the management of advisory committees in the Department, including the preparation of reports, documenting membership, and the nomination and appointment of members, member terms, vacancies, acceptance, and separation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were members of advisory committees, who have applied or were nominated to serve on advisory committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: Advisory committee applicant, nominee, and member name, title, home address, business address, employer, organizational affiliation, phone number, email address, educational institutions attended, degrees held, employment history, references/letters of recommendation, and other information relevant to an individual's qualifications to serve on an advisory committee. This system also may include the applicant's date of birth, social security number, gender, race, drivers license number and state of issuance, and prior residences for purposes of obtaining a credit check and criminal background check. The system will also include the results of those checks. The system also includes information about the member's position on the committee, including documentation of their appointment, date of appointment, term, date of separation, and reason for separation.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals who apply to serve on advisory committees, individuals identified by applicants as their references, Members of Congress, applicants' former employers. Information may also be

obtained from publicly available sources with the applicant's consent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

SYSTEM SPECIFIC ROUTINE USES:

1. To the Executive Office of the President, the Office of Management and Budget, or the General Services Administration when necessary in the administration of the Department's advisory committee, including complying with reporting obligations;

2. To the public, information about an advisory committee's membership and qualifications when the Department deems it necessary to inform the public of advisory committee membership or activities. This routine use does not permit disclosure of information obtained in a criminal background or credit check, social security number, driver license number, and date of birth.

DEPARTMENT GENERAL ROUTINE USES:

3. To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing, investigating, prosecuting, or enforcing a statute, regulation, rule or order, when a record in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, including any records from this system relevant to the implementation, investigation, prosecution, or enforcement of the statute, regulation, rule, or order that was or may have been violated;

4. To a Federal, State, or local agency maintaining civil, criminal, or other information, such as current licenses, if necessary for DOT to obtain information relevant to a DOT decision;

5. To the Department of Justice, or any other Federal agency conducting litigation, when (a) DOT, (b) any DOT employee, in his/her official capacity, or in his/her individual capacity if the Department of Justice has agreed to represent the employee, or (c) the United States or any agency thereof, is a party to litigation or has an interest in litigation, and DOT determines that the use of the records by the Department of Justice or other Federal agency conducting the litigation is relevant and necessary to the litigation;

6. To parties in proceedings before any court or adjudicative or administrative body before which DOT appears when (a) DOT, (b) any DOT employee in his or her official capacity, or in his or her individual capacity where DOT has agreed to represent the employee, or (c) the United States or any agency thereof is a party to litigation or has an interest in the proceeding, and DOT determined that is relevant and necessary to the proceeding;

7. To the National Archives and Records Administration for an inspection under 44 U.S.C. 2904 and 2906.

8. To another agency or instrumentality of any government jurisdiction for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims; however, this routine use only permits the disclosure of names pursuant to a computer matching program that otherwise complies with the requirements of the Privacy Act.

9. To the Attorney General of the United States, of his/her designee, information indicating that a person meets any of the qualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. Should the validity of the information DOT provides to the Attorney General or his/her designee be disputed, DOT may disclose to that National Background Information Check System, established by the Brady Handgun Violence Prevention Act, any information from this system necessary to resolve the dispute.

10. To appropriate agencies, entities, and persons, when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or not) that rely on the compromised information; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. To DOT's contractors and their agents, DOT's experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

12. To an agency, organization, or individual for the purpose of performing an audit or oversight related to this system or records, provided that DOT determines the records are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

13. To a Federal, State, local, tribal, foreign government, or multinational agency, either in response to a request or upon DOT's initiative, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or law enforcement information (Guideline 2, report attached to White House Memorandum, ''Information Sharing Environment,'' Nov. 22, 2006), when DOT finds that disclosure of the record is necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–456, and Executive Order 13388 (Oct. 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically and/or on paper in secure facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name of individual or committee name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Resumes and references of members and applicants are retained and disposed of when they are superseded, obsolete, or no longer needed, in accordance with General Records Schedule 6.2, Item 050. Records related to the selection and membership of committee members are permanent, and transferred to the National Archives and Records Administration when they are 15 years old or the committee is termination, whichever is sooner, in accordance with General Records Schedule 6.2, Item 010.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Appropriate controls have been imposed to minimize the risk of

compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request to the System Manager in writing in writing to the address provided under ''System Manager and Address.'' Individuals may also search the public docket at *www.regulations.gov* by their name.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the procedures described in ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

Individuals seeking notification of whether this system contains records about him or her may contact the System Manager following the procedures described in the ''Record Access Procedures'' above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

DOT/OST–008; 65 FR 19570 (April 11, 2000); DOT/RSPA–08 65 FR 19561, (April 11, 2000).

Issued in Washington, DC, on February 1, 2019.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2019–00617 Filed 1–31–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions; Sanctions Actions Pursuant to Executive Order 13661 and Executive Order 13662

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons who are no longer subject to the prohibitions imposed pursuant to Executive Order 13661 of March 14, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'', and Executive Order 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine.''

DATES: OFAC's actions described in this notice were effective on January 27, 2019.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available from OFAC's website at *http://www.treasury.gov/ofac.*

Notice of OFAC Actions

On January 27, 2019, OFAC removed from the SDN List the persons listed below, who were subject to prohibitions imposed pursuant to Executive Order 13661 and Executive Order 13662.

Entities

1. EN+ GROUP PLC, Esplanade 44, Saint Helier JE4 9WG, Jersey; 8 Cleveland Row, London SW1A 1DH, United Kingdom; 1 Vasilisy Kozhinoy St., Moscow 121096, Russia; Registration ID 91061 [UKRAINE–EO13661] [UKRAINE–EO13662] (Linked To: DERIPASKA, Oleg Vladimirovich).

2. JSC EUROSIBENERGO, 165 Chkalova Street, Divnogorsk, Krasnoyarsk Krai 663091, Russia; 1 Vasilisy Kozhinoy Street, Moscow 121096, Russia; Registration ID 5087746073817; Tax ID No. 7706697347; Identification Number 88303955 [UKRAINE–EO13661] [UKRAINE–EO13662] (Linked To: DERIPASKA, Oleg Vladimirovich; Linked To: EN+ GROUP PLC).

3. UNITED COMPANY RUSAL PLC, 44 Esplanade, St. Helier JE4 9WG, Jersey; 1 Vasilisy Kozhinoy Str., Moscow 121096, Russia; 11/F Central Twr., 28 Queen's Rd. C, Central District, Hong Kong; Registration ID 94939; Company Number F–17314 (Hong Kong); Business Number 51566843 (Hong Kong) [UKRAINE–EO13661] [UKRAINE–EO13662] (Linked To: EN+ GROUP PLC).

Dated: January 27, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–00659 Filed 1–31–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5316

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 5316,

Application for Group or Pooled Trust Ruling.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Group or Pooled Trust Ruling.

OMB Number: 1545–2166.

Form Number: Form 5316.

Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B. *28.*

Current Actions: There is no change to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: 19 hours.

Estimated Total Annual Burden Hours: 3,800 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00728 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4506–A, Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.l.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

OMB Number: 1545–0495.

Form Number: 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 20,000.

Estimated Time per Response: 58 minutes.

Estimated Total Annual Burden Hours: 19,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00635 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 5-month or 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 6,537,500.

Estimated Time per Respondent: 6 hrs., 48 mins.

Estimated Total Annual Burden Hours: 44,324,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00738 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions:

Line 10: The biodiesel or renewable diesel mixture credit expired for fuel sold or used after 12/31/17. Public Law 115–123, sec. 40407; IRC 6426(c)(6). These lines are replaced with ''Reserved for future use'' and the entry boxes are gray shaded.

Line 12: The alternative fuel credit expired for fuel sold or used after 12/31 17. Public Law 115–123, sec. 40415; IRC 6426(d)(5). These lines are replaced with ''Reserved for future use'' and the entry boxes are gray shaded.

''Reserved for future use'' are generally restored to show the underlying credits extended by late legislation (Extenders).

Type of Review: Extension of a currently approved collection.

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

Estimated Number of Respondents: 2,441,858.

Estimated Time per Respondent: 1 hr., 41 min.

Estimated Total Annual Burden Hours: 4,122,076.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00634 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Sch. F (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Profit or Loss From Farming.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Profit or Loss From Farming.

OMB Number: 1545–1975.***

Form Number: Sch. F (Form 1040).

Abstract: Schedule F (Form 1040) is used by individuals to report their farming income, expenses and self-employment taxes derived from this income. The data is used to verify that the items reported on the form is correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

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

Estimated Number of Respondents: 26,546.

Estimated Time per Respondent: 19 hours.***

Estimated Total Annual Burden Hours: 504,374.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00683 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8613

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Charles G. Daniel at (202) 317–5754, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Charles.G.Daniel@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 1,500.

Estimated Time per Response: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00776 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–CP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return for Credit Payments to Issuers of Qualified Bonds.

OMB Number: 1545–2142.

Form Number: Form 8038–CP.

Abstract: Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds, was developed to carry out the provisions of the American Recovery and Reinvestment Act of 2009. It provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. The bill gives state and local governments the option to receive a direct payment from the Federal government equal to a subsidy that would have been received through the Federal tax credit for bonds.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 12 hours 20 minutes.

Estimated Total Annual Burden Hours: 246,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00731 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 15058

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 15058, Application for Security Summit Membership.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Charles G. Daniel at (202) 317 5754, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Charles.G.Daniel@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Security Summit Membership.

OMB Number: 1545–XXXX.

Form Number: 15058.

Abstract: The IRS has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers.

The Security Summit consists of IRS, state tax agencies and the tax community, including tax preparation firms, software developers, payroll and tax financial product processors, tax professional organizations and financial institutions.

Form 15058—*Application for Security Summit Membership,* is the application form for membership. This form requests the agency's or organization's name, address, individual representative, individual representative's job title, email address, and telephone number.

Current Actions: This is a new form.

Type of Review: Approval of a new collection.

Affected Public: State tax agencies and the tax community.

Estimated Number of Respondents: 62.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 5 hours, 10 minutes.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00663 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicly Offered Original Issue Discount Instructions.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Charles G. Daniel at (202) 317–5754, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Charles.G.Daniel@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicity offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

*Estimated Time per Respons*e: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 3,060 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00772 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8903, Domestic Production Activities Deduction.

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202)317–6009, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Domestic Production Activities Deduction.

OMB Number: 1545–1984.

Form Number: 8903.

Abstract: Taxpayers will use Form 8903 and related instructions to calculate the domestic production activities deduction.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 24 hours 40 min.

Estimated Total Annual Burden Hours: 7,398,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–00727 Filed 1–31–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Customer Identification Program for Futures Commission Merchants and Introducing Brokers in Commodities

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 4, 2019 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 8100, 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:

Financial Crimes Enforcement Network (FinCEN)

Title: Customer Identification Program for Futures Commission Merchants and Introducing Brokers in Commodities.

OMB Control Number: 1506–0022.

Type of Review: Revision of a currently approved collection.

Description: Futures commission merchants and introducing brokers are required to develop and maintain a customer identification program. A copy of the program must be maintained for five years. See 31 CFR 1026.100 and 31 CFR 1026.220.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,228.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,228.

Estimated Time per Response: 11 hours.

Estimated Total Annual Burden Hours: 13,508.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 29, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–00719 Filed 1–31–19; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Application, Reports, and Recordkeeping for the Social Impact Partnerships To Pay for Results Act (SIPPRA) Grant Program

AGENCY: Office of Economic Policy, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed information collection, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Economic Policy, within the Department of the Treasury, is soliciting comments concerning the application, reports, and recordkeeping forms to be used for the Social Impact Partnerships to Pay for Results Act (SIPPRA).

DATES: Written comments should be received on or before April 2, 2019 to be assured of consideration. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by electronic mail to the Department of the Treasury, Room 3445, 1500 Pennsylvania Ave. NW, Washington, DC 20020, Attention: William Girardo, SIPPRA Coordinator, or sent via electronic mail to *William.Girardo@Treasury.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of the Treasury, Room 3445, 1500 Pennsylvania Ave. NW, Washington, DC 20020, Attention: William Girardo, SIPPRA Coordinator, 202–62200260, or sent via electronic mail to *William.Girardo@Treasury.gov.*

SUPPLEMENTARY INFORMATION:

Agency: Office of Economic Policy, Treasury.

Title: Application, Reports, and Recordkeeping for the Social Impact Partnerships to Pay for Results Act (SIPPRA) Grant Program.

OMB Number: 1505–XXXX.

Type of Review: Request for a new OMB Control Number.

Description: The Social Impact Partnerships to Pay for Results Act (SIPPRA), enacted February 9, 2018, amends Title XX of the Social Security Act, 42 U.S.C. 1397 *et seq.,* to provide $100 million in funding to implement ''Social Impact Partnership Demonstration Projects'' (projects) and feasibility studies for such projects. SIPPRA authorizes the Secretary of the Treasury to enter into award agreements with state or local governments for SIPPRA projects and feasibility studies. The Department of the Treasury, in partnership with other federal agencies, will administer the SIPPRA grant program.

Authorized under the Bipartisan Budget Act of 2018, the Social Impact Partnerships to Pay for Results Act (SIPPRA), amends Title XX of the Social Security Act, 42 U.S.C. 1397 *et seq.,* to provide $100 million in funding to implement ''Social Impact Partnership Demonstration Projects'' (projects) and feasibility studies to assist states and local governments in applying for project funding. SIPPRA authorizes the Secretary of the Treasury (Secretary) to enter into award agreements with state or local governments for projects addressing entrenched social problems. SIPPRA requires Treasury to conduct a request for proposals for projects, make award decisions, and enter into project award agreements. Treasury is publishing a Notice of Funding Availability (NOFA) seeking applications for projects, and anticipates that ten or more persons will respond to its notice announcing availability of funding for SIPPRA projects.

Although Treasury is asking applicants to use the SF–424 family of common forms for their applications, in order to effectively and efficiently assess and evaluate applications and ensure that projects comply with statutory requirements, Treasury is also soliciting additional detailed information from applicants. This request only includes the burden for this additional information. The burden for the SF–424 forms is covered under OMB Control Numbers 4040–0004, 4040–0006, 4040–0007, 4040–0008, 4040–0009, 4040–0010, and 4040–0013. The additional information includes the following components:

- Notice of Intent to Apply;
- Project Narrative, to include an Executive Summary;
- Project Narrative Attachments, to include project budget, partnership agreements, partner qualifications, independent evaluator qualifications, evaluation design plan, independent evaluator contract, outcome valuation (for which Treasury's SIPPRA website will provide a tool to assist applicants), legal compliance, and (optional) additional supporting documentation such as a preexisting feasibility study;
- DUNS Number and SAM registration;
- Copy of application proposing privileged or confidential information to be redacted;
- Administrative Reporting, including Annual Performance Report, Evaluation Progress Reports, and Final Evaluation Report;
- Records Retention

Evaluation Activity

One of the statutory purposes of SIPPRA is ''to incorporate outcomes measurement and randomized controlled trials or other rigorous methodologies for assessing program impact.'' 42 U.S.C. 1397n. SIPPRA also requires that the federal government pay a recipient only after an independent evaluator determines a project ''has met the requirements specified in the agreement and achieved an outcome as a result of the intervention.'' § 1397n–2(c)(2). It also establishes a Federal Interagency Council on Social Impact Partnerships (Interagency Council), chaired by the Director of OMB, with ten members representing ten Federal agencies.[1] Among their responsibilities, the Council must:

> prior to approval by the Secretary, certify that each State and local government application for a social impact partnership contains rigorous, independent data and reliable, evidence-based research methodologies to support the conclusion that the project will yield savings to the State or local government or the Federal Government if the project outcomes are achieved;
>
> certify to the Secretary that each State or local government that has entered into an agreement with the Secretary for a social impact partnership project under this division and each evaluator selected by the head of the relevant agency under section 1397n–4 of this title has access to Federal administrative data to assist the State or local government and the evaluator in evaluating the performance and outcomes of the project; and
>
> certify to the Secretary, in the case of each approved social impact partnership that is expected to yield savings to the Federal Government, that the project will yield a projected savings to the Federal Government if the project outcomes are achieved, and coordinate with the relevant Federal agency to produce an after-action accounting once the project is complete to determine the actual Federal savings realized, and the

[1] The head of each of the following federal agencies shall designate one officer or employee to be a Council member: Departments of Labor, Health and Human Services, Agriculture, Justice, Housing and Urban Development, Education, Veterans Affairs, and Treasury, and the Social Security Administration Corporation for National and Community Service. § 1397n–5(b).

extent to which actual savings aligned with projected savings [2]

To help ensure that these statutory goals and objectives are achieved and to assist the Interagency Council in making its certification determinations, Treasury is asking applicants to include in their applications an evaluation design plan. The design plan must incorporate an evaluation methodology and evidence standards. Additionally, they must provide an estimate of the value to the federal government of the interventions being proposed in the project.

Independent Evaluator Reports

SIPPRA requires the federal government to complete certain project evaluation duties, including the collection from award recipients of periodic project outcome evaluation reports and final reports produced by each project's independent evaluator. SIPPRA § 1397n–4(d) and (e).

Use of the Data

Treasury is publishing a Notice of Funding Availability soliciting applications for projects under SIPPRA. The information collected under this NOFA: (1) Identifies eligible recipients and activities; (2) helps identify which applications sufficiently address all statutory requirements and which proposed projects are the most competitive; (3) determines the appropriate amount of funding; (4) ensures compliance with SIPPRA and Federal laws and policies on grants *(Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200, herein OMB Uniform Guidance);* (5) tracks recipients' progress; and (6) collects statutorily mandated reports prepared by recipients' contracted independent evaluators.

- The Notice of Intent is optional; it will assist Treasury and the Interagency Council in determining the number of applications to be received, and thus, enable them to conduct intake and evaluation of applications as efficiently and economically as possible.
- The application Executive Summary will assist Treasury and the Interagency Council in streamlining the processing of applications and in optimizing the eligibility phase of application review. The application Standard Forms, Project Narrative, and Project Narrative attachment components of the grant application are intended to provide Treasury with the information necessary to properly evaluate and assess applications and to make sure applications include statutorily mandated information. Additionally, certain components of the application, and in particular, the Outcome valuation, will enable the Interagency Council to determine whether to make statutorily mandated certifications regarding the proposed projects.
- The DUNS number and the SAM registration are both required under Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR part 200.
- To comply with Uniform Guidance performance and financial monitoring and reporting requirements, 2 CFR 200.327–200.329, Treasury is requiring an annual performance and financial report from grant recipients. SIPPRA requires that recipients submit progress reports prepared by an independent evaluator on a periodic basis and before the schedule time of outcome payments. SIPPRA § 1397n–4(d). SIPPRA also requires that recipients submit a final report prepared by an independent evaluator within six months of a project's completion. SIPPRA § 1397n–4(e). Per the statute, Treasury and the Interagency Council will use these reports to determine if outcome payments are warranted.
- Treasury is requiring recipients under this NOFA to comply with the Uniform Guidance's record retention requirement, 2 CFR 200.333, which requires them to maintain records for three years after grant close-out.

SIPPRA establishes a Commission on Social Impact Partnerships (Commission) whose principal obligation is to make recommendations to Treasury regarding the funding of SIPPRA demonstration project and feasibility studies. SIPPRA § 1397n–6. The Commission is subject to the provisions of the Federal Advisory Committee Act (FACA), which generally requires that documents made available to the Commission be made available for public inspection and copying. 5 U.S.C. App. 2 10(b). Treasury expects to provide to the Commission all complete applications received under this NOFA from eligible applicants and expects to make these applications available for public inspection and copying. However, FACA also provides that trade secrets and commercial or financial information that is privileged or confidential under the Freedom of Information Act (confidential business information) need not be made publicly available. 5 U.S.C. 552(b)(4). To assist Treasury in complying with FACA's public disclosure requirements while protecting confidential business information in accordance with FACA, Treasury is requesting applicants to propose redactions of confidential business information. An applicant may omit pages for which it does not propose any redactions. Treasury will review the redactions proposed by each applicant.

Also, applicants must provide qualifications of key project personnel and partners. They may voluntarily provide curriculum vitae for key project personnel and partners, but the application does not require that personally identifiable information (PII) is collected.

Frequency: Once, On Occasion.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 43.8 hours.

Estimated Annual Responses: 50.

Estimated Total Annual Burden Hours: 2,190.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up cost and cost of operation, maintenance, and purchase of services to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 29, 2019.

Diana Furchtgott-Roth,

Acting Assistant Secretary for Economic Policy.

[FR Doc. 2019–00790 Filed 1–31–19; 8:45 am]

BILLING CODE 4810–25–P

[2] § 1397n–5(a).

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal

Advisory Committee Act that the Advisory Committee on Disability Compensation (Committee) will meet on March 26–28, 2019 at 1722 Eye Street NW, AMO 3rd Floor Training Complex, Washington, DC 20006. The sessions will begin at 7:30 a.m. and adjourn at 4:30 p.m. EST each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and on other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2-page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30 minutes before the meeting begins. Routine escort will be provided until 8:00 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Janice Stewart or call her at (202) 461–9023.

Dated: January 29, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–00702 Filed 1–31–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, March 6, 2019, at 1100 First Street NE, Room 104, Washington, DC 20002. The meeting will convene at 9:00 a.m. and end at 3:30 p.m. This meeting is open to the public.

The agenda will include information technology challenges, career development and merit awards, roadmaps overview, clinical trials, and cooperative research and development agreements (CRADAs). No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Rashelle Robinson, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5678, or by email at *Rashelle.Robinson@va.gov* no later than close of business on February 27, 2019. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Any member of the public seeking additional information should contact Rashelle Robinson at the phone number or email address noted above.

Dated: January 29, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–00678 Filed 1–31–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Notice To Extend the Public Comment Period

SUMMARY: On December 14, 2018, The U.S. Department of Veterans Affairs (VA) published a notice at 83 FR 64431 for the VA's Draft Programmatic Environmental Impact Statement, West Los Angeles Medical Center Campus Draft Master Plan (Draft PEIS). The public comment period ends January 29, 2019. This notice announces an extension of the public comment period until February 13, 2019.

SUPPLEMENTARY INFORMATION: A notice of availability was published in the **Federal Register** by the U.S. Environmental Protection Agency on December 7, 2018 (83 FR 63161) and a companion notice was published by the VA on December 14, 2018 at 83 FR 64431. This notice announces an extension of the public comment period for the VA published Draft PEIS until February 13, 2019. The comment period is being extended to allow the public and other Federal agencies additional time to file comments due to the protracted shutdown of the federal government that ended on January 26, 2019. Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to 202–273–9026. Comments should indicate that they are submitted in response to ''Draft Programmatic Environmental Impact Statement (PEIS) for the West Los Angeles Medical Center Campus Draft Master Plan''. The Draft PEIS is available electronically for public viewing at *www.losangeles.va.gov/masterplan/* and hard copies are available at the following libraries: Los Angeles City Hall, 200 N Spring Street, Los Angeles, CA 90012; Donald Bruce Kaufman Brentwood Branch Library, 11820 San Vicente Boulevard, Los Angeles, CA 90049; West Los Angeles Regional Library, 11360 Santa Monica Boulevard, Los Angeles, CA 90025; Westwood Branch Library, 1246 Glendon Avenue, Los Angeles, CA 90024; VA GLAHS WLA Medical Center, 11301 Wilshire Boulevard, Los Angeles, CA 90073, Building 500/Room 6429K.

Dated: January 29, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–00735 Filed 1–31–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,
No. 22 February 1, 2019

Part II

Securities and Exchange Commission

17 CFR Parts 270 and 274
Fund of Funds Arrangements; Proposed Rule

Securities and Exchange Commission

17 CFR Parts 270 and 274

[Release Nos. 33–10590; IC–33329; File No. S7–27–18]

RIN 3235–AM29

Fund of Funds Arrangements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is proposing a new rule under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act'') to streamline and enhance the regulatory framework applicable to funds that invest in other funds (''fund of funds'' arrangements). In connection with the proposed rule, the Commission proposes to rescind rule 12d1–2 under the Act and most exemptive orders granting relief from sections 12(d)(1)(A), (B), (C), and (G) of the Act. Finally, the Commission is proposing related amendments to rule 12d1–1 under the Act and Form N–CEN.

DATES: Comments should be received on or before May 2, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–27–18 on the subject line.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–18. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also 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. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Joel Cavanaugh, John Foley, Senior Counsels; Jacob D. Krawitz, Branch Chief; Melissa S. Gainor, Senior Special Counsel; Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment 17 CFR 270.12d1–4 (new rule 12d1–4) under the Investment Company Act [15 U.S.C. 80a–1 *et seq.*]; amendments to 17 CFR 270.12d1–1 (rule 12d1–1) under the Investment Company Act; amendments to Form N–CEN [referenced in 17 CFR 274.101] under the Investment Company Act; and rescission of 17 CFR 270.12d1–2 (rule 12d1–2) under the Investment Company Act.[1]

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I. Background

We are proposing new rule 12d1–4 under the Investment Company Act to streamline and enhance the regulatory framework applicable to fund of funds arrangements.[2] The proposed rule would, under specified circumstances, permit a fund to acquire shares of another fund in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission.[3] The proposed rule reflects decades of experience with fund of funds arrangements, and would subject funds relying on proposed rule 12d1–4 to a tailored set of conditions that we believe would help protect investors from the harms Congress sought to address by enacting section 12(d)(1) of the Act. As the proposed rule would provide a comprehensive exemption for funds of funds to operate, we also propose to rescind rule 12d1–2 under the Act and individual exemptive orders for certain fund of funds arrangements in order to create a consistent and efficient rules-based regime for the formation and oversight of funds of funds. Finally, in connection with the proposed rescission of rule 12d1–2, we are proposing amendments to rule 12d1–1 under the Act to allow funds that rely on section 12(d)(1)(G) of the Act to invest in money market funds

[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270].

[2] For purposes of this release, we generally use the term ''funds'' to refer to registered investment companies and business development companies (''BDCs'') unless the context otherwise requires. A BDC is a closed-end fund that: (i) is organized under the laws of, and has its principal place of business in, any state or states; (ii) is operated for the purpose of investing in securities described in section 55(a)(1)–(3) of the Act and makes available ''significant managerial assistance'' to the issuers of those securities, subject to certain conditions; and (iii) has elected under section 54(a) of the Act to be subject to the sections addressing activities of BDCs under the Act. *See* 15 U.S.C. 80a–2(a)(48). Section 6(f) of the Act exempts BDCs that have made the election under section 54 of the Act from registration provisions of the Act.

[3] We also are proposing amendments to Form N–CEN, a structured form that requires registered funds to provide census-type information to the Commission on an annual basis. *See infra* section IV.

that are not part of the same group of investment companies.[4]

A. Funds' Investments in Other Funds

Funds increasingly invest in other funds as a way to achieve asset allocation, diversification, or other investment objectives. For example, a fund may invest in another fund to gain exposure to a particular market or asset class in an efficient manner.[5] A fund could, for instance, obtain exposure to a foreign market by investing in a country-specific fund rather than investing in the securities of companies listed on an exchange in that country. Funds also may invest in other funds to equitize cash, engage in hedging transactions, or manage risk.

According to staff estimates, almost one half of all registered funds hold investments in other funds.[6] Of those funds investing in other funds, one half invest at least 5% of their assets in other funds, and one quarter hold almost all of their assets (90%) in other funds. The acquired funds most often provide exposures to US equity, international equity, or fixed income asset classes.

Main Street investors similarly use fund of funds arrangements as a convenient way to allocate and diversify their investments through a single, professionally managed portfolio. For example, a fund of funds may provide an investor with the same benefits as separate direct investments in several underlying funds, without the increased monitoring and recordkeeping that could accompany investments in each underlying fund.[7] In addition, a fund of funds may provide an investor with exposure to an asset class or fund that may not otherwise be available to that investor.[8]

B. Overview of Section 12(d)(1) Limits

Section 12(d)(1) of the Investment Company Act limits the ability of a fund to invest substantially in shares of another fund.[9] Section 12(d)(1)(A) of the Act prohibits a registered fund (and companies, including funds, it controls) from:

- Acquiring more than 3% of another fund's outstanding voting securities;
- investing more than 5% of its total assets in any one fund; or
- investing more than 10% of its total assets in funds generally.[10]

Section 12(d)(1)(B) of the Act addresses the other side of the transaction by prohibiting a registered open-end fund[11] (and any principal underwriter thereof or broker-dealer registered under the Exchange Act) from knowingly selling securities to any other investment company if, after the sale, the acquiring fund would:

- Together with companies it controls, own more than 3% of the acquired fund's outstanding voting securities; or
- together with other funds (and companies they control), own more than 10% of the acquired fund's outstanding voting securities.[12]

Congress enacted these restrictions because it was concerned about ''pyramiding,'' a practice under which investors in the acquiring fund could control the assets of the acquired fund and use those assets to enrich themselves at the expense of acquired fund shareholders.[13] Control could be exercised either directly (such as through the voting power of a controlling interest) or indirectly (such as coercion through the threat of large-scale redemptions). Congress also was concerned about the potential for excessive fees when one fund invested in another,[14] and the formation of overly complex structures that could be confusing to investors.[15] Congress imposed these limits, in part, based on our conclusions in 1966 that fund of funds structures served little or no economic purpose.[16]

Our views and those of Congress regarding fund of funds arrangements have evolved over the years as fund of funds structures have developed to include investor protections and serve purposes that benefit investors.[17] As a

[4] *See infra* section III.

[5] Total net assets in mutual funds that invest primarily in other mutual funds have grown from $469 billion in 2008 to $2.22 trillion in 2017. During this period the number of mutual funds utilizing this arrangement grew from 839 to 1,400. *See* Investment Company Institute, 2018 Investment Company Fact Book (2018) (''2018 ICI Fact Book''), at 256, *available at https://www.ici.org/pdf/2018_factbook.pdf.*

[6] This estimate is derived from an analysis of data obtained from Morningstar Direct for the period ending August 2018. For more data on fund of funds arrangements, *see infra* section VI.

[7] Target-date funds are a common type of fund of funds arrangement that are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced over time without the need for investors to rebalance their own portfolio. *See* Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Investment Company Act Release No. 29301 (June 16, 2010) [75 FR 35920 (June 23, 2010)] (proposing disclosure requirements for target date retirement funds' marketing materials).

[8] A fund of funds may invest, for example, in funds or share classes with minimum investment amounts that are higher than some retail investors could afford.

[9] As originally enacted, section 12(d)(1) prohibited a registered fund (and any companies it controlled) from purchasing more than 5% of the outstanding shares of any fund that concentrated its investments in a particular industry, or more than 3% of the shares of any other type of fund. *See* Public Law 76–768, 54 Stat. 789, 809–10 § 12(d)(1) (1940) (codified at 15 U.S.C. 80a–12(d)(1) (1940)). Congress amended section 12(d)(1) to include the current limits in section 12(d)(1)(A) and (B) in 1970.

[10] *See* 15 U.S.C. 80a–12(d)(1)(A). Both registered and unregistered investment companies are subject to these limits with respect to their investments in a registered investment company. Registered investment companies are also subject to these same limits with respect to their investment in an unregistered investment company. Pursuant to sections 3(c)(1) and 3(c)(7), private funds are subject to the 3% limitation on investments in registered funds as well. 15 U.S.C. 80a–3(c)(1) and 3(c)(7)(D). A ''private fund'' is an issuer that would be an investment company, as defined in section 3 of the Investment Company Act, but for section 3(c)(1) or 3(c)(7) of that Act. 15 U.S.C. 80b–2(a)(29). In addition, section 60 of the Act makes section 12(d) applicable to a BDC to the same extent as it if were a registered closed-end fund. 15 U.S.C. 80a–60.

[11] A registered open-end fund is a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer. 15 U.S.C. 80a–5(a)(1) (defining ''open-end company''). A registered closed-end fund is any management company other than an open-end fund. 15 U.S.C. 80a–5(a)(2) (defining ''closed-end company''). Section 12(d)(1)(C) of the Act also includes specific limitations on investments in registered closed-end funds. *See* 15 U.S.C. 80a–12(d)(1)(C).

[12] *See* 15 U.S.C. 80a–12(d)(1)(B). This prohibition applies to the sale of securities issued by an open-end fund to registered funds and unregistered investment companies. Pursuant to sections 3(c)(1) and 3(c)(7), private funds are subject to the 3% limitation with respect to the sale of any security by any open-end fund to such private fund. 15 U.S.C. 80a–3(c)(1) and 3(c)(7)(D).

[13] *See* Hearing on H.R. 10065 before the Subcomm. of the House Comm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess., 112–14 (1940) (statement of David Schenker); Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission, pt. 3, ch. 4, H.R. Doc. No. 136, 77th Cong., 1st Sess., 1031–1041, nn. 58–59 (1941) (''Investment Trust Study''); *id.,* at ch. 7, 2742–50. *See also* Exchange-Traded Funds, Investment Company Act Release No. 28193 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] (''2008 Proposing Release''), at n.195 (discussing the legislative history of ''pyramiding schemes''). In some cases, acquired funds directed underwriting and brokerage business to entities affiliated with acquiring fund investors on terms that were unfavorable to acquired fund shareholders.

[14] Controlling persons profited when acquiring fund shareholders paid excessive fees due to duplicative charges at both the acquiring and acquired fund levels. *See* Investment Trust Study, *supra* footnote 13, at ch. 7, 2725–39, 2760–75, 2778–93.

[15] Complicated corporate structures could allow acquiring funds to circumvent investment restrictions and limitations and make it difficult for shareholders of the acquiring fund to understand who controlled the fund or the true value of their investments. *See* Investment Trust Study, *supra* footnote 13, at 2776–77. Acquiring fund shareholders might believe that they owned shares in a fund that invested in equity securities of large companies without understanding that the acquiring fund actually held funds that provided substantial exposure to smaller issuers, foreign currencies, or interest rates. *See id.,* at 2721–95.

[16] *See* 2008 Proposing Release, *supra* footnote 13 (citing legislative history and *Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth,* H. Rep. No. 2337, 89th Cong., 2d Sess. (1966) (''PPI Report'')). *See also* Fund of Funds Investments, Investment Company Act Release No. 26198 (Oct. 1, 2003) [68 FR 58226 (Oct. 8, 2003)] (''Fund of Funds Proposing Release'') at n.8.

[17] *See* Fund of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006) [71 FR 36640 (June 27, 2006)] (''Fund of Funds

Continued

result, Congress created statutory exceptions that permit different types of fund of funds arrangements subject to certain conditions.[18] First, section 12(d)(1)(E) of the Act allows an acquiring fund to invest all of its assets in a single fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund.[19] Second, section 12(d)(1)(F) of the Investment Company Act permits a registered fund to take small positions (up to 3% of another fund's securities) in an unlimited number of other funds.[20] Finally, section 12(d)(1)(G) allows a registered open-end fund or unit investment trust (''UIT'') to invest in other open-end funds and UITs that are in the same ''group of investment companies.'' [21]

When Congress enacted section 12(d)(1)(G), it also gave the Commission specific authority to permit additional types of fund of funds arrangements as structures evolved. Section 12(d)(1)(J) of the Act allows the Commission to exempt any person, security, or transaction, or any class or classes of transactions, from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.[22] A House of Representatives committee report on the amendments urged the Commission to use this exemptive authority ''in a progressive way as the fund of funds concept continues to evolve over time.'' [23]

We exercised this exemptive authority in 2006 when we adopted 17 CFR 270.12d1–1 (rule 12d1–1), 17 CFR 270.12d1–2 (rule 12d1–2), and 17 CFR 270.12d1–3 (rule 12d1–3), which were based on relief we previously provided in a number of exemptive orders.[24] We also have used our authority under section 12(d)(1)(J) to issue exemptive orders permitting fund of funds arrangements that the Act or our rules otherwise restrict when we found those arrangements to be consistent with the public interest and the protection of investors.[25] These exemptive orders permit fund investments in other funds, subject to specified conditions that are designed to prevent the abuses that led Congress to enact section 12(d)(1).[26]

Relief from sections 12(d)(1)(A) and (B) also is included in our exemptive orders that allow exchange-traded funds (''ETFs'') and exchange traded managed funds (''ETMFs'') to operate.[27]

This combination of statutory exemptions, Commission rules, and exemptive orders, however, has created a regulatory regime where substantially similar fund of funds arrangements are subject to different conditions. For example, an acquiring fund could rely on section 12(d)(1)(G) and rule 12d1–2 when investing in an acquired fund within the same group of investment companies.[28] Alternatively, it could rely on relief provided by an exemptive order, which would allow it to invest in substantially the same investments, but would require the fund to comply with different conditions.

In order to create a more consistent and efficient regulatory framework for fund of funds arrangements, we are proposing to rescind rule 12d1–2 and many of the exemptive orders we have granted giving relief from sections 12(d)(1)(A), (B), (C), and (G) of the Act.[29] We propose to replace that relief with a comprehensive fund of funds framework under new rule 12d1–4. A comprehensive, streamlined framework would reduce confusion and subject fund of funds arrangements to a tailored set of conditions that would enhance investor protection, while also providing funds with investment flexibility to meet their investment

Adopting Release'') at n.7 and accompanying text; 2008 Proposing Release, *supra* footnote 13.

[18] *See* Fund of Funds Proposing Release, *supra* footnote 16, at n.8 and accompanying text.

[19] *See* 15 U.S.C. 80a–12(d)(1)(E). This section is relied upon by master-feeder fund arrangements, in which one or more funds pool their assets by investing in a single fund with the same investment objective.

[20] *See* 15 U.S.C. 80a–12(d)(1)(F). A fund relying on section 12(d)(1)(F) is restricted in its ability to redeem shares of the acquired fund and is unable to use its voting power to influence the outcome of shareholder votes held by the acquired fund.

[21] *See* 15 U.S.C. 80a–12(d)(1)(G). ''Group of investment companies'' is defined in section 12(d)(1)(G) as any two or more registered funds that hold themselves out to investors as related companies for purposes of investment and investor services. 15 U.S.C. 80a–12(d)(1)(G)(ii).

[22] *See* National Securities Markets Improvement Act of 1996 (''NSMIA''), Public Law 104–290, 110 Stat. 3416 (1996), at § 202(4) (codified at 15 U.S.C. 80a–12(d)(1)(J); Comm. On Commerce, Securities Amendments of 1996, H.R. Rep. No. 104–622 (1996), 104th Cong., 2nd Sess., at 43–44 (''H.R. Rep. No. 622''). Congress added section 12(d)(1)(J) to resolve questions regarding the scope of our authority under section 6(c) of the Act. *See* Vanguard Special Tax-Advanced Retirement Fund, Inc., Investment Company Act Release No. 14361 (Feb. 7, 1985) (order), dissenting opinion of Commissioners Treadway and Peters (concluding that applicants failed to establish an adequate record on which the Commission could find an exemption from section 12(d)(1)(A) to meet the standards of section 6(c) of the Act).

[23] H.R. Rep. No. 622, *supra* footnote 22, at 44–45. The report specifically noted that many fund complexes might not have a sufficient number or variety of fund types to permit a workable fund of funds arrangement under section 12(d)(1)(G) and the Commission should use its exemptive authority so ''the benefits of [funds of] funds are not limited only to investors in the largest fund complexes, but, in appropriate circumstances, are available to investors through a variety of different types and sizes of investment company complexes.'' The report stated that, in exercising its authority, the Commission should consider factors that relate to the protection of investors, including the extent to which a proposed arrangement is subject to conditions that are designed to address conflicts of interest and overreaching by a participant in the arrangement, so as to avoid the abuses that gave rise to the initial adoption of the Investment Company Act's restrictions against funds investing in other funds.

[24] *See* Fund of Funds Adopting Release, *supra* footnote 17. Rule 12d1–1 allows funds to invest in shares of money market funds in excess of the limits of section 12(d)(1). *See infra* section III (discussing the proposed amendment of rule 12d1–1). Rule 12d1–2 provides funds relying on section 12(d)(1)(G) with greater flexibility to invest in other types of securities. *See infra* section III (discussing the proposed rescission of rule 12d1–2). Finally, rule 12d1–3 allows acquiring funds relying on section 12(d)(1)(F) to charge sales loads greater than 1.5%. We did not rescind the exemptive orders that funds had relied upon in connection with these arrangements before we adopted rules 12d1–1, 12d1–2 and 12d1–3.

[25] As the orders are subject to terms and conditions set forth in the applications requesting exemptive relief, references in this release to ''exemptive relief'' or ''exemptive orders'' include the terms and conditions described in the related applications. *See, e.g.,* Schwab Capital Trust, *et al.,* Investment Company Act Release Nos. 24067 (Oct. 1, 1999) [64 FR 54939 (Oct. 8, 1999)] (notice) and 24113 (Oct. 27, 1999) (order) and related application (''Schwab''); Franklin Fund Allocator Series, *et al.,* Investment Company Act Release Nos. 32669 (June 5, 2017) [82 FR 26720 (June 8, 2017)] (notice) and 32722 (July 3, 2017) (order) and related application (''Franklin Fund''). In addition to our section 12(d)(1)(J) authority, we have issued these orders pursuant to our exemptive authority under sections 17(a) and 6(c) of the Act.

[26] *See, e.g.,* Schwab, *supra* footnote 25. The conditions include: (i) Limits on the control and influence an acquiring fund can exert on the acquired fund; (ii) limits on certain fees charged to the acquiring fund and its shareholders; and (iii) limits on the acquired fund's ability to invest in other funds.

[27] ETFs are organized as either open-end funds or UITs and require exemptive relief from certain provisions of the Act to operate. ETFs issue shares that can be bought or sold throughout the day in the secondary market at a market-determined price. *See, e.g.,* IndexIQ ETF Trust, *et al.,* Investment Company Act Release Nos. 33163 (July 19, 2018) [83 FR 35289 (July 25, 2018)] (notice) and 33200 (Aug. 14, 2018) (order) and related application. ETMFs are hybrid structures between mutual funds and ETFs and similarly need relief from the Act to operate. Unlike ETFs, secondary market transactions in ETMFs occur at the next-determined net asset value (''NAV'') plus or minus a market-determined premium or discount that may vary during the trading day. *See, e.g.,* Eaton Vance Management, *et al.,* Investment Company Act Release Nos. 31333 (Nov. 6, 2014) [79 FR 67471 (Nov. 13, 2014)] (notice) and 31361 (Dec. 2, 2014) (order) and related application (''Eaton Vance'').

[28] Such a fund would rely on section 12(d)(1)(G) to invest in acquired funds within the same group of investment companies, government securities, and short term paper. In addition, the fund could rely on rule 12d1–2 to invest in: (i) Securities of funds that are not in the same group of investment companies up to the limits in section 12(d)(1)(A) or (F); (ii) securities of money market funds in reliance on rule 12d1–1; and (iii) stocks, bonds, and other securities.

[29] We do not propose to rescind exemptive orders providing relief from section 12(d)(1)(A) and (B) of the Act with respect to certain interfund lending arrangements. *See infra* footnote 201 and accompanying text.

objectives in an efficient manner. We believe that the proposed rule would provide investors with the benefits of fund of funds arrangements, while protecting them from the historical abuses described above. We also propose to amend rule 12d1–1 under the Act to allow funds that rely on section 12(d)(1)(G) to invest in money market funds that are not part of the same group of investment companies in reliance on that rule.[30]

In developing this proposal, the Commission considered comments we received in response to a package of new rules and rule amendments focused largely on ETFs proposed in 2008.[31] This proposal also takes into account Commission staff observations of developments in the industry since that time.

II. Proposed Rule 12d1–4

A. Scope of Proposed Rule 12d1–4 and Exemptions From Section 12(d)(1) of the Act

Registered funds and BDCs. Proposed rule 12d1–4 would permit a registered investment company or BDC (collectively, ''acquiring funds'') to acquire the securities of any other registered investment company or BDC (collectively, ''acquired funds'') in excess of the limits in section 12(d)(1), subject to conditions that are designed to address historical abuses associated with fund of funds arrangements. Accordingly, open-end funds, UITs, closed-end funds (including BDCs), ETFs, and ETMFs could rely on proposed rule 12d1–4 as both acquiring and acquired funds.[32]

Today, an acquiring fund's ability to invest in an acquired fund in excess of the limits in section 12(d)(1) varies significantly based on the type of acquiring fund. The following chart describes the types of fund of funds arrangements that have been permitted under our exemptive orders:

Acquiring fund under exemptive orders	Acquired fund under exemptive orders
Open-end funds	Open-end funds, UITs, ETFs, ETMFs, Listed closed-end funds,[33] Listed BDCs.
UITs	Open-end funds, UITs, ETFs, ETMFs, Listed closed-end funds.
Closed-end funds (listed and unlisted)	ETFs, ETMFs.
BDCs (listed and unlisted)	ETFs.
ETFs[34]	Open-end funds, UITs, ETFs, Listed closed-end funds, Listed BDCs.

Proposed rule 12d1–4 would create a consistent framework for all registered funds and BDCs. The proposed rule would subject fund of funds arrangements to conditions that are tailored to different acquiring fund structures, rather than assessing the merit of a particular fund of funds arrangement on an individual basis. As described in more detail below, we believe that these tailored conditions would serve to protect fund investors at both tiers of a fund of funds arrangement.

The following chart describes the types of fund of funds arrangements that would be permitted under proposed rule 12d1–4:

Acquiring fund under proposed rule 12d1–4	Acquired funds under proposed rule 12d1–4
Open-end funds	Open-end funds.
UITs	UITs.
Closed-end funds (listed and unlisted)	Closed-end funds (listed and unlisted).[35]
BDCs (listed and unlisted)	BDCs (listed and unlisted).
ETFs	ETFs.
ETMFs	ETMFs.

Thus, in addition to the fund of funds arrangements currently allowed by our exemptive orders, the proposed rule would allow open-end funds, UITs, and ETFs to invest in unlisted closed-end funds and unlisted BDCs beyond the limits in section 12(d)(1). Proposed rule 12d1–4 would similarly increase permissible investments for closed-end funds beyond ETFs and ETMFs to allow them to invest in open-end funds, UITs, other closed-end funds, and BDCs, in

[30] Under the proposal, a fund relying on section 12(d)(1)(G) would no longer have the flexibility to: (i) Acquire the securities of other funds that are not part of the same group of investment companies; or (ii) invest directly in stocks, bonds, and other securities. In order to make these investments, the fund would need to comply with proposed rule 12d1–4 (including its conditions). *See infra* section III.

[31] *See* 2008 Proposing Release, *supra* footnote 13. The 2008 Proposing Release, among other things, would have allowed funds to invest in ETFs beyond the section 12(d)(1) statutory limits. Proposed rule 12d1–4 also would allow funds to invest in ETFs, and would allow ETFs to act as acquiring funds, in excess of the limits in section 12(d)(1). As discussed in section V, we propose to rescind the exemptive relief relating to investments in ETFs that has been included in our ETF exemptive orders.

[32] The proposed rule would not be available to face-amount certificate companies. Face-amount certificate companies are registered investment companies which are engaged or propose to engage in the business of issuing face-amount certificates of the installment type, or which have been engaged in such businesses and have any such certificates outstanding. *See* section 4(1) of the Investment Company Act. There is only one face-amount certificate company currently operating as an investment company and making current filings pursuant to section 13 [15 U.S.C. 80a–13] or section 15(d) of the Exchange Act [15 U.S.C. 80a–15]. Given the very limited universe of face-amount certificate companies and the nature of their investments, we do not propose to include face-amount certificate companies within the scope of proposed rule 12d1–4 as acquiring funds or acquired funds.

[33] We use the terms ''listed closed-end funds'' and ''listed BDCs'' to refer to closed-end funds and BDCs that are listed and traded on national securities exchanges. Our exemptive orders have included a representation that acquiring funds will not invest in reliance on the order in closed-end funds or BDCs that are not listed and traded on a national securities exchange. *See, e.g.,* Innovator ETFs Trust, *et al.,* Investment Company Act Release Nos. 33214 (Aug. 24, 2018) [83 FR 44374 (Aug. 30, 2018)] (notice) and 33238 (Sept. 19, 2018) (order) and related application (''Innovator ETFs'').

[34] We have provided this relief to ETFs that are structured as open-end funds and UITs. *See* Exchange-Traded Funds, Investment Company Act Release No. 33140 (June 28, 2018) [83 FR 37332 (July 31, 2018)] (''2018 ETF Proposing Release'') at nn. 344–46 and accompanying text (describing relief from section 12(d)(1) for investments in ETFs).

[35] Under proposed rule 12d1–4, an acquiring fund could invest in unlisted closed-end funds and BDCs. For example, an acquiring fund could invest in interval funds under the proposed rule, which are closed-end funds that offer to repurchase their shares at periodic intervals pursuant to 17 CFR 270.23c–3 (rule 23c–3 under the Investment Company Act), and are generally unlisted. Based on staff analysis, there were 39 interval funds, representing approximately $21 billion in assets, in 2017.

excess of the section 12(d)(1) limits. Under the proposed rule, BDCs, which currently may only invest in ETFs in excess of the section 12(d)(1) limits, would additionally be permitted to invest in open-end funds, UITs, closed-end funds, other BDCs, and ETMFs. Finally, the proposed rule would allow ETMFs to invest in all registered funds and BDCs.

Expanding permissible fund of funds arrangements would provide funds covered by the rule with flexibility to meet their investment objectives. In addition, we believe that the proposed rule's scope would eliminate unnecessary and potentially confusing distinctions among permissible investments for different types of acquiring funds. The proposed rule also would level the playing field among these entities, allowing each to invest in the same universe of acquired funds in excess of the limits in section 12(d)(1) without obtaining individualized exemptive relief from the Commission. We believe that the universe of permissible fund of funds arrangements generally should not turn on the type of the funds in the arrangement. Instead, we believe that the proposed rule should address differences in fund structures with tailored conditions designed to protect against the abuses historically associated with funds of funds.[36] When conditioned appropriately, expanding the scope of permissible acquiring and acquired funds in the manner described above would create a consistent and streamlined regulatory framework, while addressing investor protection concerns.

For example, we do not believe that expanding the scope of permissible acquiring funds to include BDCs would present investor protection concerns regarding undue influence, duplicative fees, or complex structures that the proposed rule's conditions would not address. A BDC relying on the proposed rule as an acquiring fund also is subject to other limitations on its ability to invest in acquired funds.[37] Similarly, we do not believe that including ETMFs within the scope of the proposed rule would present investor protection concerns that we have not already extensively considered with other investment products. We believe that the proposed rule's conditions appropriately address investor protection concerns underlying section 12(d)(1)(A) with respect to these products.[38]

Further, we believe that the proposed rule's scope of permissible arrangements is appropriately calibrated based on our understanding of these investment products and our experience with conditions similar to the proposed rule's conditions. As noted above, Congress specifically urged the Commission to monitor the evolution of legitimate fund of funds arrangements and permit such arrangements when investors are adequately protected against the abuses that led Congress to enact section 12(d)(1). We believe that the proposed rule's conditions appropriately guard against those abuses, serving to protect investors. More specifically, the proposed rule would limit an acquiring fund's ability to exert undue influence over an acquired fund directly through ownership or indirectly through the threat of large-scale redemptions,[39] would require evaluation of the fees associated with a fund of funds arrangement,[40] and would guard against unduly complex fund of funds structures.[41] Accordingly, we believe that the proposed exemptions from sections 12(d)(1)(A), (B), and (C) are consistent with the public interest and the protection of investors under section 12(d)(1)(J) of the Act.

Private funds. Similar to the 2008 proposal, private funds would not be within the proposed rule's scope of acquiring funds.[42] Several commenters on the 2008 proposal urged us to include private funds within that proposed rule's scope.[43] They argued that the conditions of the 2008 proposed rule would prevent abuses by acquiring private funds in the same way that the conditions would prevent abuses by registered acquiring funds. For example, some commenters stated that the rule's prohibition of control by an acquiring fund and the restrictions on direct redemptions would protect an acquired ETF from being unduly influenced by an acquiring private fund.[44] Some also stated that the risks associated with duplicative fees and overly complex structures are less concerning when the acquiring fund is a private fund, because private fund investors may be better able to understand the complex structure and judge the propriety of the private fund's fees than some investors in other types of acquiring funds.[45] They also argued that private fund investment in ETFs would benefit ETFs by increasing the liquidity of ETF shares and furthering economies of scale, and would benefit private funds by permitting them to invest in specific sectors in an efficient manner.[46]

The proposed rule would not include private funds as acquiring funds because private funds are not registered with the Commission and would not be subject to the reporting requirements that we propose below on Form N–CEN regarding reliance on the proposed rule.[47] Private funds also would not report information regarding their acquired fund holdings on Form N–PORT.[48] In addition, private funds are not subject to recordkeeping requirements under the Investment

[36] In 2008, the proposed relief from section 12(d)(1) was considered within the context of a broader ETF rule proposal and thus was limited to sales of shares of ETFs beyond the limits in section 12(d)(1). That proposal, however, similarly would have permitted all registered funds and BDCs to act as acquiring funds under the rule. *See* 2008 Proposing Release, *supra* footnote 13.

[37] *See* 15 U.S.C. 80a–54(a) (prohibiting a BDC from making any investment unless, at the time of the investment, at least 70% of the BDC's total assets are invested in securities of certain specific types of companies, which do not include funds).

[38] *See supra* footnote 27.

[39] Proposed rule 12d1–4(b)(1) would prohibit the acquiring fund and its advisory group from controlling (individually or in the aggregate) the acquired fund, with certain exceptions. Proposed rule 12d1–4(b)(2) would limit the amount of acquired fund shares that an acquiring fund may redeem directly from the acquired fund during any thirty-day period. *See infra* section II.C.1–2.

[40] Proposed rule 12d1–4(b)(3). *See infra* section II.C.3.

[41] Proposed rule 12d1–4(b)(4). *See also infra* section II.C.4.

[42] Pursuant to sections 3(c)(1) and 3(c)(7), private funds are subject to the 3% limitation on investments in registered funds in section 12(d)(1)(A)(i). Accordingly, private funds require relief from this section in order to invest in registered funds beyond the limits in section 12(d)(1). *See supra* footnote 10. Because the limitations contained in sections 12(d)(1)(A)(i) and 12(d)(1)(B)(i) referenced in 3(c)(1) and 3(c)(7) only apply to registered funds, private funds can invest in other private funds or unregistered investment companies without limitation.

[43] *See, e.g.,* Comment Letter of Barclays Global Fund Advisors (May 16, 2008) (''BGFA Letter'') (all investment companies subject to section 12(d)(1) should be included within the rule's scope); Comment Letter of Managed Fund Association (May 18, 2017) (''MFA Letter''); Comment Letter of The Bar of the City of New York (May 9, 2008) (''NY Bar Letter''); Comment Letter of State Street Global Advisors (May 19, 2008) (''SSgA Letter'').

[44] *See* MFA Letter; SSgA Letter.

[45] *See* MFA Letter; SSgA Letter.

[46] *See, e.g.,* MFA Letter; NY Bar Letter.

[47] *See infra* section IV. However, Form PF and 17 CFR 275.204(b)–1 (rule 204(b)–1 under the Investment Advisers Act of 1940 (the ''Advisers Act'')) require certain registered investment advisers to private funds to file Form PF to report information about the private funds they manage. *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71128 (Nov. 16, 2011)].

[48] Form N–PORT requires certain registered investment companies to report information about their monthly portfolio holdings to the Commission in a structured data format. *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Reporting Modernization Adopting Release'').

Company Act.[49] Even if an acquired fund kept records relating to this arrangement, that alone may not provide an adequate basis for monitoring compliance with the proposed rule's conditions.

Accordingly, we do not propose to include private funds as acquiring funds under the scope of the rule. Given the policy considerations discussed above, we believe it is appropriate for private funds to request relief from sections 12(d)(1)(A) and (B) of the Act through our exemptive application process, and for the Commission to weigh these policy considerations in the context of the facts and circumstances of each particular applicant.[50]

Unregistered investment companies. Unregistered investment companies, such as foreign funds, also are excluded from the scope of proposed rule 12d1–4.[51] We have the same concerns regarding fund of funds arrangements involving unregistered investment companies that we discussed above for private funds.[52] By definition, these investment companies are not registered with the Commission and would not be subject to the reporting requirements that we propose below on Form N–CEN regarding reliance on the proposed rule. Furthermore, unregistered foreign funds' investments in U.S. registered funds, and certain abusive practices that were associated with such investments, were a concern underlying Congress's amendments to section 12(d)(1) in 1970.[53] Those amendments expanded the scope of section 12(d)(1) to include unregistered investment companies.[54] We therefore do not propose to include unregistered investment companies as acquiring funds under the rule. As with private funds, we believe it is appropriate for unregistered investment companies to request relief from sections 12(d)(1)(A) and (B) of the Act through our exemptive application process, and for the Commission to weigh the applicable policy considerations in the context of the facts and circumstances of each particular applicant.[55]

We request comment on the scope of proposed rule 12d1–4:

- Should the exemptive relief under the proposed rule include all registered funds and BDCs within the scope of ''acquired funds'' and ''acquiring funds'' as proposed? Should we define those terms more broadly or more narrowly?
- Should we limit the scope of the proposed rule to track the scope of existing fund of funds exemptive relief? For example, should we exclude closed-end funds and BDCs that are not listed on a national securities exchange from the scope of ''acquired funds'' under the proposed rule, maintaining the status quo for those investments?
- Are there investor protection concerns with including closed-end funds and BDCs that are not listed on a national securities exchange in the scope of the ''acquired funds''? If so, what concerns, and why?
- Would including these unlisted closed-end funds and BDCs in the scope of ''acquired funds'' affect an acquiring fund's liquidity risk management, including acquiring funds subject to rule 22e–4 under the Act? If so, how?
- Should closed-end funds and BDCs be permitted to rely on the rule as acquiring funds only with respect to investments in ETFs and ETMFs or with respect to some other limited subset of acquired funds?
- Should UITs be permitted to invest in BDCs under the proposed rule? Would such an arrangement present any concerns that are not addressed by the proposed rule's conditions?
- Should the scope of proposed rule 12d1–4 include ETMFs as acquiring funds, as proposed? Are there any special concerns we should consider with respect to ETMFs, given that we have less experience with fund of fund arrangements involving these funds?
- Should the proposed rule expressly allow sponsors of UITs to deposit units of existing UITs into portfolios of new UIT series beyond the limits of section 12(d)(1)?[56] If so, why, and should the proposed rule include conditions specifically related to such relief? For example, should the proposed rule expressly require that no sales charges are charged in connection with the deposit of units of the existing UIT in the portfolio of the future UIT? Are there other conditions we should consider?
- Are there additional conditions we should consider for any subset of acquiring funds or acquired funds? Are there any proposed conditions that should apply only to a subset of acquiring funds or acquired funds?
- Should the scope of proposed rule 12d1–4 include private funds as acquiring funds? If so, should private funds be permitted to invest in all types of acquired funds under the rule? Or should they be limited to investments in funds that may be bought and sold on

[49] *See, e.g.,* 17 CFR 270.31a–1 (rule 31a–1) (setting forth certain recordkeeping requirements for registered investment companies). While the records of a private fund to which a registered investment adviser provides investment advice are deemed to be the records of the investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), there is no requirement for the private fund to create these records under the Investment Company Act. *See* section 204(b)(2) of the Investment Advisers Act [15 U.S.C. 80b–4(b)(2)].

[50] To date, our exemptive orders have not permitted private funds to invest in registered funds beyond the limits in section 12(d)(1)(A)(i) of the Act.

[51] *See supra* footnote 10 and accompanying text. We use the term ''foreign fund'' to refer to an ''investment company'' as defined in section 3(a)(1)(A) of the Investment Company Act that is organized outside the United States and that does not offer or sell its securities in the United States in connection with a public offering. *See* section 7(d) of the Investment Company Act (prohibiting a foreign fund from using the U.S. mails or any means or instrumentality of interstate commerce to offer or sell its securities in connection with a public offering unless the Commission issues an order permitting the foreign fund to register under the Act). An unregistered foreign fund, as discussed in this release, may be registered in a foreign jurisdiction, such as under the European Union's directive regarding Undertakings for Collective Investments in Transferable Securities (''UCITS''). A foreign fund may conduct a private U.S. offering in the United States without violating section 7(d) of the Act only if the foreign fund conducts its activities with respect to U.S. investors in compliance with either section 3(c)(1) or 3(c)(7) of the Act (or some other available exemption or exclusion). *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)] (''Exemptions Release'').

[52] The Commission has taken the position that a foreign fund that uses U.S. jurisdictional means in the offering of the securities it issues and that relies on section 3(c)(1) or 3(c)(7) of the Investment Company Act would be a private fund. *See* Exemptions Release, *supra* footnote 51 (citing Dechert LLP, Staff No-Action Letter (Aug. 24, 2009) at n.8 (noting that under certain circumstances, a foreign fund may make a private U.S. offer in reliance on the exclusion from the definition of ''investment company'' in sections 3(c)(1) or 3(c)(7) of the Act, and such a foreign fund is subject to section 12(d)(1) to the same extent as a U.S. 3(c)(1) or 3(c)(7) fund)).

[53] The legislative history of the 1970 amendments suggests that Congress primarily intended to address four abusive practices: pyramiding of voting control; undue influence over an acquired fund through the threat of large-scale redemptions; investor confusion caused by complex fund of funds structures; and layering of costs. *See* PPI Report, *supra* footnote 16. With respect to foreign funds as acquiring funds, the PPI Report noted that ''redemptions could be unduly escalated by the instability of certain foreign economies, political upheaval, currency reform, or other factors which are not really relevant to investment in domestic mutual funds.'' *See id* at 318.

[54] *See supra* footnote 9.

[55] To date, our exemptive orders have not permitted unregistered funds to invest in registered funds beyond the limits in section 12(d)(1)(A) of the Act.

[56] In several staff no-action letters, the staff has stated that, based on certain facts and circumstances, it would not recommend that the Commission take any enforcement action under section 12(d)(1)(A) (and other sections of the Act) if the sponsor of a UIT deposits units of existing series in portfolios of futures series of the UIT. *See, e.g.,* Municipal Investment Trust Fund, Staff No-Action Letter (pub. avail. Oct. 25, 1975); The Ohio Company, Staff No-Action Letter (pub. avail. March 14, 1977); First Trust of Insured Municipal Bonds, Staff No-Action Letter (pub. avail. Feb. 25, 1979).

an exchange, such as closed-end funds and ETFs?

• If we permit private funds to rely on the rule as acquiring funds, should the rule include additional conditions designed to address private fund investments? For example, should the rule only be available to a private fund with an SEC-registered investment adviser? Should we also permit private funds with exempt reporting advisers to rely on the rule? How should we treat private funds that are sub-advised for these purposes? Should the rule be available only to a private fund for which an investment adviser provides information on Form ADV? [57] Should we require additional reporting on Form ADV regarding whether a private fund relies on rule 12d1–4?

• Should we allow unregistered investment companies, including foreign funds, to rely on the rule as acquiring funds? If we permit unregistered investment companies to rely on the rule, should we include additional conditions in rule 12d1–4 designed to address an unregistered investment company's investments? If so, what conditions?

• Should we continue to take the interpretive position that foreign funds that make private offerings in the U.S. in reliance on section 3(c)(1) or 3(c)(7) are private funds for purposes of section 12(d)(1)? Alternatively, should we only treat foreign funds that conduct their activities with respect to U.S. investors in compliance with section 3(c)(1) or 3(c)(7) *and* are privately offered outside the United States as private funds for purposes of section 12(d)(1)? For example, should we take the position that a fund that conducts a private U.S. offering in compliance with sections 3(c)(1) or 3(c)(7), but also conducts a public offering in a foreign jurisdiction (*e.g.,* certain UCITS funds),[58] is an investment company, rather than a private fund, solely for purposes of section 12(d)(1)? Should the treatment of foreign funds as private funds differ when the foreign fund is an acquiring fund versus when the foreign fund is an acquired fund? Are there different or greater concerns, particularly regarding duplicative fees and complex structures, if registered funds are permitted to invest in foreign funds in excess of the limits in section 12(d)(1)(A) than there are with domestic private funds or registered funds?

• If we permit private funds or unregistered investment companies to rely on rule 12d1–4, should we require those acquiring funds to make certain filings with the Commission disclosing their reliance on the rule? If so, should we promulgate a new form for those filings, and what information should be required on this form? For example, should we consider requiring these funds to report information to the Commission regarding their amount of holdings in an acquired fund? How frequently should we require these funds to report such information? For example, should we require monthly filings? Should reports be filed more or less frequently? Should those reports be public or non-public? Would any special concerns arise with respect to such a condition? To the extent that a foreign fund is registered in a foreign jurisdiction, should we consider requests for substituted compliance when the foreign fund complies with comparable non-U.S. rules?

B. Exemptions From the Act's Prohibition on Certain Affiliated Transactions

Proposed rule 12d1–4 would provide exemptive relief from section 17(a) of the Act.[59] Section 17 of the Act generally prohibits an affiliated person of a fund, or any affiliated person of such person, from selling any security or other property to, or purchasing any security or other property from, the fund.[60] It is designed to prevent affiliated persons from managing the fund's assets for their own benefit, rather than for the benefit of the fund's shareholders.[61]

Absent exemptive relief, section 17(a) would prohibit a fund that holds 5% or more of the acquired fund's securities from making any additional investments in the acquired fund.[62] Fund of funds arrangements involving funds that are part of the same group of investment companies or that have the same investment adviser (or affiliated investment advisers) also implicate the Act's protections against affiliated transactions, regardless of whether an acquiring fund exceeds the 5% threshold.[63] Furthermore, in instances where an ETF is an acquired fund, section 17(a) would prohibit the delivery or deposit of basket assets on an in-kind basis by an affiliated fund (that is, by exchanging certain assets from the ETF's portfolio, rather than in cash).[64]

Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve

[57] Investment advisers register with the Commission by completing Form ADV and filing Parts 1A and 2A of that form with the Commission. Exempt reporting advisers also file reports with the Commission on Form ADV. Form ADV generally requires advisers to private funds to report certain information regarding those funds. *See generally,* Rules Implementing Amendments to Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)]. *See also* Item 7.B and Section 7.B. of Schedule D of Form ADV.

[58] *See supra* footnote 51.

[59] Proposed rule 12d1–4(a).

[60] An affiliated person of a fund includes: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the fund; and (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the fund. *See* 15 U.S.C. 80a–2(a)(3)(A), (B). Section 17 also restricts certain transactions involving funds that are affiliated because both funds have a common investment adviser or other person exercising a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(3)(C). The determination of whether a fund is under the control of its advisers, officers, or directors depends on all the relevant facts and circumstances. *See infra* section II.C.1.

[61] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong., 3rd Sess. 37 (1940) (Statement of Commissioner Healy).

[62] If an acquiring fund holds 5% percent or more of the outstanding voting shares of an acquired fund, the acquiring fund is an affiliated person of the acquired fund and the acquired fund is an affiliated person of the acquiring fund. In general, to the extent that purchases and sales of acquired fund shares occur on the secondary market and not through principal transactions directly between an acquiring fund and an acquired fund, relief from section 17(a) would not be necessary.

[63] As discussed below, the proposed rule would allow fund of funds arrangements when: (i) The acquiring fund is in the same group of investment companies as the acquired fund; or (ii) the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser. *See infra* section II.C.1. For purposes of this section, we assume that funds in the same group of investment companies are under common control because funds that are not affiliated persons would not require relief from section 17(a). *See* Fund of Funds Adopting Release, *supra* footnote 17.

[64] An ETF would be prohibited under section 17(a)(2) from purchasing securities and other property (*i.e.,* securities and other property in the ETF's basket assets) from the affiliated acquiring fund in exchange for ETF shares. An acquiring fund would be prohibited under section 17(a)(1) from selling any securities and other property (*i.e.,* securities and other property in the ETF's basket assets) to an affiliated ETF in exchange for the ETF's shares. The orders we have granted permitting investments in ETFs provide relief from section 17(a) of the Act to permit these transactions. *See, e.g.,* Barclays Global Fund Advisors, *et al.,* Investment Company Act Release Nos. 24394 (Apr. 17, 2000) [65 FR 21215 (Apr. 20, 2000)] (notice) and 24451 (May 12, 2000) (order) and related application. In addition, our orders provide separate affiliated transaction relief for the acquisition or sale of an ETF's basket assets as part of the creation or redemption of ETF creation units. Such relief is subject to its own protections. *See* 2018 ETF Proposing Release, *supra* footnote 34. The exemptive orders granted to ETMFs have included similar exemptions from section 17(a). *See* Eaton Vance, *supra* footnote 27.

overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in the fund's registration statement and the general purposes of the Act. In addition, section 6(c) of the Act permits the Commission to exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[65] We believe that the exemptions from section 17(a) set forth in the proposed rule meet the standards set forth in sections 17(b) and 6(c). We believe that the proposed rule's conditions make unlikely the prospect of overreaching by an affiliated fund. For example, the proposed rule's redemption limit would prevent an acquiring fund (including an acquiring fund that is an affiliate of the acquired fund) from threatening to quickly redeem or tender a large volume of acquired fund shares as a means to exert undue influence over an acquired fund.[66]

An acquired fund that is an open-end fund or UIT is further protected from overreaching due to the requirement that all purchasers receive the same price.[67] In the case of a closed-end acquired fund, we similarly believe that the acquired fund's repurchase of its shares would provide little opportunity for the acquiring fund to overreach because all holders would receive the same share price.[68]

In addition, the utility of the proposed rule would be limited if we did not exempt fund of funds arrangements from the affiliated transaction prohibitions in section 17(a). As a practical matter, without an exemption from section 17(a), an acquiring fund would be subject to a 5% limit on investments in acquired funds under proposed rule 12d1–4.[69] Similarly, a fund of funds arrangement involving funds that are part of the same group of investment companies or that have the same investment adviser (or affiliated investment advisers) would not be able to rely on proposed rule 12d1–4 without such an exemption. We also believe that the proposed exemption from section 17(a) is necessary in light of the goals of rule 12d1–4. Existing orders have provided similar exemptive relief from the affiliated transaction provisions in section 17(a) for many years.[70]

We proposed exemptions from section 17(a) in connection with our 2008 proposal, which would have permitted an ETF that is an affiliated person of an acquiring fund to purchase and sell ETF shares to the acquiring fund at NAV.[71] We noted there that we did not believe providing these exemptions would implicate the concerns underlying section 17(a). Commenters that addressed these provisions in the 2008 Proposing Release agreed with the proposed relief under section 17(a).[72] One commenter, in particular, noted that the exemption was appropriate in light of the proposed protections in the rule, which provided little opportunity for the acquiring fund to manage an acquired fund for its own benefit.[73]

We request comment on the affiliated transaction exemptions in proposed rule 12d1–4.

- Do the acquiring funds that currently invest in acquired funds on the basis of the relief provided in our orders typically acquire 5% or more of the acquired fund's outstanding voting securities?
- Is the scope of the proposed exemptions from section 17(a) sufficiently broad to allow funds to use the exemptive relief we propose to grant from sections 12(d)(1)(A)–(C)? Should the scope of the proposed exemptions include transactions on the secondary market? If so, why?

C. Conditions

Consistent with the public interest and the protection of investors, proposed rule 12d1–4 includes conditions designed to prevent the abuses that historically were associated with fund of funds arrangements and that led Congress to enact section 12(d)(1). These conditions are based on conditions in exemptive orders that the Commission has issued permitting fund of funds arrangements.[74] However, we propose to streamline these conditions to enhance compliance and strengthen investor protections. The proposed rule would establish a comprehensive framework that would subject fund of funds arrangements to a tailored set of conditions that address differences in fund structures.[75] The following table sets forth a general overview of the differences between the conditions under our current exemptive relief and the proposed rule:

[65] The Commission has interpreted its authority under section 17(b) as extending only to a single transaction and not a series of transactions. *See In re Keystone Custodian Funds, Inc.,* 21 SEC. 295 (1945) (exempting, under section 6(c) of the Act, a series of transactions that otherwise would be prohibited by section 17(a)). The Commission's exemptive authority under section 6(c), however, is not constrained to a single transaction. The Commission looks to the standards set forth in section 17(b) when issuing exemptions by rule from section 17(a).

[66] *See infra* sections II.C.1 and 2.

[67] The purchase of open-end fund or UIT shares must be at a price based on the current NAV of the shares which is next-computed after receipt of a tender of an offer to purchase or redeem the shares. *See* section 22(c) of the Act and 17 CFR 270.22c–1 (rule 22c–1). Primary market transactions with an ETF (or an ETMF) would also be done at a price based on NAV. *See* 2018 ETF Proposing Release, *supra* footnote 34; Eaton Vance, *supra* footnote 27.

[68] Closed-end fund shares typically are bought and sold on the secondary market. In cases where closed-end funds engage in repurchase transactions, such as with interval funds, the pricing of the closed-end fund's shares in those transactions are subject to certain rules. *See, e.g.,* rule 23c–3; *see also* section 23(c)(2) of the Act (providing for offers to repurchase closed-end funds to be made only after all holders of securities are given reasonable opportunity to submit tenders); 17 CFR 270.23c–1(a)(6) (rule 23c–1(a)(6)) (requiring repurchase of closed-end fund shares be made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase); 17 CFR 270.23c–1(a)(9) (rule 23c–1(a)(9)) (requiring that the purchase be made in a manner or on a basis that does not unfairly discriminate against any holders of the class of securities purchased).

[69] Without an exemption from section 17(a), an acquired fund generally could not sell its shares to, or redeem or repurchase those shares from, an affiliated acquiring fund.

[70] *See e.g.,* Schwab, *supra* footnote 25; Franklin Fund, *supra* footnote 25; Innovator ETFs, *supra* footnote 33. We believe that section 12(d)(1)(G) of the Act also implies relief under section 17(a) of the Act with respect to the acquisition or sale of shares of an acquired fund within the same group of investment companies.

[71] *See* 2008 Proposing Release, *supra* footnote 13.

[72] *See* ICI Letter; Comment Letter of Xshares Advisors, LLC (May 20, 2008) (''Xshares Letter'').

[73] *See* ICI Letter.

[74] *See, e.g.,* Schwab, *supra* footnote 25; Franklin Fund, *supra* footnote 25; Innovator ETFs, *supra* footnote 33.

[75] For example, the conditions regarding layering of fees vary based on the structure of acquiring fund. *See infra* section II.C.3.

Concern addressed	Condition under existing exemptive orders	Condition under proposed rule 12d1–4
Undue Influence	Voting conditions (including the point at which the voting condition is triggered) differ based on the type of acquired fund. Fund boards must make certain findings and adopt procedures to prevent overreaching and undue influence by the acquiring fund and its affiliates. Requires an agreement between acquiring and acquired funds agreeing to fulfill their responsibilities under the exemptive order (a ''participation agreement'').	Voting conditions do not differ based on the type of acquired fund and would require an acquiring fund and its advisory group to use pass-through or mirror voting when they hold more than 3% of the acquired fund's outstanding voting securities. An acquiring fund's ability to quickly redeem or tender a large volume of acquired fund shares is restricted (replacing the requirements for participation agreements and board findings/procedures).
Complex Structures	Limits the ability of an acquired fund to invest in underlying funds (that is, it limits structures with three or more tiers of funds).	Limits the ability of funds relying on certain exemptions to invest in an acquiring fund and limits the ability of an acquired fund to invest in other funds. Requires an evaluation of the complexity of the fund of funds structure and aggregate fees. Specific considerations vary by acquiring fund structure.
Layering of Fees	Caps sales charges and service fees at limits under current FINRA sales rule (rule 2830) even in circumstances where the rule would not otherwise apply. Requires an acquiring fund's adviser to waive advisory fees in certain circumstances or requires the acquiring fund's board to make certain findings regarding advisory fees.	Requires an evaluation of the complexity of the fund of funds structure and aggregate fees. Specific considerations vary by acquiring fund structure.

Other than the differences described in this table, the conditions in proposed rule 12d1–4 are substantially similar to the conditions that have been included in our exemptive orders since 1999.[76] We discuss each of the proposed conditions below.

1. Control

In order to address the concern that a fund could exert undue influence over another fund, proposed rule 12d1–4 prohibits an acquiring fund and its advisory group from controlling, individually or in the aggregate, an acquired fund, except in the circumstances discussed below.[77] This condition generally comports with the conditions of the exemptive relief the Commission has previously issued and our 2008 proposal.[78]

The Act defines control to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.[79] The Act also creates a rebuttable presumption that any person who directly or indirectly beneficially owns more than 25% of the voting securities of a company controls the company and that one who does not own that amount does not control it.[80] A determination of control depends on the facts and circumstances of the particular situation.[81]

Accordingly, an acquiring fund and its advisory group's beneficial ownership of up to 25% of the voting securities of an acquired fund would be presumed to not constitute control over the acquired fund. A fund relying on the proposed rule, therefore, generally could make a substantial investment in an acquired fund (*i.e.,* up to 25% of the acquired fund's shares). If, however, facts and circumstances existed that gave an acquiring fund and its advisory group the power to exercise a controlling influence over the acquired fund's management or policies other than as discussed below, that fund would not be able to rely on the proposed rule even if the fund and its advisory group owned 25% or less of the acquired fund's voting securities.[82]

In assessing control, an acquiring fund's investment in an acquired fund would be aggregated with the investment of the acquiring fund's advisory group. Consistent with past exemptive orders, the proposed rule would not require an acquiring fund to aggregate the ownership of an acquiring fund advisory group with an acquiring fund sub-advisory group.[83] Instead, each of these groups would consider its ownership percentage separately and would be subject to the same voting provisions as discussed below.[84]

[76] *See, e.g.,* Schwab, *supra* footnote 25.

[77] *See* proposed rule 12d1–4(b)(1)(i); proposed rule 12d1–4(d) (defining ''advisory group''). *See also infra* section II.C.1.b. (discussing exceptions to the control condition).

[78] *See, e.g.,* Wells Fargo Funds Trust, *et al.,* Investment Company Act Release Nos. 30201 (Sept. 12, 2012) [77 FR 57597 (Sept. 18, 2012)] (notice) and 30231 (Oct. 10, 2012) (order) and related application (prohibiting an acquiring fund (and its advisory group and sub-advisory group) from controlling an acquired fund). *See also* 2008 Proposing Release, *supra* footnote 13 (prohibiting an acquiring fund, any of its investment advisers or depositors, or any company in a control relationship with any of those entities from controlling an ETF, individually or in the aggregate).

[79] 15 U.S.C. 80a–2(a)(9).

[80] *Id.* These presumptions continue until the Commission makes a final determination to the contrary by order either on its own motion or on application by an interested person.

[81] ''[N]o person may rely on the presumption that less than 25% ownership is not control when, in fact, a control relationship exists under all the facts and circumstances.'' Exemption of Transactions by Investment Companies with Certain Affiliated Persons, Investment Company Act Release No. 10698 (May 16, 1979) [44 FR 29908 (May 23, 1979)], at n.2.

[82] We have long held that ''controlling influence'' includes, in addition to voting power, a dominating persuasiveness of one or more persons, the act or process that is effective in checking or directing action or exercising restraint or preventing free action, and the latent existence of power to exert a controlling influence. *See, e.g.,* In re Investors Mutual, Inc., *et al.,* Investment Company Act Release No. 4595 (May 11, 1966) (Commission opinion), at text accompanying nn.11–14 (*citing* The Chicago Corporation, Investment Company Act Release No. 1203 (Aug. 24, 1948); Transit Investment Corporation, Investment Company Act Release No. 927 (July 31, 1946); In the Matter of the M.A. Hanna Company, Investment Company Act Release No. 265 (Nov. 26, 1941)).

[83] Proposed rule 12d1–4(d) defines ''advisory group,'' to mean ''either: (1) an acquiring fund's investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor; or (2) an acquiring fund's investment sub-adviser and any person controlling, controlled by, or under common control with such investment sub-adviser.'' Under the proposed rule, an acquiring fund would not combine the entities listed in clause (1) with those listed in clause (2).

[84] *See* proposed rule 12d1–4(b)(1)(ii).

We believe requiring an acquiring fund to aggregate its holdings with its advisory group would prevent a fund or adviser from circumventing the control condition by investing in an acquired fund through multiple controlled entities, *e.g.,* other funds in the fund complex. Several commenters on our 2008 proposal, however, urged us to narrow the scope of entities that an acquiring fund would be required to aggregate when determining whether an acquiring fund controls an ETF.[85] These commenters noted that the scope of the 2008 Proposing Release's control prohibition was broader than that of section 12(d)(1)(A), which prohibits only an acquiring fund and companies it controls from acquiring in the aggregate more than 3% of an ETF's shares.[86] They also noted the difficulty of complying with the proposed aggregation requirement, particularly for those funds whose advisers are part of large financial organizations where information barriers may preclude the adviser from knowing positions held, for example, by advisers under common control.[87]

Because the control condition effectively allows an acquiring fund and its advisory group to obtain a significant ownership stake in an acquired fund, we do not believe it is appropriate to limit the affiliates that are subject to this condition as suggested by commenters in 2008. Our exemptive orders include a similar condition and funds relying on those orders likely already have established policies and procedures to monitor compliance with the aggregation requirement embedded in the proposed definition of the term ''advisory group.'' Other provisions of the Act and our rules also extend to affiliated persons of an investment adviser.[88] Funds (or the advisers) have experience developing compliance policies and procedures in those circumstances.[89] Finally, we also do not believe that the breadth of the entities that are included within an acquiring fund and its advisory group would limit the usefulness of proposed rule 12d1–4. Instead, the risk of undue influence over an acquired fund would be more effectively addressed by requiring the entities that fall within these definitions to aggregate their holdings in an acquired fund for purposes of the control condition.

In some circumstances, such as net redemptions, an acquiring fund's holdings may trigger the Act's control presumption through no action of its own. If the acquiring fund and its advisory group become a holder of more than 25% of the outstanding voting securities of an acquired fund as a result of a decrease in the outstanding voting securities of the acquired fund, the proposed rule would not require an acquiring fund to dispose of acquired fund shares. An acquiring fund, however, would not be able to rely on the proposed rule to acquire additional securities of the acquired fund when it (along with its advisory group) holds more than 25% of the acquired fund's voting securities.

a. Voting Provisions

The proposed rule would require an acquiring fund and its advisory group to vote their securities in the manner prescribed by section 12(d)(1)(E)(iii)(aa) of the Act if the acquiring fund and its advisory group (in the aggregate) hold more than 3% of the outstanding voting securities of an acquired fund.[90] In these circumstances, the acquiring fund would be required to either: (i) Seek voting instructions from its security holders and vote such proxies in accordance with their instructions (''pass-through voting''); or (ii) vote the shares held by it in the same proportion as the vote of all other holders of the acquired fund (''mirror voting'').[91] This proposed condition is designed to limit the acquiring fund and its advisory group's power to influence the outcome of shareholder votes of the acquired fund.[92]

Our exemptive orders have historically included conditions designed to limit an acquiring fund's ability to influence an acquired fund through voting power. The voting conditions in our exemptive orders, however, have differed based on the type of acquired fund. For example, our orders require an acquiring fund (and any other funds within the advisory group) to vote shares of acquired closed-end funds in the manner required by section 12(d)(1)(E), while non-fund entities within the advisory group are required to use mirror voting.[93] The voting condition in our orders applies whenever the acquiring fund invests in a closed-end fund beyond the limits in section 12(d)(1). For acquired open-end funds or UITs, our exemptive relief has required an acquiring fund (and its advisory group) to vote their shares using mirror voting only if the acquiring fund and its advisory group become holders of more than 25% of the acquired fund's outstanding voting securities due to a decrease in the outstanding securities of the acquired fund.[94] Our exemptive orders also include exceptions to the voting conditions when the fund of funds arrangement involves funds within the same group of investment companies as discussed below.

We propose to subject all acquiring funds under proposed rule 12d1–4 that do not fall within the control exceptions discussed below to the same voting condition in order to simplify and streamline this requirement. We believe that this approach would facilitate compliance monitoring for fund groups that have multiple types of acquiring funds. We also believe that requiring acquiring funds to utilize mirror voting or pass-through voting whenever their holdings exceed the statutory limit in section 12(d)(1)(A)(i) is appropriate to protect the acquired fund (and ultimately its investors) from undue influence through shareholder votes. A 3% threshold for the voting condition is particularly important because our

[85] *See, e.g.,* BGFA Letter; Comment Letter of Stradley Ronon Stevens & Young LLP (May 19, 2008) (''Stradley Letter''); ICI Letter; Xshares Letter.

[86] *See, e.g.,* ICI Letter.

[87] *See, e.g.,* Xshares Letter. Section 12(d)(1)(B) prohibits an acquired fund from ''knowingly'' selling or otherwise disposing of a security issued by the acquired fund to any other investment company. Section 12(d)(1)(A) does not include a similar ''knowing'' element.

[88] *See, e.g.,* section 17(a) of the Act (prohibiting first- and second-tier affiliates of a fund from borrowing money or other property, or selling or buying securities or other property to or from the fund, or any company that the fund controls). *See also supra* footnote 60 and accompanying text.

[89] *See* 17 CFR 270.38a–1 (rule 38a–1 under the Act) (requiring registered investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violations of the federal securities laws). *See also* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Compliance Rule Adopting Release'') (noting that funds or their advisers should have policies and procedures in place to identify affiliated persons and to prevent unlawful transactions with them).

[90] Proposed rule 12d–4(b)(1)(ii). The acquiring fund would be required to follow the prescribed voting procedures only so long as such holdings remain above the 3% holdings threshold. This threshold would be calculated as of the record date for a vote at an annual or special meeting of the holders of the acquired fund's shares.

[91] *See* proposed rule 12d1–4(b)(1)(ii).

[92] *See, e.g.,* Fund of Funds Adopting Release, *supra* footnote 17 (funds relying on section 12(d)(1)(F) of the Act are required to follow the section 12(d)(1)(E)(iii) voting procedures so that ''the [acquiring] fund's adviser would not be able to influence the outcome of shareholder votes in the acquired fund.'').

[93] *See* Innovator ETFs, *supra* footnote 33.

[94] *See, e.g.,* Janus Investment Fund, *et al.,* Investment Company Act Release Nos. 31753 (Aug. 13, 2015) (notice) and 31808 (Sept. 9, 2015) (order) and related application (''Janus Investment Fund''). Our 2008 proposal would have included a similar condition for investments in ETFs. *See* 2008 Proposing Release, *supra* footnote 13.

proposal would allow funds to acquire shares of closed-end funds under proposed rule 12d1–4. Closed-end funds historically have been the target of proxy contests.[95]

Since 1999, our exemptive orders also have included specific voting provisions when an insurance product separate account is part of the acquiring fund advisory group or acquiring fund sub-advisory group.[96] These provisions are designed to comport with the conditions of exemptions the Commission has issued specific to certain insurance product structures.[97] Most insurance product separate accounts, however, are organized as UITs and rely on section 12(d)(1)(E) to invest proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of a mutual fund.[98] Accordingly, we believe most insurance product separate accounts already comply with the voting provisions set forth in section 12(d)(1)(E)(iii)(aa) of the Act, which we propose to incorporate into rule 12d1–4. We therefore do not believe separate voting conditions are necessary for these products.

b. Exceptions From the Control and Voting Conditions

The proposed rule would include exceptions to the control and voting conditions when: (i) An acquiring fund is within the same group of investment companies as an acquired fund; or (ii) the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor.[99] The proposed exceptions are designed to include arrangements that are permissible under section 12(d)(1)(G) and our exemptive orders within the regulatory framework of rule 12d1–4. Based on our experience overseeing fund of funds arrangements, we believe the proposed exceptions are appropriately tailored to except only those fund of funds arrangements that do not raise the concerns of undue influence that underlie section 12(d)(1) from the control and voting conditions.

As noted above, open-end funds and UITs may rely on section 12(d)(1)(G) to invest in an open-end fund or UIT within the same group of investment companies. Our exemptive orders have expanded the relief in section 12(d)(1)(G) to allow open-end funds to invest in open-end funds, UITs, ETFs, listed closed-end funds, and listed BDCs within the same group of investment companies. Proposed rule 12d1–4 would allow registered funds and BDCs to invest in other registered funds and BDCs within the same group of investment companies.

For purposes of rule 12d1–4, we propose to define the term ''group of investment companies'' as ''any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for investment and investor services.'' [100] This is similar to the definition used in many of our exemptive orders permitting investments in listed closed-end funds and listed BDCs. It is intended to clarify that closed-end funds and BDCs are within the scope of the exception.

We believe that it would be false or misleading for a group of investment companies to hold themselves out as related companies as that term is used in proposed rule 12d1–4 unless they are, in fact, related investment companies. We believe, for example, that funds that are advised by the same investment adviser, or by advisers that are control affiliates of each other, would be ''related'' companies for purposes of the proposed rule.[101] The determination of whether advisers are control affiliates, however, depends on the relevant facts and circumstances.[102]

We believe that whether a group of funds sharing a common adviser or having advisers that are all control affiliates could satisfy the ''holding out'' prong of the definition would depend on the totality of communications with investors by or on behalf of the funds. For example, the acquiring fund's prospectus could identify the acquired funds in which the acquiring fund expects to invest, and disclose the control relationship among the advisers to the acquiring and acquired funds. In our view, it would not be necessary for the acquired funds to include comparable disclosure in their prospectuses or that the acquired funds and acquiring funds be marketed as related companies for all purposes and to all potential investors.[103] Rather, the requirement in the definition of ''group of investment companies'' that the funds must hold themselves out to ''investors'' as related companies for purposes of investment and investor services refers only to potential investors in the acquiring fund because the relevant inquiry is how the funds are holding themselves out to potential investors in the acquiring fund. Disclosure in the acquiring fund's prospectus of the identity of the acquired funds in which the acquiring fund expects to invest, and of the control relationship among the advisers to the acquired and acquiring funds, therefore, is one way to satisfy the ''holding out'' requirement of the definition.

Our orders also allow an acquiring fund to invest in an acquired fund when an acquiring fund's sub-adviser (or a control affiliate of the sub-adviser) serves as the primary investment adviser or sponsor to the acquired fund.[104] Proposed rule 12d1–4 would

[95] Since the mid-1990s, closed-end funds that have traded at a discount to NAV have been the target of proxy contests initiated by large investors in those funds, including other funds. *See, e.g.,* Tom Lauricella, *Proxy Fight at Closed-End Fund Opens Can of Worms for Industry,* The Wall Street Journal (Aug. 9, 2002).

[96] *See, e.g.,* The Ohio National Life Insurance Company, *et al.,* Investment Company Act Release Nos. 30895 (Jan. 28, 2014) [79 FR 6238 (Feb. 3, 2014)] (notice) and 30925 (Feb. 24, 2014) (order) and related application (''Ohio Life''). The exemptive relief granted by orders generally is conditioned on registered separate accounts seeking voting instructions from contract owners and then voting their shares in accordance with the instruction received (and voting shares for which no instruction were received in the same proportion as the shares for which instructions were received). Relief granted to unregistered separate accounts is conditioned on those accounts either mirror voting their shares or voting in the same manner as registered separate accounts. *See id.*

[97] The Commission has granted exemptions from certain rules under the Act to the extent necessary to permit certain insurance product structures—referred to as ''mixed and shared funding.'' These exemptions are subject to conditions, including voting conditions, designed to limit potential material conflicts of interest among the different contract owners. *See, e.g.,* The RBB Fund, Inc., *et al.,* Investment Company Act Release Nos. 31648 (May 27, 2015) (notice) [80 FR 31420 (June 2, 2015)] and 31687 (Jun. 23, 2015) (order) and related application; SunAmerica Series Trust, *et al.,* Investment Company Act Release Nos. 31281 (Oct. 10, 2014) (notice) [79 FR 62473 (Oct. 17, 2014)] and 31331 (Nov. 15, 2014) (order) and related application.

[98] *See* Fund of Funds Proposing Release, *supra* footnote 16.

[99] Proposed rule 12d1–4(b)(1)(iii).

[100] Proposed rule 12d1–4(d).

[101] The definition of ''affiliated person'' includes any person directly or indirectly controlling, controlled by, or under common control with, such other person. *See* section 2(a)(3)(C) of the Act.

[102] *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)] (proposing rule amendments to permit mergers and other business combinations between certain affiliated investment companies), at n.11.

[103] If the acquired funds' marketing materials and/or prospectuses include any statements that are inconsistent with the representations made in the prospectuses for the acquiring funds regarding how the acquired fund and acquiring funds are related companies because of the affiliation of their investment advisers, such statements could call into question whether the investment companies are holding themselves out as related companies and potentially render the control exception unavailable to the fund of funds arrangement.

[104] *See* Calamos Advisors LLC, *et al.,* Investment Company Act Release Nos. 30628 (July 24, 2013) [78 FR 46381 (July 31, 2013)] (notice) and 30653 (Aug. 20, 2013) (order) and related application. *See also* BGFA Letter (noting that asset allocation funds often retain the advisers of acquired ETFs as sub-advisers and that ''[t]he Commission has previously

similarly except these arrangements from the control and voting conditions.[105] This proposed exception would cover arrangements that may not qualify for the proposed exclusion available to funds within the same group of investment companies under subparagraph (b)(1)(iii)(A) because the acquiring fund and acquired fund do not hold themselves out as related funds for purposes of investment and investor services.[106] We believe that these arrangements do not raise the same concerns regarding undue influence as other types of fund of funds arrangements because of the sub-adviser's duties as a fiduciary to both the acquiring fund and acquired fund.

The proposed rule would subject the fund of funds arrangements within these exclusions to a more limited set of conditions than other fund of funds arrangements relying on the rule. In circumstances where the acquiring fund and acquired fund share the same adviser, the adviser would owe a fiduciary duty to both funds, serving to protect the best interests of each fund.[107] In addition, in cases where the arrangement involves funds that are advised by advisers that are control affiliates, we do not believe that the acquiring fund adviser generally would seek to benefit the acquiring fund at the expense of the acquired fund (nor do we believe that the acquiring fund would seek to influence the acquired fund through its ownership interest in the acquired fund).[108] We believe that the proposed rule's other conditions, such as the redemption condition described below, would mitigate against the risks of undue influence when the arrangement involves funds that have advisers that are control affiliates.

c. Potential Alternatives to Proposed Control Condition

We considered several alternatives to the proposed control condition to address concerns regarding undue influence over an acquired fund, including whether we should set a different limit on investments by an acquiring fund and its advisory group in an acquired fund. For example, we considered whether to propose a condition prohibiting an acquiring fund and its advisory group from acquiring more than 10% of the outstanding voting stock of an acquired fund. This alternative would effectively lower an acquiring fund's potential investment in an acquired fund from 25% to 10% when control is based on ownership.[109] A lower limit could reduce the potential for undue influence and could eliminate the need for additional conditions designed to address these concerns, such as the redemption limit described below. A 10% limit also is consistent with sections 12(d)(1)(B) and 12(d)(1)(C) of the Act, which each include a 10% limit on fund investments in a single acquired fund.

We also considered whether we should narrow the scope of entities that should be assessed for purposes of a 10% limit. For example, the 10% limit in section 12(d)(1)(C) applies to the acquiring fund and other funds advised by the same adviser. If we adopted a similar provision, it would have the benefit of excluding from the calculation members of an advisory group that are not funds.[110] As noted above, non-fund affiliates are not subject to the 12(d)(1) limits, and acquiring funds are required to consider their non-fund affiliates' holdings when assessing whether they control an acquired fund by effect of a condition in our exemptive orders. This approach therefore could lessen compliance burdens for those funds whose advisers are part of large financial organizations.

However, we believe that our proposed restrictions on control, which incorporate the 25% presumption, are appropriate when combined with other conditions set forth in proposed rule 12d1–4. For example, we believe the proposed condition requiring specified voting procedures when the acquiring fund and its advisory group exceed a 3% ownership threshold, and the proposed limit on the acquiring fund's ability to quickly redeem or tender a large volume of acquired fund shares effectively mitigate the influence that an acquiring fund and its advisory group may have on an acquired fund, even if the acquiring fund and its advisory group owns up to 25% of that fund.[111] We believe that a higher ownership limit provides an acquiring fund with the ability to allocate its assets in an efficient and cost-effective manner.[112] Together, we believe that these provisions would limit the ability of the members of an acquiring fund's advisory group to exercise undue influence over an acquired fund.

We request comment on the control and voting conditions in proposed rule 12d1–4.

- Would the proposed control and voting conditions sufficiently protect an acquired fund from the type of coercive behavior on the part of acquiring funds that section 12(d)(1) was intended to prevent? Are there other conditions that we should consider to address the potential for undue influence by an acquiring fund and its controlling persons? Should we consider a lower limit (*e.g.,* 10%) or a higher limit (*e.g.,* 30%) on investments by an acquiring fund and its advisory group in an acquired fund? Would a lower limit unduly restrict fund of funds arrangements?
- Should we require an acquiring fund to aggregate its holdings with its advisory group when assessing control of an acquired fund? Are we correct that funds relying on fund of funds exemptive orders already have established policies and procedures to monitor compliance with the aggregation requirement embedded in the definition of an acquiring fund's ''advisory group?''
- Should we define ''advisory group'' as proposed or are there alternatives that we should consider? For example,

granted exemptive relief relating to this issue on many occasions'').

[105] *See* proposed rule 12d1–4(b)(1)(iii)(B). Proposed rule 12d1–4(b)(1)(iii)(B) would, however, use the term ''depositor'' instead of ''sponsor'' to be consistent with other rules.

[106] Fund of funds arrangements where the acquiring fund's primary adviser served as adviser to the acquired fund typically would be able to qualify as funds within the ''same group of investment companies'' and would not require a separate exception under our orders.

[107] An investment adviser has a fiduciary duty to act in the best interests of a fund it advises. *See* section 36(a) under the Investment Company Act. *See also, e.g., SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180 (1963); *Rosenfeld* v. *Black,* 445 F.2d 1337 (2d Cir. 1971) (describing the fiduciary relationship between an investment adviser and a mutual fund); *Brown* v. *Bullock,* 194 F. Supp. 207, 229, 234 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961) (noting that investment advisers are under a fiduciary duty to manage the investment companies entrusted to their care with a single eye to their best interest, free from any self-dealing); Compliance Rule Adopting Release, *supra* footnote 89, at n.68.

[108] Accordingly, we also propose to except these arrangements from the voting condition in proposed rule 12d1–4(b)(1)(ii). *See* proposed rule 12d1–4(b)(iii).

[109] We also considered whether the 10% limit should be combined with a condition prohibiting an acquiring fund and its advisory group from controlling an acquired fund. This approach would capture certain control relationships that are not based on ownership. As with other questions of control discussed in this section, whether a person is controlling, controlled by, or under common control with the acquiring fund's investment adviser or depositor or the acquiring fund's investment sub-adviser depends on the particular facts and circumstances.

[110] Such a provision also could include funds advised by control affiliates of the adviser to reflect the current structure of advisory firms, which may include multiple entities serving as investment advisers to funds. The proposed exception for funds within the same group of investment companies in proposed rule 12d1–4(b)(1)(iii)(A) would incorporate a similar approach. *See supra* footnote 101 and accompanying text.

[111] *See supra* section II.C.2.

[112] For example, one way to gain efficient and cost effective exposure to a particular index in a target-date or life-cycle fund might be to acquire up to 25% of a fund tracking the index. This allocation may change over the life cycle of the fund.

should we exclude control affiliates of an acquiring fund's investment adviser or depositor from this definition and only include control affiliates of the acquiring fund?

- Should we permit, as proposed, an exception to the control and voting conditions when the acquiring fund and acquired fund are part of the same group of investment companies? Alternatively, should the proposed rule only except an acquiring fund that is part of the same group of investment companies from the control condition? Is this proposed exception to these conditions appropriately tailored? Should we define ''group of investment companies'' as proposed or are there alternative definitions we should consider? Should we include a ''holding out'' requirement as part of the exception? Or should we provide additional guidance regarding how a group of funds sharing a common investment adviser or having investment advisers that are control affiliates could satisfy the ''holding out'' prong of the definition?
- Should we also permit, as proposed, an exception to the control and voting conditions when the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor? Alternatively, should the proposed rule only except such an acquiring fund from the control condition? Are we correct that the potential for abuse is limited in these circumstances due to generally aligned interests? Are there other conditions we should consider in this circumstance?
- Are there particular kinds of votes to which the proposed voting condition should not apply? For example, should there be an exception to the voting condition for votes on changes in control of an acquired fund's adviser? If an acquiring fund has a large enough investment that is subject to the redemption limits (described below) and is unable to redeem its investment in an acquired fund, would the timing of such a vote allow sufficient time for the acquiring fund to seek investor instructions?
- Should the control and voting exceptions cover funds with advisers that are control affiliates as proposed, or only funds that share the same investment adviser? Are we correct that an adviser to an acquiring fund in these circumstances would not seek to benefit the acquiring fund at the expense of the acquired fund?
- Should we require an acquiring fund to vote in the manner prescribed by section 12(d)(1)(E)(iii)(aa) if the acquiring fund and its advisory group hold more than 3% of an acquired fund's outstanding voting securities? Is there a lower or higher threshold that we should consider? Should that threshold vary depending on the type of acquired fund? For example, should there be a lower or higher threshold for closed-end funds? Should that threshold depend on whether a closed-end fund is listed or not? Why? Are there alternative voting procedures that we should consider? Should we eliminate the optionality in the proposed rule and only allow either pass-through voting or mirror voting?
- Are the voting options in proposed rule 12d1–4 workable? Would the proposed threshold cause operational challenges for voting acquired fund shares? How frequently do acquiring funds use pass-through voting or mirror voting under our exemptive orders? How frequently would acquiring funds use pass-through voting versus mirror voting under the proposed rule?
- Instead of the proposed voting condition, should we codify the voting provisions set forth in our existing exemptive orders? [113]
- Are we correct that insurance product separate accounts already have experience complying with the voting provisions in section 12(d)(1)(E)(iii)(aa)? Should we instead include separate voting provisions for insurance product separate accounts? If so, should we codify the voting provisions for insurance product separate accounts set forth in our exemptive orders? [114]
- Is our proposal to calculate the holdings of an acquired fund for the purposes of the 3% voting threshold as of the record date appropriate? Alternatively, should our proposal be more similar to the requirements of section 12(d)(1)(F) of the Act, which requires section 12(d)(1)(E) voting procedures for ''any security purchased or acquired pursuant'' to that section?
- Would the proposed voting provisions have unintended consequences regarding fund governance? If so, what would those consequences be, and how should we address them?
- To the extent that an acquiring fund and its advisory group become a holder of more than 25% of the outstanding voting securities of an acquired fund as a result of a decrease in the outstanding voting securities of an acquired fund, should we provide relief from section 17(a) to allow the acquiring fund and its advisory group to redeem shares of the acquired fund in-kind and thus reduce their holdings of the acquired fund?

2. Redemptions

To address concerns that an acquiring fund could threaten large-scale redemptions as a means of exercising undue influence over an acquired fund, the proposed rule includes a condition that would limit an acquiring fund from quickly redeeming or tendering a large volume of acquired fund shares. Specifically, proposed rule 12d1–4(b)(2) would prohibit an acquiring fund that acquires more than 3% of an acquired fund's outstanding shares (*i.e.,* the statutory limit) from redeeming or submitting for redemption, or tendering for repurchase, more than 3% of an acquired fund's total outstanding shares in any 30-day period.[115]

The proposed redemption limitation is designed to provide a check against the influence that an acquiring fund can have on an acquired fund when it owns a significant percentage of the acquired fund. As discussed in the context of the control condition, we believe it is appropriate to permit funds to purchase up to 25% of an acquired fund in reliance on the rule, in part, because of the protections afforded by limiting the acquiring fund's ability to influence the fund through the threat of large-scale redemptions.[116]

[113] *See supra* footnotes 93–94 and accompanying text (describing the voting conditions included in our orders).

[114] *See supra* footnote 96.

[115] Proposed rule 12d1–4(b)(2). Investors in mutual funds can redeem their shares on each business day and, by law, must receive approximately their *pro rata* share of the fund's net assets (or its cash value) within seven calendar days after receipt of the redemption request. *See* section 2(a)(32) of the Act (defining redeemable security); section 22(e) of the Act (providing, in part, that no registered investment company shall suspend the right of redemption, or postpone the date of payment upon redemption of any redeemable security in accordance with its terms for more than seven days after tender of the security absent unusual circumstances); and rule 22c–1 (purchases and redemptions of fund shares must be at a price based on the current NAV next computed after receipt of an order to purchase or redeem). Since the proposed condition restricts an acquiring fund's ability to redeem or submit a redemption request, rather than an acquired fund's obligation to honor such redemptions, we do not propose an exemption from section 22(e) of the Act in connection with this condition.

[116] Certain acquiring funds that could rely on proposed rule 12d1–4 could acquire even more than 25% of an acquired fund's outstanding voting securities. *See* proposed rule 12d1–4(b)(1)(iii) (providing exceptions from the control and voting conditions for fund of funds arrangements when: (i) The acquiring fund is in the same group of investment companies as the acquired fund; or (ii) the acquiring fund's investment sub-adviser or any control affiliate of such sub-adviser acts as the acquired fund's investment adviser or depositor). *See also infra* sections III and V (discussing the proposed rescission of rule 12d1–2 and exemptive orders).

We believe the proposed redemption condition, together with the proposed control and voting conditions, are more protective than certain conditions currently found in our orders and may be objectively tested as part of a fund's compliance program. The conditions in our orders generally require the acquired fund board to make certain findings and adopt procedures to prevent overreaching and undue influence by the acquiring fund and its affiliates once the investment in an unaffiliated acquired fund exceeds the section 12(d)(1) limits.[117] For example, our orders require an unaffiliated acquired fund board to adopt procedures reasonably designed to monitor purchases by the unaffiliated acquired fund in an underwriting in which an affiliate of the acquiring fund is the principal underwriter.[118] Our orders also require the acquiring fund to take measures to prevent the acquiring fund from influencing the terms of any services or transactions between the acquiring fund and an unaffiliated acquired fund or causing an unaffiliated acquired fund to purchase a security in any affiliated underwriting. The acquiring fund's board of directors, including a majority of its independent directors, is required by our orders to adopt procedures reasonably designed to assure that the acquiring fund's investment adviser does not take into account consideration received from an unaffiliated acquired fund (or certain of the unaffiliated acquired fund's affiliates).[119] In addition, our exemptive orders require the acquired fund and each unaffiliated acquiring fund to execute a participation agreement.[120]

We believe that the proposed redemption, control, and voting conditions address the same concerns regarding overreaching and undue influence that these exemptive order conditions sought to address, without requiring procedures and related board findings covering particular instances where undue influence and overreaching could exist. Therefore, replacing these conditions with the proposed redemption, control, and voting conditions would lower compliance costs and burdens and enhance investor protection for acquired funds.[121]

We believe the proposed limit is appropriately tailored to reduce the threat of large-scale redemptions. Along with the other conditions we are proposing today, it is designed to prevent an acquiring fund from unduly influencing the acquired fund without the board oversight and monitoring conditions imposed by our orders. At the same time, the redemption limit leaves an acquiring fund the ability to redeem a portion of its investment.[122] Because the threat of large-scale redemptions only exists when an acquiring fund holds a significant amount of an acquired fund, the redemption condition does not apply unless the acquiring fund holds shares of the acquired fund in excess of the 3% limit on the acquisition of an acquired fund's outstanding voting securities under section 12(d)(1)(A)(i) of the Act.[123] It does not apply as a result of the fund exceeding the 5% limit on the total assets of an acquiring fund that may be invested in a single acquired fund under section 12(d)(1)(A)(ii) of the Act or the 10% limit on the total assets of an acquiring fund that may be invested in all acquired funds under section 12(d)(1)(A)(iii) of the Act. In addition, acquiring funds that rely on the proposed rule to invest in funds that are listed on an exchange would be permitted to continue to sell shares in the secondary market without regard to the volume limit.[124] Based on the staff's analysis of redemptions of acquired fund shares, we do not believe that our proposed redemption limit would have a large effect on funds.[125] However, we acknowledge that this condition could have a larger impact during periods of market stress or high volatility.

Section 12(d)(1)(F) of the Act includes a redemption provision, but limits redemptions to only 1% of the acquired fund's total outstanding securities during a 30-day period.[126] However, a fund relying on section 12(d)(1)(F) of the Act only may acquire up to 3% of an acquired fund, whereas proposed rule 12d1–4 would permit an acquiring fund to acquire up to 25% of an acquired fund.[127] We believe a 3% redemption limit, rather than a 1% limit, would have a less significant impact on an acquiring fund's liquidity, particularly if the acquiring fund is not able to trade the acquired fund's shares on the secondary market.[128] The

[117] Our orders generally use the term ''unaffiliated funds'' to refer to acquired funds that are not part of the same group of investment companies as the acquiring fund. For purposes of this discussion of the conditions in our orders that differentiate based on whether the acquired fund is part of the same group of investment companies, we will use the term ''unaffiliated acquired fund''. *See, e.g.,* USCF Advisers, LLC, *et al.,* Investment Company Act Release Nos. 32851 (Oct. 4, 2017) [82 FR 47262 (Oct. 11, 2017) (notice) and 32889 (Oct. 31, 2017) (order) and related application (''USCF Advisers''); Franklin Fund, *supra* footnote 25.

[118] This condition also requires the board to review these transactions on at least an annual basis and to maintain certain records associated with the procedures and affiliated underwritings.

[119] *See, e.g.,* USCF Advisers, *supra* footnote 117.

[120] *See, e.g.,* Schwab, *supra* footnote 25.

[121] We anticipate that fund of funds involving separate accounts will continue to enter into participation agreements as a result of the requirements in their ''mixed and shared funding'' orders. *See supra* footnote 97.

[122] The acquiring fund could redeem shares in multiple transactions within a 30-day period, provided that, taken together, they represent less than 3% of the acquired fund's outstanding shares.

[123] If the section 12(d)(1)(A)(i) limits are exceeded, the acquiring fund could not redeem any shares from the acquired fund beyond the rule's limits until the acquiring fund disposes of shares it acquired in excess of the 3% statutory limit. Once the acquiring fund does not hold any shares in excess of 3%, the acquiring fund could redeem any remaining acquired fund shares it held.

[124] We understand that most acquiring funds purchase ETFs, ETMFs, listed closed-end funds, and listed BDCs in secondary market transactions. In some cases, UITs also may have secondary market trading. Secondary market transactions would not involve redemptions from the acquired fund. However, an acquiring fund might seek to redeem ETF or ETMF shares from an ETF or ETMF in a primary market transaction through one or more authorized participants. When transacting with an ETF or ETMF in the primary market, an acquiring fund would be subject to, among other things, the redemption restrictions discussed herein, which could result in acquiring funds being treated differently than other market participants seeking to engage in primary market transactions with an ETF or ETMF.

[125] *See infra* section VI. From January 2017 to June 2018, 0.16% of the monthly redemptions of unlisted acquired funds exceeded the proposed 3% redemption limit. During that same period, 0.76% of the monthly redemptions of listed acquired funds exceeded the proposed 3% redemption limit. For these purposes, open-end funds and UITs are included in the figures for unlisted acquired funds and ETFs, ETMFs, listed closed-end funds, and listed BDCs are included in the figures for listed acquired funds. We estimate the percentage of fund redemptions that are above the 3% limit in any 30-day period using the quarterly fund holding information in Morningstar Investment Company Holdings database between January 2017 and June 2018, and assuming that the changes in quarterly portfolio holdings occur evenly across the three months in each quarter. Our analysis does not distinguish between changes in holdings as a result of primary and secondary market transactions.

[126] *See* section 12(d)(1)(F)(ii) (providing that no issuer of a security purchased or acquired by a registered investment company pursuant to that section is obligated to redeem such security in an amount exceeding 1% of the issuer's total outstanding securities during any period of less than thirty days).

[127] Acquiring funds could rely on proposed rule 12d1–4 to hold more than 25% of an acquired fund's outstanding voting securities when they are part of the same group of investment companies or when the acquiring fund's sub-adviser (or a control affiliate) acts as the acquired fund's adviser or depositor. Because acquiring funds that fall within the exceptions in rule 12d1–4(b)(1)(iii) are not constrained in their ability to control a fund and could acquire more than 25% of an acquiring fund's outstanding voting securities, we propose to subject these types of acquiring funds to the redemption limitation in proposed rule 12d1–4(b)(2).

[128] An acquiring fund that holds more than 3% of an acquired fund's total outstanding shares should take this limitation into account when classifying this portfolio investment as part of its liquidity risk management program under 17 CFR 270.22e–4 (rule 22e–4 under the Act). *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No.

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proposed 3% redemption limit would provide funds and their advisers with greater flexibility to manage a fund's investments, while continuing to protect acquired funds from undue influence. In addition, we believe a 3% redemption limit is appropriate for proposed rule 12d1–4 because an acquiring fund that does not seek an exemption from section 12(d)(1)(A) would be able to redeem up to 3% of an acquired fund's total outstanding shares.[129]

We acknowledge that the provision in section 12(d)(1)(F)(ii) is permissive (*i.e.,* acquired funds have the option to limit redemptions in this manner), while the proposed condition in rule 12d1–4 is mandatory. An acquiring fund, however, could influence an acquired fund to eliminate (or never establish) a limit on redemptions if the redemption condition were merely permissive. We therefore propose a mandatory limit on submitting redemptions as a more effective means to mitigate the threat of undue influence than an optional limit.

The Commission proposed stricter redemption limits in 2008, in part because that proposal related to investments in ETFs and we anticipated that most acquiring funds would transact in ETF shares on the secondary market.[130] Under that proposal, an acquiring fund that acquired more than 3% of an ETF's outstanding shares in reliance on rule 12d1–4 would have been prohibited from redeeming any of those shares. Commenters on the 2008 proposal generally supported the proposed condition.[131] One commenter, however, recommended that we modify the redemption condition to provide for volume and time limitations on redemption, rather than rendering particular shares ineligible for redemption.[132]

Under the 2008 proposal, an ETF, its principal underwriter, and a broker or a dealer that relied on the rule to sell the ETF's shares in excess of section 12(d)(1)(B) limits also would have been prohibited from redeeming those shares acquired by another fund that exceeded the 3% limit in section 12(d)(1)(A)(i).[133] In proposing this limit, the Commission acknowledged that it may be difficult for these entities to know whether a redemption order is submitted by such an entity and included a safe harbor for each of those entities if certain conditions were met.[134] Commenters agreed such identification would be difficult and objected to this condition.[135]

Our proposal would not prohibit an acquired fund from redeeming, or its principal underwriter or a broker or dealer from submitting for redemption, shares held by an acquiring fund that exceed the 3% limit in section 12(d)(1)(A)(i). The proposed 30-day limit on redemptions for acquiring funds would reduce the risk of undue influence through the threat of large-scale redemptions, without requiring an acquired fund to track whether a redemption order was submitted by an acquiring fund that holds more than 3% of the acquired fund's shares. Instead, the acquiring fund would need to track its redemptions of acquired fund shares.

We request comment on the proposed redemption condition.

- Should we prohibit, as proposed, an acquiring fund that acquires more than 3% of an acquired fund's outstanding shares (*i.e.,* the statutory limit) from redeeming or submitting for redemption, or tendering for repurchase, more than 3% of an acquired fund's total outstanding shares in any 30-day period? Should either of these proposed limits be higher (*e.g.,* 5% or 10%) or lower (*e.g.,* 1%)? Should the period be longer or shorter than 30 days? Should the same limit apply for all types of acquired funds under the rule? How should the rule handle a situation where an acquiring fund initially holds less than 3% of an acquired fund, but comes to hold more than 3% as a result of a decline in assets of the acquired fund? Should this provision of the proposed rule apply to an acquiring fund that ''holds'' more than 3% of an acquired fund's outstanding shares, instead of an acquiring fund that ''acquires'' that amount?
- Should the redemption limit apply to funds that are not traded on the secondary market? Alternatively, should the redemption limit be higher for acquired funds that are not traded on the secondary market? Would eliminating this condition increase the risk that acquiring funds could exert undue influence over acquired funds through the threat of large-scale redemptions? Should there be an exception to the redemption limit for redemptions in kind?
- Should the redemption limit apply to an acquiring fund that is part of the same group of investment companies as the acquired fund? Should the redemption limit apply to an acquiring fund when the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor? Alternatively, should we except these entities from the redemption condition for the same reasons we propose to except them from the control and voting conditions?
- Are we correct that acquiring funds typically buy and sell ETF shares on the secondary market? Are there instances where acquiring funds transact with an ETF in the primary market through an authorized participant? Would the proposed redemption condition affect the efficiency of the arbitrage mechanism for ETFs? If so, how? For example, would the proposed limitation contribute to premiums or discounts to NAV? How would the proposed redemption limitation affect ETMFs?
- How would the proposed redemption limitation affect acquiring fund's portfolio management? Where an acquiring fund holds more than 3% of the shares of an acquired fund, would the proposed redemption condition unduly impede the ability of acquiring funds to dispose of acquired fund shares, including during periods of market stress or high volatility? Do acquiring funds realize significant

32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] (''Liquidity Release'').

[129] An acquiring fund that relies on the statutory exemption to section 12(d)(1)(A) in section 12(d)(1)(G) of the Act, however, may acquire more than 3% of an acquired fund's shares without being subject to any redemption limits if that acquired fund is in the same group of investment companies and structured as an open-end fund or UIT.

[130] *See* 2008 Proposing Release, *supra* footnote 13.

[131] *See, e.g.,* Comment Letter of Independent Directors Council (May 19, 2008) (''IDC Letter'') (''The proposed conditions, particularly the condition limiting the ability of an acquiring fund to redeem ETF shares, offer an efficient means to address the same policy concerns relating to undue influence by an acquiring fund of an ETF that the director-related conditions of the exemptive orders were designed to address.''); Comment Letter of Mutual Fund Directors Forum (May 21, 2008) (''MFDF Letter''); SSgA Letter.

[132] The commenter asserted that it would be difficult to implement a tracking method for particular shares to abide by the redemption prohibition in the 2008 proposal. *See* MFA Letter (suggesting a redemption limit of 1% of an ETF's shares per month during any month the acquiring fund holds more than 3% of the ETF's outstanding shares).

[133] *See* 2008 Proposing Release, *supra* footnote 13, at n.221 and accompanying text. Section 12(d)(1)(B) applies to a registered open-end investment company (and any principal underwriter thereof or broker-dealer).

[134] *See id.* The proposed safe harbor was available for each of those entities if it had: (i) Received a representation from the acquiring fund that none of the ETF's shares the acquiring fund is redeeming includes any shares that it acquired in excess of 3% of the ETF's shares in reliance on the proposed rule; and (ii) no reason to believe that the acquiring fund is redeeming ETF shares that the acquiring fund acquired in excess of 3% of the ETF's shares in reliance on the proposed rule. *See id.*

[135] *See, e.g.,* ICI Letter; Comment Letter of Morgan, Lewis & Bockius LLP (July 28, 2008) (''Morgan Lewis Letter''); BGFA Letter (noting that section 12(d)(1)(B) of the Act (from which this provision would provide an exemption) only prohibits acquired funds from *knowingly* selling shares in excess of the 3% limit in section 12(d)(1)(A)(i)).

benefits from the ability to redeem acquired fund shares in these circumstances? Would the proposed limitation disrupt acquiring funds' ability to change underlying funds from time to time? Would the proposed limitation contribute to changes in how acquiring funds allocate their assets to acquired funds? For example, would acquiring funds be more likely to invest in larger funds, or in ETFs rather than mutual funds, in order to avoid the redemption limit? Would the proposed redemption condition create a competitive disadvantage for smaller acquired funds or acquired funds that are not traded on the secondary market?

- How would the proposed redemption limitation affect an acquiring fund's liquidity risk management?
- Would acquiring funds incur significant costs from a mandatory prohibition on redemption of acquired fund shares once the 3% statutory limit has been exceeded? Should the proposed redemption limitation, like the one in section 12(d)(1)(F) of the Act, be voluntary at the election of an acquired fund? If so, what other safeguards could be added to protect against undue influence?
- If an acquiring fund redeems shares in multiple transactions, should the acquiring fund calculate the total percentage redeemed by adding the percentage total of each redemption or should we provide alternative guidance regarding this calculation? For example, should a fund calculate the percentages as of the time of the latest redemption?
- Should the proposed redemption limit apply to an acquiring fund's advisory group, rather than each acquiring fund individually, in order to address the potential for large-scale redemptions that could originate from a fund group? Alternatively, should the proposed redemption limit apply, on an aggregate basis, to affiliated acquiring funds, or acquiring funds with the same exact portfolio managers, or that have in common at least one portfolio manager, as listed in the registration statement? If so, should the redemption limit be higher (*e.g.,* no more than 5% of the acquired fund's total outstanding shares during any 30-day period)? What are the benefits and drawbacks of such an approach? How would this condition affect fund operations? How would funds design compliance policies and procedures to comply with this condition? Would it be difficult to track this type of redemption limit? If so, why? Would this better protect against undue influence in acquired funds? If so, how?
- Notwithstanding that the proposed condition limits the ability of an acquiring fund to redeem, rather than limiting the ability of an acquired fund to honor redemption requests, should we provide exemptions from section 22(e) of the Act in connection with this condition?
- Does the proposed condition appropriately limit the threat of redemption that an acquiring fund could otherwise use to unduly influence or control an acquired fund? If not, are there other conditions that would better address the risks associated with undue influence or control? For example, do the conditions in our existing orders more effectively limit the ability of an acquiring fund to unduly influence or control an acquired fund? Should we codify those conditions (including the procedural requirements, board findings, and participation agreements) instead of or in addition to including a redemption condition in the rule?
- As discussed above, we believe that participation agreements would not be necessary in light of the proposed conditions of rule 12d1–4. Are there benefits to participation agreements, however, that suggest we should include this requirement? For example, do participation agreements help funds determine who is investing in the funds above the statutory limits? Do participation agreements require the parties to a fund of funds arrangement to provide information necessary for compliance with other provisions of the Act? For example, do participation agreements require acquiring funds and acquired funds to provide lists of affiliates to aid in monitoring compliance with section 17(a)? How would funds use this information in complying with the conditions in proposed rule 12d1–4? Without participation agreements, would an acquired fund have sufficient information about the acquiring funds that hold its shares? Would funds continue to enter into participation agreements even if not required under the rule?
- Should an acquired fund, its principal underwriter, and a broker or a dealer that relies on the rule be prohibited from redeeming (or from submitting an order to redeem) acquiring fund shares that exceed the 3% limit in section 12(d)(1)(A)(i)? Should this prohibition apply only to an acquired fund that is a registered open-end fund, along with its principal underwriter and broker or dealer since section 12(d)(1)(B) applies to only those entities? Would an acquired fund (along with its principal underwriter, and a broker or a dealer that relies on the rule) have difficulty identifying acquiring funds investing in the acquired fund in reliance on rule 12d1–4? If we included this prohibition, should we also include the related safe harbors for an acquired fund, its principal underwriter, and a broker or dealer that we proposed in 2008?[136] Alternatively, should we consider including a knowledge qualifier in the prohibition, similar to the one included in section 12(d)(1)(B) itself? For example, should we prohibit an acquired fund (or its principal underwriter, or a broker or a dealer) only from *knowingly* redeeming shares acquired by the acquiring fund in excess of the 3% limit in section 12(d)(1)(A)(i)?
- Are there alternative approaches to a redemption limitation that we should consider? For example, should we consider requiring acquired funds relying on the rule to set a redemption limit based on their evaluation of the effect of large redemptions on the acquired fund? If so, what parameters should we establish for such an evaluation? Would this approach raise investor protection concerns? For example, should we require the acquired fund to evaluate historical redemptions to determine what limit on redemptions is appropriate? Should we require acquired funds to disclose the redemption limit on Form N–CEN?
- Alternatively, should we consider requiring the acquiring fund to provide advance notice to an acquired fund prior to a large redemption? If so, what threshold should trigger this notice requirement (*e.g.,* 3% or higher), and how far in advance should the acquiring fund provide notice? Similarly, should we require an acquiring fund to provide notice to an acquired fund before investing in the fund in reliance on rule 12d1–4? Should we consider permitting an acquired fund to impose redemption fees on acquiring funds that make redemptions over a certain limit?[137] If so, what should that limit be?

3. Duplicative and Excessive Fees

We are proposing conditions in rule 12d1–4 that are designed to prevent duplicative and excessive fees in fund of funds arrangements, a key concern underlying the enactment of section 12(d)(1).[138] The conditions vary based

[136] *See supra* footnote 134.

[137] Funds are currently permitted to impose redemption fees in certain circumstances. *See* Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (Mar. 11, 2005) [70 FR 13328 (Mar. 18, 2005)] (adopting rule 22c–2 under the Act).

[138] *See* Investment Trust Study, *supra* footnote 13 at ch. 7, 2725–39, 2760–75, 2778–93. The Investment Trust Study observed that controlling persons profited from duplicative fees at the

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on the structural characteristics of the acquiring fund, but generally hinge on a determination that the arrangement's aggregate fees do not implicate the historical abuses that section 12(d)(1) was intended to prevent. We believe that the proposed condition would help serve to protect acquiring fund investors from duplicative fees.

a. Management Companies

In cases where the acquiring fund is a management company, proposed rule 12d1–4 would require the acquiring fund's adviser to determine that it is in the best interest of the acquiring fund to invest in the acquired fund.[139] The proposed rule would require the adviser to make this determination before investing in acquired funds in reliance on the rule, and thereafter with such frequency as the board of directors of the acquiring fund, by resolution, deems reasonable and appropriate, but in any case, no less frequently than annually. The proposed rule also would require the adviser to report its finding and the basis for the finding to the board.

Investment Adviser Review and Reporting. In finding that it is in the best interest of the acquiring fund to invest in an acquired fund, the proposed rule would require the acquiring fund's investment adviser to evaluate: (i) The complexity of the fund of funds structure; and (ii) the aggregate fees associated with the fund's investment in an acquired fund. We believe it is appropriate to require the acquiring fund's investment adviser to make these evaluations because whether to invest in an acquired fund to achieve a fund's investment objective, rather than other types of assets, is a question of portfolio management. The acquiring fund's board of directors would be required to review these arrangements, and any conflicts they may present, as part of its oversight responsibilities. The proposed evaluations are designed both to help guard against the construction of a complex structure that could be confusing to the acquiring fund's shareholders and to prevent excessive layering of fund costs.[140]

In evaluating the complexity of a fund of funds structure, an adviser should consider the complexity of an acquiring fund's investment in an acquired fund versus direct investment in assets similar to the acquired fund's holdings. The adviser should consider whether the resulting structure would make it difficult for shareholders to appreciate the fund's exposures and risks. The adviser should consider whether an investment in an acquired fund would circumvent the acquiring fund's investment restrictions and limitations. The adviser also should consider whether an acquired fund invests in other funds.[141]

In evaluating the fees associated with the fund's investment in acquired funds, an adviser should consider the fees of all tiers in the fund of funds arrangement with an eye towards duplication. As part of this analysis, an adviser should consider whether the acquired fund's advisory fees are for services that are in addition to, rather than duplicative of, the adviser's services to the acquiring fund. The adviser should consider sales charges and other fees, including fees for recordkeeping, sub-transfer agency services, sub-accounting services, or other administrative services. In particular, the adviser should consider whether these fees could be duplicative or excessive when evaluating an investment in a particular acquired fund. While not required under proposed rule 12d1–4, fee waivers would be one way to mitigate the duplicative fee concerns.[142]

Additionally, the adviser should consider reviewing acquired fund share classes to ensure that the acquiring fund is not holding a more expensive share class if a less expensive one is available to the acquiring fund.

The proposed rule does not require an acquiring fund's adviser to make these evaluations in connection with every investment in an acquired fund. For example, in developing policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, an adviser to a fund that invests regularly in acquired funds as part of its strategy could consider establishing parameters for routine investments in acquired funds, and review individual transactions that are outside of those parameters.[143] Any such policies and procedures should be tailored to the investment objectives and strategies of an individual fund. For example, an adviser to a fund that typically invests in fixed income securities of non-U.S. issuers, but periodically invests in an acquired fund to equitize cash before it can invest a large purchase of fund shares, may decide to make the evaluations in connection with each investment in an acquired fund.

Board Oversight. A management company's board of directors provides an additional layer of protection for an acquiring fund and its investors against the abuses historically associated with fund of funds arrangements. To enable effective board oversight, the proposed rule requires an acquiring fund's adviser to report to the acquiring fund's board of directors its finding that the fund of funds arrangement is in the best interest of the fund and the basis for the finding.[144] The proposed rule requires this reporting before investing in acquired funds in reliance on the rule, and with such frequency as the board of directors of the acquiring fund deems reasonable and appropriate thereafter, but in any case, no less frequently than annually.[145] The frequency of any such review and reporting by the adviser would be determined by resolution of the board, which we believe is in the best position to understand when such a review would be appropriate and the frequency thereof.

The proposed rule would not require the acquiring fund's board to find that advisory fees are based on services

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acquiring and acquired fund levels. Additionally, complex multi-tier fund structures made it difficult for shareholders to understand who controlled their fund, to assess the true value of their investments, or to assess the nature of a fund's investment risks.

[139] Proposed rule 12d1–4(b)(3)(i). This condition would apply to open-end funds, ETFs structured as open-end funds, ETMFs, closed-end funds, and BDCs.

[140] In addition, acquiring funds (other than those structured as UITs, discussed below) would be subject to our disclosure requirements for fund investments in other funds, which require all registered funds and BDCs to disclose in their prospectus fee tables expenses paid by both the acquiring and acquired funds so that shareholders can evaluate the costs of investing in a fund that invests in other funds. *See* Instruction 3(f) to Item 3 of Form N–1A; Instruction 10.a to Item 3 of Form N–2. The Commission adopted these disclosure requirements when it adopted rules 12d1–1, 12d1–2 and 12d1–3. *See* Fund of Funds Adopting Release, *supra* footnote 17, at n.67 and accompanying text. We request comment on these disclosure requirements at the end of this section.

[141] *See infra* section II.C.4.

[142] *See, e.g.,* Allianz Funds Multi-Strategy Trust, *et al.,* Investment Company Act Release Nos. 32533 (Mar. 15, 2017) [82 FR 14580 (Mar. 21, 2017)] (notice) and 32598 (Apr. 11, 2017) (order) and related application (providing that the acquiring fund adviser (or sub-adviser) will waive fees otherwise payable to it by an acquiring fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an acquired fund pursuant to rule 12b–1 under the Act) received from certain acquired funds by the adviser or sub-adviser, or an affiliated person of the adviser or sub-adviser, other than any advisory fees paid to the adviser, sub-adviser, or an affiliated person by the acquired fund, in connection with the investment by the acquiring fund in the acquired fund).

Rule 12b–1 under the Act permits a fund to use fund assets to pay broker-dealers and others for providing services that are primarily intended to result in the sale of the fund's shares. Among other things, rule 12b–1 requires that, before using fund assets to pay for distribution expenses, a fund must adopt a written plan describing all material aspects of the proposed financing of distribution. 17 CFR 270.12b–1.

[143] *See* rule 38a–1; *see also* 17 CFR 275.206(4)–7 (rule 206(4)–7 under the Advisers Act).

[144] Proposed rule 12d1–4(b)(3)(i).

[145] Proposed rule 12d1–4(b)(3)(i).

provided that are in addition to, rather than duplicative of, the services provided by an adviser to an acquired fund. Similarly, the proposed rule would not require an acquiring fund's adviser to waive fees in connection with the receipt of compensation from the acquired fund. While these conditions are required by our exemptive orders, we believe they are redundant in light of a fund adviser's and board's fiduciary duties and statutory obligations.[146] As we stated in connection with our omission of a similar condition in rule 12d1–1, an acquiring fund board already has a responsibility to see that the fund is not being overcharged for advisory services regardless of any findings we require.[147] Section 15(c) of the Act requires the board of directors of the acquiring fund to evaluate any information reasonably necessary to evaluate the terms of the acquiring fund's advisory contracts (which information would include fees, or the elimination of fees, for services provided by an acquired fund's adviser).[148] Section 36(b) of the Act also imposes on fund advisers a fiduciary duty with respect to their receipt of compensation.[149] We believe that to the extent advisory services are being performed by another person, such as the adviser to an acquired fund, this fiduciary duty would require an acquiring fund's adviser to charge a fee that bears a reasonable relationship to only the services that the acquiring fund's adviser is providing, not taking into account services performed by an adviser to an acquired fund.[150] In addition, when an adviser to an acquiring fund (or an affiliate of an adviser) receives compensation from, or related to, an acquired fund in connection with an investment by the acquiring fund, the adviser has a conflict of interest. The adviser has a fiduciary duty to the acquiring fund under the Advisers Act with respect to this conflict.[151] Accordingly, we do not believe that the elimination of these conditions would lead to an increase in the costs ultimately borne by acquiring fund investors.

The 2008 Proposing Release took a different approach with respect to the fee conditions discussed above. Then, as now, we did not propose to require the acquiring fund board to find that advisory fees are based on services provided that are in addition to, rather than duplicative of, the services provided by an adviser to an acquired fund.[152] Further, we did not propose to require an acquiring fund's adviser to waive fees in connection with the receipt of compensation from the acquired fund. Instead, our 2008 proposal limited sales charges and service fees charged by the acquiring fund to those set forth in Financial Industry Regulatory Authority's (''FINRA'') rule 2341 (''FINRA sales charge rule'') to prevent duplicative fees.[153] The FINRA sales charge rule takes into consideration sales charges and certain servicing fees charged at both levels of a fund of funds arrangement.

We do not believe it is necessary, however, to include a similar condition in proposed rule 12d1–4. Fund of funds arrangements involving open-end funds and certain closed-end funds already are subject to the FINRA sales charge rule.[154] Even in circumstances where the arrangement is not subject to the sales charge rule, we believe the fee conditions in proposed rule 12d1–4 effectively capture concerns regarding duplicative or excessive fees. In particular, proposed rule 12d1–4 would require acquiring funds to consider fees, which could include expenses such as fees for recordkeeping, sub-transfer agency services, sub-accounting services, or other administrative services that are not covered by the sales charge rule, when finding it is in the best interest of the acquiring fund to invest in the acquired funds.[155]

Recordkeeping Requirements. The proposed rule would require the acquiring fund to maintain and preserve a written record of the adviser's finding, the basis for the finding, and the adviser's reports to the board.[156] These records must be maintained and preserved for at least five years, the first two in an easily accessible place.[157] Funds currently have compliance program-related recordkeeping procedures in place that incorporate this type of retention period, and consistency with that period would minimize any compliance burden to funds related to the preservation of the records.[158] We believe that these recordkeeping requirements would allow for external examinations of advisers' determinations without placing an undue burden on fund advisers or boards of directors.

b. UITs

Proposed rule 12d1–4 sets forth an alternative fee condition when the acquiring fund in a fund of funds arrangement is a UIT. Specifically, on or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor must evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in acquired funds, and find that the fees of the UIT do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit.[159]

The proposed condition for acquiring UITs under rule 12d1–4 differs from the condition applicable to acquiring management companies for several reasons. First, by statute, a UIT is unmanaged and its portfolio fixed.[160]

[146] Our exemptive orders require the acquiring fund's adviser to waive fees otherwise payable to it by an acquiring fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an unaffiliated fund pursuant to rule 12b–1 under the Act) received from an unaffiliated fund by the adviser, or an affiliated person of the adviser, other than advisory fees paid to the adviser or its affiliated person by an unaffiliated fund, in connection with the investment by the acquiring fund in the unaffiliated fund. *See also supra* footnote 117 (defining ''unaffiliated fund'' for these purposes).

[147] *See* Fund of Funds Adopting Release, *supra* footnote 17, at n.52 and accompanying text.

[148] 15 U.S.C. 80a–15(c); *see also* Fund of Funds Adopting Release, *supra* footnote 17, at n.52 and accompanying text.

[149] 15 U.S.C. 80a–36(b).

[150] *See* Fund of Funds Adopting Release, *supra* footnote 17, at n.52.

[151] *See* Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Request for Comment on Enhancing Investment Adviser Regulation, Investment Advisers Act Release No. 4889 (Apr. 18, 2018) [83 FR 21203 (May 9, 2018)].

[152] *See* 2008 Proposing Release, *supra* footnote 13, at n.234 (''As we noted in the proposing and adopting releases for rule 12d1–1 explaining our exclusion of a similar condition from rule 12d1–1, an acquiring fund board is already obligated to protect the fund from being overcharged for services provided to the fund regardless of any special findings we might require.''). The 2008 proposal would have limited fees using an approach based on the FINRA sales charge rule.

[153] *See id. See also* FINRA rule 2341. The proposal also included specific fee conditions for insurance product separate accounts, which are discussed below.

[154] FINRA rule 2341 does not apply to registered closed-end funds (other than interval funds relying on rule 23c–3 under the Act), BDCs, or UITs (other than ''single payment'' investment plans that are issued by a UIT). *See* FINRA rule 2341(d).

[155] *See* proposed rule 12d1–4(b)(3)(i) (requirement to evaluate aggregate fees of the arrangement). *See also* FINRA Notice to Members 92–41: SEC Approval of Amendments to Article III, Section 26 of the NASD Rules of Fair Practice Regarding Limitations on Mutual Fund Asset-Based Sales Charges (Aug. 1992) (definitions of ''sales charges'' and ''service fees'' under FINRA Rule 2341 do not include fees for recordkeeping, transfer agency services, accounting services, or other administrative services), *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=1684.*

[156] Proposed rule 12d1–4(c)(1).

[157] *See id.*

[158] The retention period is consistent with the period provided in rules 22e–4 and 38a–1(d) under the Act.

[159] Proposed rule 12d1–4(b)(3)(ii).

[160] *See* 15 U.S.C. 80a–4(2) (defining a UIT, in part, to mean an investment company organized under a trust indenture or similar instrument that issues

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Unlike a management company, a UIT does not have a board of directors, officers, or an investment adviser to render advice during the life of the trust. Accordingly, we do not propose to apply the best interest determination requirement to UITs. Second, acquiring UITs typically raise different fee concerns than management companies. A UIT, for example, does not bear investment advisory fees and the payments UITs make are limited by section 26 of the Act.[161]

Due to the unmanaged nature of UITs and the fixed nature of their portfolios, we believe it would be inconsistent with their structure and portfolios to require UITs to re-evaluate their acquired fund finding over time. The requirement only applies, therefore, at the time of the UIT's creation. Nevertheless, this determination generally should consider taking into account the planned structure of the UIT's holdings. In particular, if the UIT tracks an index, the determination should consider the index design and whether the index design is likely to lead to the UIT holding acquired funds with duplicative fees or overly complex structures. We believe that requiring a UIT's principal underwriter or depositor to evaluate the complexity of the structure and aggregate fees associated with the UIT's investment in acquired funds, and to make a finding that the UIT's fees do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit, is an appropriately calibrated means to protect investors, given a UIT's unmanaged structure.[162]

In making this evaluation, the depositor could decide to waive fees payable to it by the UIT on account of any compensation (including any distribution fees) received by the UIT's depositor or any affiliated person from the acquired fund. Our exemptive orders have required UIT depositors to deposit only acquired funds that do not assess a sales load or that waive any sales loads.[163] We believe that fee waivers would be one way to mitigate the duplicative fee concerns, and would allow UIT depositors and affiliates to rely on processes that they may already have in place as a result of the exemptive order conditions.

The proposed condition would apply only at the time of initial deposit for UITs that are formed after the proposed rule's effective date.[164] We do not believe it is necessary to exclude UITs that are already in existence from relying on proposed rule 12d1–4 as acquiring funds. UITs that serve as separate account vehicles funding variable annuity and variable life insurance contracts would be subject to additional fee conditions, as discussed below.[165] The majority of UITs fall into this category.[166] In addition, we believe that existing UIT ETFs are unlikely to rely on proposed rule 12d1–4 as acquiring funds because they replicate the components of broad-based securities indexes that do not currently include funds.[167] Even if funds were to become significant components of these indexes in the future, we believe that acquiring funds that invest in broad-based securities indexes are unlikely to raise complex structure concerns because the funds replicate the relevant index.[168] If an index were to include funds, the UIT ETF would simply acquire those funds as part of replicating the broader index. Such an arrangement also is unlikely to raise duplicative fee concerns because existing UIT ETFs do not bear advisory fees, sales loads, or other types of service fees at the UIT ETF level. Finally, UITs that do not serve as variable insurance contract separate account vehicles or that are not ETFs typically have a limited term of 12–18 months.[169] Given this short term, the number of UITs that have not made the finding required by proposed rule 12d1–4 would quickly decrease over time.

Recordkeeping Requirements. The proposed rule would require an acquiring fund that is a UIT to maintain and preserve a written record of its principal underwriter's or depositor's finding under proposed rule 12d1–4(b)(3)(ii) and the basis for the finding.[170] UITs currently have compliance program-related recordkeeping procedures in place that incorporate this type of retention period, and consistency with that period would minimize any compliance burden to funds related to the preservation of the records.[171] Although the proposed retention period would differ from the period required for certain UIT findings under rule 22e–4 and the general recordkeeping requirements in rule 31a–2, we believe it is appropriate have consistent recordkeeping requirements under rule 12d1–4.[172] We also believe that these recordkeeping requirements would allow for external examinations of the principal underwriter's or depositor's determinations without placing an undue burden on those entities.

c. Separate Accounts Funding Variable Insurance Contracts

With respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the proposed rule would require an acquiring fund to obtain a certification from the insurance company issuing the separate account that it has determined that the fees borne by the separate account, acquiring fund and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act.[173] The standard set forth in section 26(f)(2)(A) of the Act provides that the fees must be

redeemable securities, each of which represents an undivided interest in a unit of specified securities).

[161] Section 26(a)(2)(C) of the Act requires that the trust indenture for a UIT prohibit payments to the depositor or to any affiliated person thereof, except payments for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself. 80 U.S.C. 80a–26(a)(2)(C). UIT ETFs have exemptive relief that allow the ETF to pay certain enumerated expenses that would be prohibited under section 26(a)(2)(C). *See* 2018 ETF Proposing Release, *supra* footnote 34, at n.52 and accompanying text.

[162] *See supra* section II.C.3.a. (discussing examples of factors that could be considered as part of such an evaluation).

[163] *See, e.g.,* Elkhorn Securities, LLC, *et al.,* Investment Company Act Release Nos. 31022 (Apr. 17, 2014) [79 FR 22720 (Apr. 17, 2014)] (notice) and 31043 (May 13, 2014) (order) and related application. UITs also have agreed as a condition to their exemptive orders to voluntarily comply with the FINRA sales charge rule, even though that rule does not apply to UITs. *See, e.g.,* Ausdal UIT, *et al.,* Investment Company Act Release Nos. 32922 (Dec. 14, 2017) [82 FR 60426 (Dec. 20, 2017)] (notice) and 32953 (Dec. 26, 2017) (order) and related application. As discussed above, we believe the conditions in proposed rule 12d1–4 more effectively capture concerns regarding complex structures and duplicative or excessive fees.

[164] *See* proposed rule 12d1–4(b)(3)(ii).

[165] *See* proposed rule 12d1–4(b)(3)(iii).

[166] According to UIT annual Form N–SAR filings, as of December 2017, insurance UITs made up 673 of the total 719 registered UITs.

[167] There are eight existing UIT ETFs that had total assets of approximately $374 billion as of December 31, 2017, representing 80% of UIT assets. All existing UIT ETFs seek to track the performance of a broad-based securities index by investing in the component securities of the index in the same approximate portions as the index.

[168] The exemptive relief that has been granted to UIT ETFs provides that the trustee will make adjustments to the ETF's portfolio only pursuant to the specifications set forth in the trust formation documents in order to track changes in the ETF's underlying index. The trustee does not have discretion when making these portfolio adjustments. *See* 2018 ETF Proposing Release, *supra* footnote 34, at nn. 46–47 and accompanying text.

[169] This estimate is based on staff sampling of equity UIT prospectuses.

[170] Proposed rule 12d1–4(c)(2). These records must be maintained and preserved for at least five years, the first two in an easily accessible place. *Id.*

[171] The retention period is consistent with the period provided in rule 38a–1(d) under the Act.

[172] *See* rule 22e–4(c) (requiring a UIT to maintain a record of the determination that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues for the life of the trust and for five years thereafter). *See also* Liquidity Release, *supra* footnote 128.

[173] Proposed rule 12d1–4(b)(3)(iii).

reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

The proposed requirement relating to separate account fees is based on the limits in our fund of funds exemptive relief. Our exemptive orders are subject to conditions providing that each acquiring fund will represent in its participation agreements with an acquired fund that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the acquiring fund unless the insurance company has made a certification to the acquiring fund. Specifically, the insurance company must certify to the acquiring fund that the aggregate of all fees and charges associated with each variable insurance contract that invests in the acquiring fund are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company. Because the proposed rule would not require participation agreements, however, proposed rule 12d1–4 requires that the acquiring fund obtain a certification from the insurance company issuing a separate account that the required reasonableness determination was made.

Our 2008 Proposing Release also included reasonableness determinations for separate accounts, which commenters generally supported.[174] As discussed above, we believe it is appropriate to require an acquiring fund to obtain a certification from each insurance company that issues separate accounts that a reasonableness determination was made in order to better protect investors from duplicative or excessive fees.

Recordkeeping Requirements. The proposed rule would require an acquiring fund to maintain and preserve a written record of each certification obtained by the acquiring fund under proposed rule 12d1–4(b)(3)(iii).[175] As noted above for the other proposed recordkeeping requirements under proposed rule 12d1–4, we believe that consistency with the retention period that funds have in place for other requirements under the Act and our rules would minimize any compliance burden to funds related to the preservation of the records. We also believe that these recordkeeping requirements would allow for external examinations of compliance with this condition without placing an undue burden on the acquiring funds.

We request comment on the proposed fee conditions.

- Would the proposed fee conditions sufficiently reduce the risk of acquiring fund shareholders paying excessive or duplicative fees? Should those conditions vary for management companies, UITs, and insurance product separate accounts as proposed? Alternatively, should all acquiring funds be subject to the same fee condition and if so which condition? Should closed-end funds and BDCs be subject to any special fee conditions with respect to the adviser's determination, or generally?
- Are there other conditions we should consider? For example, should the rule include a condition requiring the waiver of certain fees similar to the one included in our orders? Should the rule include a condition requiring an acquiring fund board to find that the advisory fees charged under an advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided by an adviser to an acquired fund?
- Should we require, as proposed, an acquiring fund's investment adviser to determine that it is in the best interest of the acquiring fund to invest in an acquired fund? Should we prescribe the frequency of these determinations? Should we provide additional guidance or requirements in the rule regarding the considerations that an investment adviser should or must take into account when making this determination? Should we require that advisers develop policies and procedures related to fund of funds arrangements before relying on the rule? What parameters, if any, should we place on board oversight of an investment adviser's determinations under rule 12d1–4?
- Alternatively or in addition to the proposed requirements in rule 12d1–4(b)(3)(i), should we require an acquiring fund's investment adviser to make a determination regarding the reasonableness of fees that more closely tracks the determination we propose to require for insurance product separate accounts?
- Are we correct in our belief that the elimination of the fee waiver conditions in our exemptive orders would not lead to an increase in the costs ultimately borne by acquiring fund investors? If not, why not?
- Are the proposed conditions associated with separate accounts appropriate to address concerns regarding layering fees in the three-tier structure typically utilized by insurance product separate accounts? Should we include the reasonableness determinations for separate accounts? Alternatively, should we cap the asset-based sales charges and services fees that may be charged on an aggregate basis by both the acquiring fund and the acquired fund in these arrangements?
- Should we condition proposed rule 12d1–4 on compliance with the FINRA sales charge rule? Should we subject all acquiring funds to the limits in the FINRA sales charge rule, even if that rule does not currently apply to them?
- Should we require, as proposed, that an acquiring fund maintain and preserve written records regarding the finding made under rule 12d1–4(b)(3) for a period of not less than five years (the first two years in an easily accessible place)? Should we require any additional records to be maintained or preserved? Should the records be required to be maintained and preserved for a longer or shorter period of time? For example, should we require UITs to maintain and preserve written records regarding the depositor's finding under proposed rule 12d1–4(b)(3)(ii) for the life of the UIT and for five years thereafter, consistent with other rules under the Act?
- Should we set forth new expense disclosure requirements for acquiring funds structured as UITs? Should such requirements track the disclosure requirements in place for other types of acquiring funds? Are there additional disclosure requirements we should consider?
- An acquiring fund is currently required to disclose the fees and expenses it incurs indirectly from investing in shares of one or more acquired funds. In Form N–1A, for example, an open-end fund investing in another fund is required to include in its prospectus fee table an additional line item titled ''Acquired Fund Fees and Expenses'' (''AFFE'').[176] The AFFE disclosure was designed to provide investors with: (i) A better understanding of the actual costs of investing in a fund that invests in shares of another fund; and (ii) relevant

[174] *See* 2008 Proposing Release, *supra* footnote 13. *See, also,* BGFA Letter; IDC Letter; ICI Letter (supporting the proposed reasonableness determination, but suggesting that additional fee limits for separate accounts were unnecessary). Commenters supported our proposed exclusion of the two conditions from the exemptive orders that address the layering of fees. *See* ICI Letter; IDC Letter; MFDF Letter.

[175] Proposed rule 12d1–4(c)(3). These records must be maintained and preserved for at least five years, the first two in an easily accessible place. *Id.*

[176] *See* Instruction 3(f)(i) to Item 3 of Form N–1A. Form N–2 has a similar disclosure relating to AFFE. *See* Instruction 10.a to Item 3.1 of Form N–2. A fund may include AFFE in the line item for ''Other Expenses'' rather than in a separate line item if the aggregate expenses attributable to acquired funds does not exceed 0.01%.

information to compare directly the costs of investing in alternative funds of funds or of investing in a fund that invests in one or more other funds to a fund that does not.[177] Since we adopted the AFFE disclosure requirement, however, concerns have been expressed with respect to disclosure of fees and expenses of certain acquired funds, *e.g.,* private funds other than hedge funds, and BDCs.[178] Has the AFFE disclosure requirement been effective? Why or why not?

- Do investors understand the AFFE disclosure? Has the AFFE disclosure requirement helped investors understand the fees and expenses associated with their investment in an acquiring fund? If so, how? For example, has the AFFE disclosure helped in fund selection or fund comparison? Are there ways that we could improve the AFFE disclosure consistent with our intent in adopting the AFFE disclosure requirement? Can we make the disclosure easier to understand or more comparable across pooled vehicles of the same or different types? Are there additional disclosures (*e.g.,* as words, graphics, or pictures) that we should require to clarify how AFFE is calculated in order to help investors to understand the fees and expenses associated with such an investment?
- For purposes of the AFFE disclosure, the definition of ''acquired funds'' includes investment companies and private funds. Is AFFE disclosure appropriate for all types of acquired funds or should we exempt certain types of acquired funds from the definition of acquired fund for purposes of AFFE disclosure? If so, which types of acquired funds should be exempted and why? Alternatively, are there pooled investment vehicles or other entities with structures similar to investment companies and private funds that are not included in the definition of ''acquired fund'' but should be? If so, which entities and why?
- Is AFFE disclosure appropriate for every type of fee and expense of every type of acquired fund or should specific types of acquired fund fees or expenses be excluded from the disclosure? If so, which fees and/or expenses and why? Some have commented, for example, that expenses of certain funds are operationally distinct and thus do not raise expense duplication concerns.[179] For example, closed-end funds, and particularly BDCs, finance a portion of their portfolios through borrowing, which is not typical for open-end funds, and the interest paid is included in the fund's expense ratio. Would the exclusion of certain fees or expenses affect the way that acquired funds characterize expenses? Are there concerns, other than expense duplication, that warrant disclosure of acquired fund fees and expenses? Should we instead require two disclosures: One without such fees and expenses and one with such fees and expenses?
- Alternatively, should the AFFE disclosure be aligned with the restrictions imposed by Congress on the acquisition limitations imposed by section 12(d)(1)(A)? For example, should we require AFFE disclosures only for acquiring funds that invest in acquired funds in excess of the limits of section 12(d)(1)(A)? Would such an alternative disclosure allow investors to fully understand the acquiring fund's fees and expenses?
- Has the AFFE disclosure requirement affected investment or other decisions of acquiring funds? If so, in what ways?
- Are there ways that we can improve the calculation of AFFE? If so, how should we modify the calculation and why? For example, acquiring funds that have been in operation for less than a year are required to calculate AFFE using the number of days in the fund's fiscal year. Should we revise the AFFE calculation to reflect the number of days the acquiring fund has been in operation, which we believe would be more accurate?
- Should AFFE take into account fees and expenses of a fund held by an acquired fund?

4. Complex Structures

As discussed above, one Congressional concern underlying section 12(d)(1) was that complex multi-tier fund structures may lead to excessive fees and investor confusion. As a result, our exemptive orders have included conditions designed to address complex structure concerns, and proposed rule 12d1–4 also would include conditions designed to prevent the creation of complex structures that could cause investor confusion or result in duplicative and excessive fees. We believe that the proposed complex structure conditions would protect acquiring fund investors from unduly complex structures.

Proposed rule 12d1–4's complex structure conditions generally are more comprehensive than the conditions in our orders to address certain multi-tier arrangements that have emerged.[180] Our fund of funds exemptive orders prohibit an acquired fund (*i.e.,* the lower tier in a traditional fund of funds structure) from investing in other funds beyond the limits in section 12(d)(1), but they do not expressly prohibit a fund from investing in an acquiring fund (*i.e.,* the top tier in a traditional fund of funds structure) beyond the limits in section 12(d)(1). Proposed rule 12d1–4 contains conditions designed to restrict fund of funds arrangements to two tiers (other than in limited circumstances).

a. Limitations on Other Funds' Acquisitions of Acquiring Funds

Proposed rule 12d1–4 would include a condition designed to prevent an acquiring fund from also being an acquired fund under the rule or under section 12(d)(1)(G) of the Act. Specifically, the proposed rule would prohibit a fund that is relying on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) or the proposed rule from acquiring, in excess of the limits in section 12(d)(1)(A), the outstanding voting securities of a fund that discloses in its most recent registration statement that it may be an acquiring fund in reliance on proposed rule 12d1–4.[181] This proposed provision would limit the ability of funds relying on section 12(d)(1)(G) or rule 12d1–4 to acquire the securities of acquiring funds, and, as a result, would significantly limit funds' ability to create multi-tier arrangements.

This condition, however, would not prevent another fund from investing all of its assets in an acquiring fund in reliance on section 12(d)(1)(E). We do not believe three-tier structures involving a master-feeder arrangement

[177] *See* Funds of Funds Adopting Release, *supra* footnote 17, at text accompanying n.67 and nn. 53, 88.

[178] *See, e.g.,* ICI Comment Letter to File No S7–12–18, *https://www.sec.gov/comments/s7-12-18/s71218-4560073-176206.pdf*; House Report to [Omnibus Spending Bill/H.R. 3280] (July 17, 2017), *https://www.congress.gov/congressional-report/115th-congress/house-report/234/1?overview=closed*; Fidelity Management & Research Company, Petition for Rulemaking (Dec. 28, 2006), *https://www.sec.gov/rules/petitions/2006/petn4-528.pdf* (''Fidelity Petition'').

[179] *See* Fidelity Petition, *supra* footnote 178. As in this release, we previously noted Congressional concerns regarding potentially duplicative fees at the acquiring and acquired fund levels. *See supra* Funds of Funds Adopting Release, *supra* footnote 17, at nn.51–53 and accompanying text; Fund of Funds Proposing Release, *supra* footnote 16, at n.4 and accompanying text and n.68.

[180] As discussed in more detail below, we have observed target date funds that invest, in reliance on section 12(d)(1)(G) of the Act, in acquired funds that then invest in ETFs in reliance on an exemptive order. *See infra* section V.

[181] *See* proposed rule 12d1–4(b)(4)(ii). *See also* section 12(d)(1)(G)(v) (granting the Commission authority to prescribe rules or regulations with respect to acquisitions under section 12(d)(1)(G) as necessary and appropriate for the protection of investors).

present the risk that section 12(d)(1) was designed to address. For example, this type of three-tier structure would permit a target date fund (itself an acquiring fund) to simply act as a conduit through which an insurance product separate account invests.

This condition also would not prevent other funds from acquiring the voting securities of an acquiring fund in amounts under 3%, effectively creating a type of three-tier structure.[182] We would not, however, expect multiple funds holding less than 3% of the acquiring fund to implicate the historical abuses, such as undue influence, that section 12(d)(1) is intended to prevent.

The proposed rule would require a fund that relies on rule 12d1–4 (or wants to preserve investment flexibility to rely on the rule) to disclose in its registration statement that it is (or may be) an acquiring fund for purposes of rule 12d1–4.[183] The proposed disclosure requirement is designed primarily to put other funds seeking to rely on rule 12d1–4 on notice that a fund they seek to acquire is itself an acquiring fund. This disclosure would allow a fund to limit its acquisition of the acquiring fund's securities accordingly.[184] Funds investing in reliance on section 12(d)(1)(G) likely would have less need for this disclosure. In such arrangements, we believe that the acquiring fund would have, or be able to obtain, sufficient information to know which other funds within the same group of investment companies are acquiring funds under rule 12d1–4.

Proposed rule 12d1–4 differs from the complex structures provision we proposed in 2008, which would have required an acquired fund to have a ''disclosed policy'' limiting three-tier arrangements.[185] Instead, the proposed rule would both require certain disclosure and prohibit the acquisition of an acquiring fund's outstanding voting securities by other funds. We believe that these conditions would help prevent the construction of a complex multi-tier structure more effectively than the current participation agreement requirements in our exemptive orders.[186] Thus, the proposed rule would eliminate the need for acquiring funds to negotiate participation agreements with each acquired fund to ensure that the acquired fund's investments would not violate the conditions of the acquiring fund's order.

We considered other conditions that would limit fund investments in acquiring funds. For example, we considered proposing a condition that would prevent an acquiring fund, and any principal underwriter, from knowingly selling the acquiring fund's securities to another fund in excess of the limits in section 12(d)(1)(B) of the Act, except in limited circumstances. We were concerned, however, that some acquiring funds may have limited ability to know the identity of their investors in order to comply with this condition.[187] We also were concerned that this condition could affect funds that are traded on secondary markets differently than other funds, causing certain inadvertent effects on competition.[188]

b. Limitations on Acquired Funds' Acquisition of Other Funds and Private Funds

Proposed rule 12d1–4 would include a condition designed to limit fund of funds arrangements where the acquired fund is itself an acquiring fund. The proposed rule generally would prohibit arrangements where an acquired fund invests in other investment companies or private funds in excess of the limits in section 12(d)(1)(A).[189] However, the proposed condition would allow arrangements where the acquired fund invests in other funds in certain enumerated circumstances.[190]

Our exemptive orders directly prohibit acquired funds from acquiring securities of any other investment company or private fund, with certain limited exceptions.[191] Proposed rule 12d1–4 would limit the acquired fund's ability to invest in certain other funds consistent with those orders. For example, the proposed condition would prohibit an arrangement where an acquired fund invests beyond the statutory limits in both investment companies and private funds.[192] We believe that the limitation on investments in private funds is an appropriate means to protect against the creation of overly complex structures. The proposed condition also would allow three-tier structures in circumstances that we believe do not raise the same concerns for complex structures as other fund of funds transactions.[193]

Our exemptive orders generally have included the same exceptions.[194] Specifically, proposed rule 12d1–4 would permit arrangements where an acquired fund invests in another fund

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[182] A fund could acquire the securities of an acquiring fund within the limits of section 12(d)(1)(A). Funds relying on section 12(d)(1)(F) could acquire up to 3% of the outstanding voting securities in an unlimited number of funds. *See* section 12(d)(1)(F).

[183] *See* proposed rule 12d1–4(b)(4)(i).

[184] As discussed above, proposed rule 12d1–4(b)(3) also would require an acquiring fund's investment adviser or principal underwriter or depositor to evaluate the complexity of the fund of funds structure.

[185] Our 2008 proposal would have required an acquired fund to have a disclosed policy that prohibits it from investing more than 10% of its assets in other investment companies in reliance on section 12(d)(1)(F) and 12(d)(1)(G) of the Act. *See* 2008 Proposing Release, *supra* footnote 13, at n.225 and accompanying text. Some commenters supported this approach. *See* Comment Letter of Katten Muchin Rosenman LLP (May 30, 2008) (''Katten Letter'') (stating that the proposed condition was consistent with the Commission's long-held position that a three-tiered fund arrangement increases structural complexity as well as the likelihood of possible abuses section 12(d)(1) was designed to prevent); NY Bar Letter. On the other hand, one commenter opposed prohibiting three-tiered structures, arguing that they can provide more efficient and cost-effective exposure to certain market segments. *See* ICI Letter.

[186] *See supra* footnote 120 and accompanying text.

[187] A fund may not have information regarding beneficial owners whose shares are held in omnibus accounts registered in the name of intermediaries for the benefit of such investors.

[188] For example, including a knowledge qualifier in this condition could result in secondary market transactions in ETF shares that are outside the condition's scope. Eliminating the knowledge qualifier, however, could make this condition unworkable in connection with omnibus accounts.

[189] *See* proposed rule 12d1–4(b)(4)(iii) (providing that an acquiring fund must not acquire the securities of an acquired fund that invests in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a–12(d)(1)(A)) in other funds or private funds, unless the acquired fund's investment falls within certain covered exceptions).

[190] *See* proposed rule 12d1–4(b)(4)(iii)(A)–(E).

[191] *See, e.g.,* Highland Capital Management, L.P., *et al.,* Investment Company Act Release Nos. 29890 (Dec. 19, 2011) [76 FR 80424 (Dec. 23, 2011)] (notice) and 29918 (Jan. 17, 2012) (order) and related application (''Highland Capital''). Brinker Capital Destinations Trust, *et al.,* Investment Company Act Release Nos. 32478 (Feb. 14, 2017) [82 FR 11277 (Feb. 21, 2017)] (notice) and 32534 (Mar. 16, 2017) (order) and related application (''Brinker Capital'').

[192] *See* proposed rule 12d1–4(b)(4)(iii).

[193] *See* proposed rule 12d1–4(b)(4)(iii)(A)–(E).

[194] The enumerated circumstances have differed depending on the terms of the order. For example, some orders provide that an acquired fund will not invest in funds in excess of the limits in section 12(d)(1)(A)(i)–(iii), except to the extent permitted by Commission exemptive relief to purchase shares of other investment companies for short-term cash management purposes. *See, e.g.,* Highland Capital, *supra* footnote 191. Other orders provide that an acquired fund will not invest in funds in excess of the limits in section 12(d)(1)(A) except to the extent the acquired fund: (i) Acquires securities of another investment company in compliance with section 12(d)(1)(E) and either is an affiliated fund or is in the same group of investment companies as the corresponding master fund; (ii) receives securities as a dividend or as a result of a plan of reorganization of a company; (iii) acquires securities of another investment company pursuant to exemptive relief from the Commission to: (a) Purchase shares of one or more investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions; or (iv) invests in a wholly-owned subsidiary of the underlying fund subject to certain conditions. *See, e.g.,* Brinker Capital, *supra* footnote 191.

beyond the statutory limits for short-term cash management purposes or in connection with interfund lending or borrowing transactions.[195] The proposed rule also would permit arrangements where an acquired fund invests all of its assets in a master fund or invests in a wholly-owned subsidiary.[196] Finally, the exceptions would permit arrangements where an acquired fund receives fund shares as a dividend or as a result of a plan of reorganization.[197]

These exceptions are limited in scope and designed to capture circumstances where an acquired fund may invest in another fund to efficiently manage uninvested cash, to address specific regulatory or tax limitations, or to facilitate certain transactions. We do not believe that permitting these arrangements would create an overly complex structure that could confuse investors, nor do we believe that these arrangements raise concerns regarding undue influence or layering of fees. For example, an acquired feeder fund's investment in its master fund would be entirely transparent because the feeder fund would disclose the master fund's portfolio holdings in its shareholder reports.[198] Similarly, permitting an acquired fund to invest in a wholly-owned subsidiary would allow the acquired fund to gain exposure to certain asset classes.[199] Because the wholly-owned subsidiary's financial statements are consolidated with the financial statement of the acquired fund, we do not believe that this arrangement would be so complex that investors could not understand the nature of these exposures.[200] In addition, interfund transactions are subject to (and would continue to be subject to) conditions specifically designed to address the concerns that they present under the terms of their interfund lending orders.[201] Although we acknowledge that three-tier structures may, in certain circumstances, provide efficient and cost-effective exposure to certain market segments, we continue to believe that three-tier structures can obfuscate the fund's investments, fees, and related risks.[202] We thus believe it is appropriate to prohibit three-tier structures, except in these limited circumstances.

We request comment on the proposed limits on complex structures.

- Are the proposed conditions on complex structures sufficient to prevent investor confusion and other abuses that may be present in a complex structure? If not, what limits should the rule include?
- Should we prohibit other funds from acquiring the securities of an acquiring fund in reliance on section 12(d)(1)(G) or rule 12d1–4 as proposed? Are there other alternatives we should consider?
- Should we prohibit an acquired fund from investing in other investment companies or private funds as proposed?
- As proposed, should we permit arrangements where an acquired fund invests in other investment companies and private funds in certain enumerated circumstances? Alternatively, should we strictly prohibit arrangements where an acquired fund invests in other funds in excess of the limits in section 12(d)(1)(A)? Should we eliminate any of those circumstances? If so, which ones? Should we provide additional guidance regarding these types of investments? Are the limitations appropriately calibrated to mitigate complex structure concerns, including concerns related to transparency and potential investor confusion? Should we adopt different limits? For example, should we only impose a 10% limit on an acquiring fund's investment in other funds?
- Should the complex structures conditions include limits on investments in private funds, given that section 12(d)(1) does not limit a registered fund's investments in private funds? Should the rule instead limit investments in funds only, consistent with the statutory cap on investment in all funds under section 12(d)(1)(A)? Should the overall limit be 10% or should that limit be higher or lower? Why?
- As proposed, should the complex structures condition allow an exception for acquired funds' investment in subsidiaries that are wholly-owned and controlled by the acquired fund? Should we include additional conditions on acquired funds' investments in wholly-owned subsidiaries? For example, should we limit the expenses of such subsidiaries? Should we limit acquired funds' use of such subsidiaries? If so, what limitations should we establish and why?
- Should we include a disclosure requirement in the complex structures condition as proposed? Should the disclosure be in an acquiring fund's registration statement? Are there other more appropriate places that the fund should make such a disclosure? Should we require particular placement of this disclosure, and if so, where? Would the proposed disclosure help ensure that funds are not circumventing the limitations on multi-tier structures in proposed rule 12d1–4? Should we require additional disclosures when a fund of funds structure involves more than two tiers? For example, should an acquiring fund be required to disclose certain fees and expenses associated with a third-tier fund?
- Should we condition proposed rule 12d1–4 on providing additional disclosure about an acquiring fund's investment in an acquired fund more generally? Should we require the additional disclosure only if an acquiring fund's investment in an acquired fund is above a certain threshold? If so, what threshold and why? What types of disclosures should we require to ensure consistency of disclosure across fund of funds structures? For example, how much detail should an acquiring fund give regarding its investment in an acquired fund? Would such disclosures assist investors to better understand the fund's structure?
- To avoid three-tier structures including private funds as a third tier, should the proposed rule prohibit an acquiring fund from relying on the rule to invest in a fund that invests in private funds in excess of the limits in section 12(d)(1)? Would a fund's current disclosure of its investments in private funds be sufficient to put other funds on notice that they should not rely on the rule to invest in such a fund? Should we instead include a specific disclosure

[195] Proposed rule 12d1–4(b)(4)(iii)(B) and (E).

[196] Proposed rule 12d1–4(b)(4)(iii)(A) and (C).

[197] Proposed rule 12d1–4(b)(4)(iii)(D). *See also* section 12(d)(1)(D) (exempting from section 12(d)(1) securities received as a dividend, as a result of an offer of exchange approved under section 11, or as a result of a plan of reorganization).

[198] Master-feeder arrangements typically rely on section 12(d)(1)(E) of the Act to operate. *See supra* footnote 19 and accompanying text. The acquired feeder fund in this example would be a pass-through entity.

[199] For example, wholly-owned subsidiaries are typically organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction in order to invest in commodity-related instruments and certain other instruments for tax and other reasons. *See, e.g.,* Consulting Group Capital Markets Fund, *et al.,* Investment Company Act Release Nos. 32940 (Dec. 15, 2017) [82 FR 60463 (Dec. 20, 2017)] (notice) and 32966 (Jan. 9, 2018) (order) and related application.

[200] In this type of arrangement, the acquired fund controls the wholly-owned subsidiary and the investment adviser to the acquired fund is also the investment adviser to the wholly-owned subsidiary. The acquired fund consolidates its financial statements with the wholly-owned subsidiary's financial statements, provided that U.S. GAAP or other applicable accounting standards permit consolidation and acquired fund's total annual fund operating expenses include the wholly-owned subsidiaries' expenses. *See id.*

[201] *See, e.g.,* Franklin Alternative Strategies Funds, *et al.,* Investment Company Act Release Nos. 33095 (May 10, 2018) [83 FR 22720 (May 16, 2018)] (notice) and 22117 (June 5, 2018) (order) and related application (permitting funds to participate in an interfund lending facility).

[202] *See* 2008 Proposing Release, *supra* footnote 13, at n.226 and accompanying and following text.

requirement for the fund investing in private funds? If so, what should the fund be required to disclose and where should the disclosure be made?

- Should the proposed rule include additional limits on an acquiring fund's ability to serve as an investment for other funds?
- Should there be an exception that allows acquired funds to equitize cash by investing in other funds (*e.g.,* short-term investments in ETFs) beyond the statutory limits or other exceptions? Should the proposed rule permit other types of multi-tier arrangements?
- Should we include an exception for offers of exchange approved under section 11 of the Act?
- Should we prohibit an acquiring fund, and any principal underwriter thereof, from selling or otherwise disposing of any security issued by the acquiring fund to any investment company or any company or companies controlled by such other investment company in excess of the limits in section 12(d)(1)(B) of the Act? Would such an approach have a negative effect on competition? How would this condition affect acquiring funds that are not subject to section 12(d)(1)(B) of the Act? Are there other limits that we should consider?
- Should we allow funds relying on section 12(d)(1)(G) to create three-tier master feeder structures? Should the proposed rule permit acquired funds relying on section 12(d)(1)(G) to invest in a third-tier ''central fund'' in order to centralize the portfolio management of floating rate or other instruments? [203] Should the proposed rule include conditions specifically related to such relief? If so, what conditions? For example, should the proposed rule require that the acquired funds' investments in the central fund be subject to the limits in section 12(d)(1)(A)(ii) and (iii)? Should the proposed rule require the acquired fund to waive certain management fees? Which fees and why? Should the proposed rule prohibit the central fund from charging sales loads, redemption fees, or distribution fees? Should the proposed rule subject the central fund to the acquisition limits under section 12(d)(1)(A)? Should the proposed rule require any board findings? If so, what findings and why?

III. Proposed Rescission of Rule 12d1–2 and Proposed Amendments to Rule 12d1–1

We also are proposing to rescind rule 12d1–2 in order to create a more consistent and efficient regulatory framework for the regulation of fund of funds arrangements. As discussed above, section 12(d)(1)(G) allows a registered open-end fund or UIT to acquire an unlimited amount of shares of other open-end funds and UITs that are in the same ''group of investment companies.'' A fund relying on this exemption is subject to certain conditions, including a condition limiting the types of securities an acquiring fund can hold in addition to the shares of funds in the same group of investment companies, to government securities and short-term paper.[204] Congress designed this limit to restrict the use of this exemption to a ''bona fide'' fund of funds, while providing the fund with a source of liquidity to redeem shares.[205]

In 2006, the Commission exercised its exemptive authority to adopt rule 12d1–2.[206] Rule 12d1–2 codified, and in some cases expanded, three types of relief that the Commission provided for fund of funds arrangements that did not conform to the section 12(d)(1)(G) limits. Specifically, rule 12d1–2 permits a fund relying on section 12(d)(1)(G) to: (i) Acquire the securities of other funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F); [207] (ii) invest directly in stocks, bonds, and other securities; [208] and (iii) acquire the securities of money market funds in reliance on rule 12d1–1.[209] Rule 12d1–2 was designed to provide a fund relying on section 12(d)(1)(G) with greater flexibility to meet its investment objective when the risks that lead to the restrictions in section 12(d)(1) are minimized.[210] The Commission stated that the investments permitted under rule 12d1–2 did not raise additional concerns under section 12(d)(1)(G) because: (i) They were not investments in funds; or (ii) they represented fund investments that are limited in scope (*i.e.,* cash sweep arrangements under rule 12d1–1) or amount (*i.e.,* up to the limits in section 12(d)(1)(A) or 12(d)(1)(F)).[211]

Our exemptive orders also have permitted funds to invest in funds within the same group of investment companies.[212] Funds relying on these orders could invest in the same group of related investment companies to the same extent as funds relying on section 12(d)(1)(G). In addition, funds relying on our exemptive orders could invest to a greater extent in funds that were not part of the same group of investment companies. Funds relying on exemptive relief also could invest in closed-end funds to a greater extent than funds relying on section 12(d)(1)(G) combined with rule 12d1–2.[213]

Our exemptive orders include conditions that differ from the conditions in section 12(d)(1)(G) and the conditions within those orders also differ depending on whether the investment involves an acquired fund that is in the same group of investment companies.[214] The orders generally

[203] In several staff no-action letters, the staff has stated that, based on certain facts and circumstances, it would not recommend that the Commission take any enforcement action under sections 12(d)(1)(A) and (B) (and other sections of the Act) if an acquiring fund relying on section 12(d)(1)(G) purchases or otherwise acquires shares of an underlying fund that, in turn, purchases or otherwise acquires shares of a central fund. *See, e.g.,* Franklin Templeton Investments, Staff No-Action Letter (pub. avail. April 3, 2015); Thrivent Financial for Lutherans and Thrivent Asset Management LLC, Staff No-Action Letter (pub. avail. Sep. 27, 2016).

[204] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(II). The acquired fund also must have a policy against investing in shares of other funds in reliance on section 12(d)(1)(F) or 12(d)(1)(G) to prevent multi-tier structures, and overall distribution expenses are limited to prevent excessive sales loads.

[205] *See* Fund of Funds Proposing Release, *supra* footnote 16.

[206] *See* Fund of Funds Adopting Release, *supra* footnote 17.

[207] *See* rule 12d1–2(a)(1).

[208] *See* rule 12d1–2(a)(2). Rule 12d1–2 limits investments to ''securities.'' The Commission has issued a series of exemptive orders that allow a fund relying on section 12(d)(1)(G) to invest in financial instruments that may not be ''securities.'' This relief provides that the funds will comply with rule 12d1–2, but for the ability to invest in a portion of their assets in these other investments. *See, e.g.,* Van Eck Associates Corp, *et al.,* Investment Company Act Release Nos. 31547 (Apr. 6, 2015) [80 FR 19380 (Apr. 10, 2015)] (notice) and 31596 (May 6, 2015) (order) and related application.

[209] 17 CFR 270.12d1–2(a)(3).

[210] Fund of Funds Adopting Release, *supra* footnote 17.

[211] *Id.*

[212] *See* Janus Investment Fund, *supra* footnote 94.

[213] A fund relying on section 12(d)(1)(G) and rule 12d1–2 could acquire no more than 3% of a closed-end fund's outstanding voting securities. A fund relying on an exemptive order could acquire an unlimited amount of the voting securities of a closed-end fund in the same group of investment companies and up to 25% of the outstanding voting securities of other closed-end funds.

[214] *See, e.g.,* Northern Lights Fund Trust, *et al.,* Investment Company Act Release Nos. 32973 (Jan. 23, 2018) [83 FR 4081 (Jan. 29, 2018)] (notice) and 33008 (Feb. 21, 2018) (order) and related application (setting forth conditions applicable to affiliated fund of funds arrangements, including that: (1) Any sales charges or service fees charged with respect to shares of acquiring funds would not exceed the limits set forth in FINRA Rule 2341; and (2) no acquired fund will acquire securities of any other investment company in excess of the limitations of section 12(d)(1) except to the extent that such acquired fund (a) acquires such securities in compliance with section 12(d)(1)(E), (b) receives such securities as a dividend or as the result of a plan of reorganization, or (c) acquires such securities pursuant to exemptive relief from the Commission permitting the acquired fund to acquire the securities of investment companies for

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subject investments in funds that are not part of the same group of investment companies to a broader set of conditions designed to protect investors from the harms Congress sought to address by enacting section 12(d)(1).[215] Under this existing framework, substantially similar fund of funds arrangements are subject to different limitations and conditions.[216] This has resulted in an inconsistent and inefficient regulatory framework where the relief on which a fund of funds arrangement is relying is not always clear to other funds, investors, or regulators.

In order to harmonize the overall regulatory structure, we are proposing to rescind existing exemptive orders (as discussed below) and rule 12d1–2. The rescission of rule 12d1–2 would eliminate the flexibility of funds relying on section 12(d)(1)(G) to: (i) Acquire the securities of other funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F); and (ii) invest directly in stocks, bonds, and other securities.[217] Accordingly, funds that wish to invest in funds within the same group of investment companies beyond the limits in section 12(d)(1)(A), as well as other securities and the securities of the other funds, could no longer rely on section 12(d)(1)(G) and rule 12d1–2.[218] Instead, acquiring funds would have flexibility to invest in different types of funds and other asset classes under proposed rule 12d1–4 under a single set of conditions that are tailored to address the concerns that underlie section 12(d)(1) of the Act. We believe that this approach would enhance investor protection by subjecting more funds of funds arrangements to the conditions in rule 12d1–4.

As we noted in the adopting release for rule 12d1–2, a significant consequence of rule 12d1–2 was that a fund investing directly in equities or bonds could invest a portion of its assets in a fund within the same group of investment companies if the acquisition was consistent with the investment policies of the fund.[219] The proposed rescission of rule 12d1–2 would require such an equity or bond fund to comply with the conditions in proposed rule 12d1–4 for any investment in another fund in excess of the limits of section 12(d)(1)(A)(i).[220] For example, as proposed, such a fund's adviser would be required to engage in an evaluation of the complexity of the fund of funds structure and fees relating to its limited investments in funds—all of which would be subject to board oversight.[221] The proposed rule's redemption limits on acquired funds also would apply to such a fund.[222]

We believe these conditions are necessary to protect investors from the abuses that can arise when a fund's investment in other funds exceeds the prescribed limits. We therefore believe that it is important to require that funds that are investing in other funds in excess of the limits in section 12(d)(1)(A)(i) comply with the conditions underlying proposed rule 12d1–4. As a result, however, proposed rule 12d1–4 could require additional compliance costs for what would be a smaller investment (albeit larger than the limits under section 12(d)(1) of the Act).

The holdings limitations in section 12(d)(1)(G) would apply to those funds that do not wish to comply with the conditions in proposed rule 12d1–4 and instead continue to rely on section 12(d)(1)(G).[223] In order to limit the hardship that the rescission of rule 12d1–2 could have on existing fund of funds arrangements, we are proposing a one-year period after the effective date before rule 12d1–2 is rescinded. We believe that one-year is adequate time for funds relying on current rule 12d1–2 time to bring their future operations into conformity with section 12(d)(1)(G) or proposed rule 12d1–4.

In addition, we are proposing an amendment to rule 12d1–1 under the Act to provide funds relying on section 12(d)(1)(G) with continued flexibility to invest in money market funds outside of the same group of investment companies if they rely on section 12(d)(1)(G).[224] We continue to believe that ''cash sweep'' arrangements do not raise the concerns that underlie section 12(d)(1).[225] We also continue to believe that retaining this flexibility will help to ensure that funds in smaller complexes that do not have a money market fund as part of their fund complex may invest available cash in an unaffiliated money market fund, subject to the conditions of rule 12d1–1.[226] This limited flexibility may come with some reduction in costs associated with complying with section 12(d)(1)(G)'s limited conditions.[227]

We request comment on the proposed rescission of rule 12d1–2 and the proposed amendments to rule 12d1–1.

- Should we rescind rule 12d1–2 as proposed? How would the proposed rescission affect funds that currently rely on section 12(d)(1)(G)? Would any funds be required to alter their investment strategies or holdings as a result of the change? Would funds currently relying on rule 12d1–2 have any challenges with relying on the conditions in proposed rule 12d1–4? If so, which conditions and why? For example, what effect would the rescission of rule 12d1–2 have on a fund that invests the majority of its assets in non-fund securities, but invests a portion of its assets in affiliated funds?
- Would funds that are currently relying on rule 12d1–2 rely on proposed rule 12d1–4? Alternatively, would such funds change their holdings in order to rely on section 12(d)(1)(G)? What factors would funds consider in determining which exemption to rely on?
- Should we continue to allow funds relying on section 12(d)(1)(G) to acquire the securities of money market funds that are not in the same group of investment companies in reliance on rule 12d1–1 as proposed? If not, why not? Should we amend rule 12d1–1 as proposed or would it be more appropriate to amend rule 12d1–2 to allow only investment in money market funds?

short-term cash management purposes or to engage in interfund lending).

[215] *See supra* footnote 117 and accompanying text (regarding conditions applicable to unaffiliated acquired funds).

[216] *See also supra* footnote 28.

[217] Rule 12d1–2(a)(1) and (a)(2). In connection with our proposed amendment to rule 12d1–1 discussed below, funds relying on section 12(d)(1)(G) could continue to invest in money market funds that are not part of the same group of investment companies even with the proposed rescission of rule 12d1–2(a)(3).

[218] Funds also may continue to rely on section 12(d)(1)(F) to make smaller investments in a number of funds and section 12(d)(1)(E) to invest all of their assets in a master-feeder arrangement. *See supra* footnotes 19 and 20 and accompanying text.

[219] *See* Fund of Funds Adopting Release, *supra* footnote 17, at n.60 and accompanying text.

[220] An equity or bond fund that holds securities could not rely on section 12(d)(1)(G) if rule 12d1–2 is rescinded because section 12(d)(1)(G) is available only to funds that invest in other funds within the same group of investment companies, government securities and short-term paper. *See also supra* footnote 217 (discussing proposed amendment to rule 12d1–1).

[221] *See* proposed rule 12d1–4(b)(3)(ii). *See also supra* section II.C.3.a.

[222] *See* proposed rule 12d1–4(b)(2). *See also* supra section II.C.2.

[223] Section 12(d)(1)(G)(i) (limiting investments to open-end funds and UITs within the same group of investment companies, government securities, and short-term paper).

[224] Proposed rule 12d1–1(a) providing an exemption from section 12(d)(1)(G) for an investment company to acquire the securities of a money market fund. Rule 12d1–2, which we propose to rescind, provided the same relief.

[225] Funds of Funds Adopting Release, *supra* footnote 17, at n. 23 and accompanying text.

[226] *See id.,* at section II.A.1(a).

[227] *See, e.g.,* section 12(d)(1)(G)(i)(III)(bb) (limiting combined sales charges and service fees to limits under current FINRA sales rule); section 12(d)(1)(G)(i)(IV) (requiring the acquired fund to have a policy that prohibits it from acquiring securities of registered open-end investment companies or registered UITs in reliance on section 12(d)(1)(G) or (F)).

• Alternatively, should we amend rule 12d1–2 to include conditions? If so, should we consider expanding the types of investments that are permissible under rule 12d1–2 to include investments other than securities, such as real estate, futures contracts, and other financial instruments that may not qualify as securities under the Act? [228]

• We are proposing a one-year period before rescinding rule 12d1–2. Is the one-year period an appropriate amount of time to allow funds of funds relying on current rule 12d1–2 to come into compliance with proposed rule 12d1–4 or section 12(d)(1)(G)? If not, how long should this period last? Why? Alternatively, should we grandfather funds that are relying on section 12(d)(1)(G) and rule 12d1–2 as of the date of this proposal?

IV. Amendments to Form N–CEN

On October 13, 2016, the Commission adopted Form N–CEN, a structured form that requires registered funds to provide census-type information to the Commission on an annual basis.[229] We are proposing amendments to Form N–CEN to conform to our proposed fund of funds arrangement rulemaking. Item C.7. of Form N–CEN requires management companies to report whether they relied on certain rules under the Investment Company Act during the reporting period. For example, Item C.7.a. currently requires management companies to disclose if they are relying on rule 12d1–1. We are proposing to add a requirement to Form N–CEN that would require management companies to report if they relied on rule 12d1–4 or the statutory exception in section 12(d)(1)(G) during the reporting period.[230] While Form N–CEN already requires a management company to report if it is a fund of funds,[231] we are proposing to collect this information in order to better assess reliance on rule 12d1–4 or the statutory exception in section 12(d)(1)(G) by management companies and to assist us with our accounting, auditing and oversight functions, including compliance with the Paperwork Reduction Act.[232]

UITs also are required to file reports on Form N–CEN. However, the UIT specific section of Form N–CEN does not require a UIT to identify if it is a fund of funds. For the same reasons discussed above, we are proposing to require UITs to report if they relied on proposed 12d1–4 or the statutory exception in section 12(d)(1)(G) during the reporting period.[233]

We request comment on our proposed amendments to Form N–CEN.

• Should we require any additional information on Form N–CEN concerning proposed rule 12d1–4 or section 12(d)(1)(G)? Should we require identification of reliance on any other fund of funds exemptive rules? For example, should we require UITs to report on Form N–CEN if they are funds of funds or relied upon rule 12d1–1 during the relevant period? Should we require funds to identify any statutory exception to section 12(d)(1)(A) that the fund relied upon during the relevant period (*e.g.,* section 12(d)(1)(E) or 12(d)(1)(F))? If we do not rescind rule 12d1–2, should we require funds to report that they relied on rule 12d1–2? Should we require funds to report if they relied on rule 12d1–3?

• Should we require BDCs to report similar information to management companies? If so, since BDCs do no file reports on Form N–CEN, in what form should we require such information be reported?

V. Proposed Rescission of Exemptive Orders; Withdrawal of Staff Letters

Pursuant to our authority under the Act to amend or rescind our orders when necessary or appropriate to the exercise of the powers conferred elsewhere in the Act, we are proposing to rescind the orders permitting fund of funds arrangements.[234] The orders covered by this rescission include all orders granting relief from sections 12(d)(1)(A), (B), (C), and (G) of the Act with one limited exception. Specifically, we do not propose to rescind the exemptive orders providing relief from section 12(d)(1)(A) and (B) granted to allow certain interfund lending arrangements.[235] Interfund lending arrangements allow certain funds within the same complex to lend money to and borrow money from each other for temporary purposes and subject to certain conditions. While such arrangements require exemptive relief from sections 12(d)(1)(A) and (B), among other provisions, they do not result in the pyramiding of funds or the related potential abuses that the proposed rule is designed to address, and thus are not included within the scope of the proposed rule.

We do, however, propose to rescind the exemptive orders providing relief from sections 12(d)(1)(A) and (B) that has been included in our ETF and ETMF orders.[236] We believe that rescinding this fund of funds relief in the ETF and ETMF orders, as well as more generally, would establish a transparent regulatory framework for these arrangements. For the reasons discussed above, we expect that the operations of most existing fund of funds arrangements would not be significantly negatively affected by the need to comply with the requirements of proposed rule 12d1–4, as opposed to their orders.[237]

However, the rescission of exemptive orders could have an effect on certain funds relying on section 12(d)(1)(G). Although section 12(d)(1)(G) requires an acquired fund to have a policy that prohibits it from acquiring any securities of a registered open-end fund or UIT in reliance on section 12(d)(1)(G) or (F), it does not require the acquired fund to have a policy that prohibits it from acquiring the securities of a fund beyond the limits in section 12(d)(1)(A) in reliance on an exemptive order issued by the Commission.[238] We have observed some funds that invest in acquired funds in reliance on section 12(d)(1)(G) of the Act that in turn invest in ETFs in reliance on an exemptive order. If the existing exemptive orders are rescinded, acquired funds could be required to reallocate or reduce underlying acquired fund investments

[228] The staff has stated that, based on certain facts and circumstances, it would not recommend that the Commission take any enforcement action under section 12(d)(1)(A) (and other sections of the Act) if a fund relying on section 12(d)(1)(G) invests a portion of its assets in investments that may not be securities. *See* Northern Lights Fund Trust, Staff No-Action Letter (pub. avail. Jun. 29, 2015).

[229] *See* Reporting Modernization Adopting Release, *supra* footnote 48.

[230] Proposed Items C.7.k. and C.7.l. of Form N–CEN.

[231] *See* Item C.3.e of Form N–CEN.

[232] We are also making conforming changes to the title of Item C.7. of Form N–CEN to reflect that the item includes a statutory exemption. *See* proposed amendment to Item C.7. (''Reliance on certain statutory exemption and rules. Did the Fund rely on the following statutory exemption or any of the rules under the Act during the reporting period? (check all that apply)'').

[233] Proposed Items F.18 and F.19. of Form N–CEN.

[234] *See* section 38(a) of the Investment Company Act (15 U.S.C. 80a–37(a)).

[235] *See, e.g.,* Ivy Funds, *et al.,* Investment Company Act Release Nos. 31068 (June 2, 2014) [79 FR 32779 (June 6, 2014)] (notice) and 31138 (June 30, 2014) (order) and related application.

[236] Some of the exemptive orders we have issued to ETFs include relief permitting ETFs to use certain master-feeder arrangements. We have proposed to rescind that master-feeder fund relief, while grandfathering ETF master-feeder arrangements relying on that relief as of June 28, 2018, as part of an ETF proposal. *See* 2018 ETF Proposing Release, *supra* footnote 34. In addition, we understand that existing ETMFs currently rely on the master-feeder relief in the orders and do not propose to rescind that relief here. *See* Eaton Vance, *supra* footnote 27.

[237] *See, e.g.,* section III.

[238] Section 12(d)(1)(G)(i)(IV).

or the acquired funds would be required to reduce their investments in ETFs. As discussed in more detail below, there could be resulting costs. We believe, however, that this condition is appropriate in order to prevent the creation of overly complex structures for affiliated funds of funds and eliminate those that currently exist. In order to limit the hardship that revocation of these orders could have on existing fund of funds arrangements, we are proposing a one-year period after the effective date before rescission to give acquiring and acquired funds relying on these exemptive orders time to conform their operations with the requirements of the proposed rule and rule amendments.

The Commission does not believe that it is necessary to give individual hearings to the holders of the prior orders or to any other person. The proposed rule would be prospective in effect and is intended to set forth for the entire industry the Commission's exemptive standards for these types of fund of funds arrangements. Recipients of prior orders may make their views known in the context of the comment process that accompanies this rulemaking, and those views will be given due consideration. Finally, funds would be able to request Commission approval to operate as a fund of funds that does not meet the requirements of the proposed rules.

We request comment on our proposal to revoke existing orders:

- Should we rescind existing fund of funds orders? If not, why not? Should we revoke the fund of funds provisions of the ETF orders and the ETMF orders (with the exceptions described above)?
- As discussed above, we are proposing a one-year period after the effective date before rescinding exemptive orders. Is the one-year period an appropriate amount of time to allow funds of funds relying on the orders to bring their funds into compliance with the rules? If not, how long should this period last? Why?
- Are we correct in our belief that existing funds of funds would not face significant challenges in complying with the conditions of proposed rule 12d1–4 rather than their exemptive orders?
- Are we correct in our understanding that certain funds rely on both section 12(d)(1)(G) and ETF exemptive orders in order to create multi-tier fund of funds arrangements? If so, would what challenges would such funds face if the fund of funds portion of the ETF exemptive orders is rescinded?
- Should we consider other approaches? For example, should we consider not rescinding any of the orders? Under this approach, in which our exemptive orders would be left in place, funds that are otherwise structured in similar ways may end up operating under different sets of conditions. Would permitting funds to operate under different sets of conditions have an adverse effect on competition?

In addition, staff in the Division of Investment Management is reviewing staff no-action and interpretative letters relating to section 12(d)(1) to determine whether any such letters should be withdrawn in connection with any adoption of this proposal. If the rule is adopted, some of the letters may be moot, superseded, or otherwise inconsistent with the rule and, therefore, would be withdrawn. To the extent that there are concerns with the withdrawal of any of the letters, commenters should provide comments.

VI. Economic Analysis

A. Introduction

Proposed rule 12d1–4 would allow funds to acquire the securities of another fund in excess of the limits in section 12(d)(1) of the Act without obtaining an exemptive order from the Commission. In connection with the proposed rule, we are also proposing to rescind rule 12d1–2 under the Act and most of our exemptive orders granting relief from sections 12(d)(1)(A), (B), (C), and (G) of the Act. We are also proposing a related amendment to rule 12d1–1. For purposes of this economic analysis, we use the term ''rule proposal'' to refer collectively to proposed rule 12d1–4, the proposed rescission of rule 12d1–2 and the exemptive orders, and the proposed amendment to rule 12d1–1.

The rule proposal would affect funds' investment flexibility, increase regulatory consistency and efficiency, and eliminate the need for funds to obtain an exemptive order from the Commission and incur the associated costs and delays. At the same time, the rule proposal would impose one-time costs to funds that would need to assess whether their operations are consistent with the rule proposal, particularly to those funds relying on an order being withdrawn in connection with the rulemaking. In addition, the conditions in proposed rule 12d1–4 would impose certain one-time and ongoing costs to funds, such as compliance, monitoring, and recordkeeping costs.[239]

We are sensitive to the economic effects that may result from the rule proposal, including the benefits, costs, and the effects on efficiency, competition, and capital formation. These potential effects, as well as possible alternatives to the rule proposal are discussed in detail below.

B. Economic Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the rule proposal are measured consists of the current state of the market and the current regulatory framework for funds of funds.

1. Current State of the Fund of Funds Market

To establish a baseline for the economic analysis of the rule proposal we provide descriptive statistics on the current state of the fund of funds market as of June 2018. For purposes of this analysis, we define a fund of funds as a fund that invests a non-zero percentage of its assets in other funds.[240] Funds whose only investments in other funds are in money market funds and master-feeder funds (*i.e.,* funds of funds created in reliance on section 12(d)(1)(E)) are excluded from our definition of a fund of funds for the purpose of the baseline.[241] Hence, our definition of funds of funds includes: (i) Funds of funds whose investments are within the limits of sections 12(d)(1)(A) and (B); (ii) funds of funds that were structured in reliance on sections 12(d)(1)(F) or (G); and (iii) funds of funds that were formed in reliance on exemptive relief on which proposed rule 12d1–4 is based. We provide descriptive statistics for these three categories of funds of funds and also for single-tier funds to provide an understanding of the funds market as a whole and because the rule proposal would affect both current and prospective funds of funds.

Table 1 below provides descriptive statistics for acquiring and acquired

[239] We expect that the proposed amendments to Form N–CEN would yield immaterial economic effects. In particular, we expect that the proposed amendments to Form N–CEN would increase the annual estimated burden hours associated with preparing and filing Form N–CEN by approximately 0.1 hours for each fund. In addition, the proposed amendments to Form N–CEN would facilitate the supervision and regulation of the fund industry, which would ultimately benefit fund investors, but any such effects are likely small. Hence, the economic analysis focuses on the economic effects of proposed rule 12d1–4, the proposed rescission of rule 12d1–2 and the exemptive orders, and the proposed amendment to rule 12d1–1.

[240] Our baseline includes acquiring funds that invest a non-zero percentage of their assets in registered funds, BDCs, and unregistered funds, and it includes as acquired funds only registered funds and BDCs.

[241] As of June 2018, there were a total of 95 master funds and 195 feeder funds based on Morningstar Direct and 10–K filings data.

funds as of June 2018.[242] As Table 1 shows, there are 4,342 acquiring funds with total gross assets equal to $5,761 billion. 31% of all open-end funds, 28% of all UITs, 20% of all ETFs, none of the ETMFs, 31% of all closed-end funds, and none of the BDCs are acquiring funds.[243] Further, 89.5% of the acquiring funds are open-end funds, 0.1% are UITs, 9.1% are ETFs, none are ETMFs, 1.4% are closed-end funds, and none are BDCs. Untabulated analysis shows that 63% of all acquiring funds are funds that invest in other funds beyond the limits in section 12(d)(1)(A), and 24% of all acquiring funds appear to be relying on the statutory exemption in section 12(d)(1)(G) to structure a fund of funds arrangement.[244]

As Table 1 shows, there are 2,521 acquired funds with total gross assets equal to $6,603 billion. 23% of all open-end funds, none of the UITs, 93% of all ETFs, none of the ETMFs, all of the closed-end funds, and 35% of all BDCs are acquired funds. In addition, 59% of the acquired funds are open-end funds, none are UITs, 37% are ETFs, none are ETMFs, 4% are closed-end funds, and 1% are BDCs. Untabulated analysis shows that 41% of all acquired funds are funds listed on a national securities exchange (*i.e.,* listed closed-end funds, ETFs, ETMFs, and listed BDCs).

As Table 1 shows, there are 2,033 acquiring funds in multi-tier structures and 783 acquired funds in multi-tier structures as of June 2018.[245] Multi-tier fund structures are funds of funds that comprise more than two tiers. Untabulated analysis shows that there are 129 multi-tier structures for which the investments in both the second and third tier are within the statutory limits of section 12(d)(1)(A).

TABLE 1—DESCRIPTIVE STATISTICS FOR SINGLE-TIER FUNDS, ACQUIRING FUNDS, AND ACQUIRED FUNDS

	N of funds	Gross assets of funds (bn $)	*N* of acquiring funds	Gross assets of acquiring funds (bn $)	*N* of acquired funds	Gross assets of acquired funds (bn $)	*N* of acquiring funds in multi-tier structures	*N* of acquired funds in multi-tier structures
Open-end	7,602	16,783	2,841	5,154	1,085	3,880	1,159	447
UITs	4,706	18	969	5	0	0	767	0
ETFs	1,885	2,622	424	522	923	2,433	83	220
ETMFs	9	0.10	0	0	0	0	0	0
Closed-end	469	258	108	80	469	258	24	116
BDCs	88	94	0	0	44	33	0	0
Total	14,759	19,775	4,342	5,761	2,521	6,603	2,033	783

This table reports descriptive statistics for single-tier funds, acquiring funds, and acquired funds as of June 2018. A fund of funds is a fund that invests a non-zero percentage of its assets in other funds. Funds, whose sole fund investments are in money market funds and master-feeder funds are excluded from the definition of fund of funds. Data is retrieved from Morningstar Direct, Morningstar Investment Company Holdings, and funds' 10–K and 10–Q filings. Total gross assets is the sum of all fund holdings, and we consider both long and short fund positions in the estimation of total gross assets.

Table 2 below shows the percentage of acquiring funds that invest between 0 and 5%, 5 and 10%, 10 and 25%, 25 and 50%, 50 and 75%, 75 and 90%, 90 and 95%, and 95% and above of their assets in other funds as of June 2018.[246] The table shows that the majority of acquiring funds invest either less than 10% or more than 90% of their assets in other funds. In particular, 31% of the acquiring open-end funds, 3% of the acquiring UITs, 37% of the acquiring ETFs, and 63% of the acquiring closed-end funds invest less than 10% of their assets in other funds. Moreover, 50% of the acquiring open-end funds, 74% of the acquiring UITs, 39% of the acquiring ETFs, and 20% of the acquiring closed-end funds invest more than 90% of their assets in other funds. The reason for the concentration of acquiring funds below the 10% level is likely that a 10% investment in other funds is within the section 12(d)(1)(A) statutory limits. Funds that invest above the 90% threshold likely rely either on sections 12(d)(1)(G) or (F) or on exemptive orders to invest in other funds beyond the section 12(d)(1)(A) statutory limits.

TABLE 2—PERCENTAGE OF ACQUIRING FUNDS THAT INVEST CERTAIN % OF THEIR ASSETS IN OTHER FUNDS

	(0–5%]	(5–10%]	(10–25%]	(25–50%]	(50–75%]	(75–90%]	(90–95%]	(95–100%]
Open-end	23	8	8	5	4	4	24	26
UITs	1	2	4	11	7	2	38	36
ETFs	31	6	7	5	7	4	14	25
Closed-end	57	6	7	5	3	1	1	19

This table reports the percentage of acquiring funds by fund type that invest between 0 and 5%, 5 and 10%, 10 and 25%, 25 and 50%, 50 and 75%, 75 and 90%, 90 and 95%, and above 95% of their assets in other funds as of June 2018. ETMFs and BDCs are excluded from this table because we have not identified any acquiring ETMFs and BDCs. Fund holdings data is retrieved from Morningstar Investment Company Holdings database. Percentages may not sum up to 100 due to rounding error.

[242] As of December 2017, there were 663 separate accounts with $1,774 bn total assets. 99.2%, or 658, of these separate accounts are structured as UITs and the remainder 0.8%, or 5, are structured as open-end funds. All of the UIT separate accounts are master-feeder structures. Data for separate accounts is retrieved from Form N–SAR. Separate accounts are not included in the Tables 1–4 and Figure 1 of the economic analysis because of limited structured data for separate accounts.

[243] All percentages in this and the next paragraph are based on funds' total gross assets. Percentages occasionally do not sum up to 100 due to rounding error.

[244] We define 12(d)(1)(G) acquiring funds as open-end funds or UITs that invest at least 10% of their assets in other open-end funds or UITs with the same investment adviser. Our methodology may underestimate the number of 12(d)(1)(G) acquiring funds to the extent that the acquiring fund and acquired fund have advisers that are control affiliates. Our methodology may overestimate the number of 12(d)(1)(G) acquiring funds to the extent that certain funds rely on exemptive orders rather than 12(d)(1)(G) to invest in funds within the same group of investment companies beyond the limits of section 12(d)(1)(A).

[245] The number of acquiring funds in multi-tier structures captures the top-tier fund in three-tier structures and the number of acquired funds in multi-tier structures captures the mid-tier fund in three-tier structures.

[246] In addition to other funds, acquiring funds may invest in private funds, cash and cash equivalents, derivatives, individual equity and debt securities, asset-backed securities, etc.

The total net assets of funds of funds have increased over time. According to the 2018 ICI Fact Book, the total net assets of open-end funds of funds increased from $638 to $2,216 billion between December 2007 and December 2017, and the total net assets of ETF funds of funds increased from $97 million to $11,944 million between December 2008 and December 2017.[247]

Table 3 below shows the expense ratio, front-end load, and deferred charges for single-tier funds (excluding acquiring funds) in Panel A and for acquiring funds in Panel B.[248] The expense ratio for acquiring funds includes the acquired funds' expense ratio. The equal-weighted average expense ratio for acquiring funds is statistically significantly higher than the equal-weighted average expense ratio for single-tier funds, with the exception of closed-end funds.[249] The results of the comparison of the equal-weighted average front-end load for acquiring and single-tier funds are mixed—acquiring UITs have statistically significantly lower front-end load than single-tier UITs but acquiring open-end funds do not have significantly different front-end load than single-tier open-end funds. The equal-weighted average deferred charges for acquiring UITs are statistically significantly higher than the equal-weighted average deferred charges for single-tier UITs but acquiring open-end funds do not have significantly different deferred charges than single-tier open-end funds. We do not compare the front-end load and deferred charges for single-tier and acquiring closed-end funds because of the limited sample size for acquiring closed-end funds with front-end load and deferred charges.

TABLE 3—EXPENSE RATIO, FRONT-END LOAD, AND DEFERRED CHARGES FOR SINGLE-TIER AND ACQUIRING FUNDS

Panel A: Single-tier funds	Expense ratio				
	Equal-weighted mean	Value-weighted mean	Median	Standard deviation	N
Open-end	0.94	0.52	0.91	0.47	5,191
UITs	0.30	0.25	0.25	0.26	4,090
ETFs	0.53	0.23	0.49	0.33	1,738
ETMFs	0.75	0.78	0.84	0.24	18
Closed-end	1.09	1.04	1.17	1.01	455
BDCs	8.87	8.89	8.49	3.23	76
	Front-end load				
Open-end	1.44	1.75	0.92	1.39	2,479
UITs	1.90	1.21	1.00	1.86	3,113
ETFs	.....	.....	.....	.....	.....
ETMFs	.....	.....	.....	.....	.....
Closed-end	2.25	1.56	2.25	1.45	16
BDCs	5.70	6.64	5.75	3.51	32
	Deferred charges				
Open-end	0.07	0.06	0.03	0.13	2,479
UITs	2.01	2.11	2.25	0.65	3,113
ETFs	.....	.....	.....	.....	.....
ETMFs	.....	.....	.....	.....	.....
Closed-end[250]	0.10	0.16	0.00	0.16	16
BDCs	.....	.....	.....	.....	.....
Panel B: Acquiring funds	Expense ratio				
Open-end	1.04	0.63	0.96	0.60	2,841
UITs	1.44	1.41	1.49	0.83	969
ETFs	0.69	0.34	0.58	0.51	424
ETMFs	.....	.....	.....	.....	.....
Closed-end	1.05	0.96	1.10	1.09	108
BDCs	.....	.....	.....	.....	.....
	Front-end load				
Open-end	1.38	1.27	0.81	1.42	1,424
UITs	0.46	0.47	0.00	0.50	952
ETFs	.....	.....	.....	.....	.....
ETMFs	.....	.....	.....	.....	.....

[247] Open-end funds of funds are open-end funds that invest primarily in other open-end funds. ETF funds of funds are ETFs that invest primarily in other ETFs. *See* 2018 ICI Fact Book, *supra* footnote 5, at 218 and 256.

[248] The number of funds in Table 3 can be different than the number of funds in Table 1 due to different data requirements to construct the two tables. We exclude no-load funds for the estimation of descriptive statistics for front-end load and deferred charges. 51% of single-tier funds and 45% of acquiring funds are no-load funds.

[249] We use a two-tailed *t*-test and a 95% confidence interval to examine whether the differences in the equal-weighted averages of fees and expenses for acquiring and single-tier funds are statistically significant. A 95% confidence interval is frequently used in scientific work (*see, e.g.,* David H. Kaye and David A. Freedman, *Reference Guide on Statistics,* in Ref. Man. on Scient. Ev., 2nd ed., Washington, DC, Federal Judicial Center, 2000).

Our comparison of fees and expenses for acquiring and single-tier funds does not control for differences in the characteristics of single-tier and acquiring funds, such as differences in their investment strategy, which could potentially affect fund fees and expenses.

[250] The closed-end funds with front-end load and deferred charges identified in Table 3 are all interval funds.

TABLE 3—EXPENSE RATIO, FRONT-END LOAD, AND DEFERRED CHARGES FOR SINGLE-TIER AND ACQUIRING FUNDS—Continued

Panel A: Single-tier funds	Expense ratio				
	Equal-weighted mean	Value-weighted mean	Median	Standard deviation	N
Closed-end	4.07	2.91	4.50	1.24	5
BDCs					
	Deferred charges				
Open-end	0.08	0.07	0.02	0.13	1,424
UITs	2.25	2.33	2.25	0.51	952
ETFs					
ETMFs					
Closed-end	0.11	0.19	0.00	0.15	5
BDCs					

This table reports descriptive statistics for the expense ratio, front-end load, and deferred charges in percentage points for single-tier funds (excluding acquiring funds) in Panel A and for acquiring funds in Panel B as of June 2018. Expense ratio is the percentage of fund assets, net of reimbursements, used to pay for operating expenses and management fees, including 12b–1 fees, administrative fees, and all other asset-based costs incurred by the fund, except brokerage costs. Sales charges are not included in the expense ratio. The expense ratio for acquiring funds is retrieved from the acquiring fund's prospectus and it includes the acquired funds' expense ratio. The front-end load is a one-time deduction from an investment made into the fund. Deferred charges are imposed when investors redeem shares. All of the analysis is conducted at the fund level using asset-weighted average values for multiple-class portfolios except for UITs. Assets at the share-class level are not available for UITs. We exclude no-load funds for the estimation of descriptive statistics for front-end load and deferred charges. ETFs and ETMFs do not charge front-end loads or deferred charges. BDCs charge a front-end load, which includes selling commissions and dealer management fees, but they do not charge deferred charges. Data for acquiring ETMFs and BDCs is missing because we have not identified any acquiring ETMFs and BDCs. Data for open-end funds, UITs, ETFs, ETMFs, and closed-end funds is retrieved from Morningstar Direct, and data for BDCs is retrieved from Forms N–2, N–2/A, and 497. Data is winsorized at the 1% and 99% levels.

Table 2 shows that the majority of acquiring funds either invest less than 10% or more than 90% of their assets in other funds. We compare the expense ratio, front-end load, and deferred charges for funds that invest less than 10% and funds that invest more than 90% of their assets in other funds, and find mixed evidence.[251] In particular, the expense ratio for acquiring open-end funds that invest more than 90% of their assets in other funds is lower than the expense ratio for acquiring open-end funds that invest less than 10% of their assets in other funds. For acquiring UITs and ETFs, the expense ratio is higher for those funds that invest more than 90% of their assets in other funds than those that invest less than 10% of their assets in other funds. There is no difference in the expense ratio of the two types of acquiring closed-end funds. Further, front-end load and deferred charges are, on average, higher for acquiring open-end funds that invest more than 90% of their assets in other funds. We find no difference in the front-end load and deferred charges between the two types of acquiring UITs. We do not compare the front-end load and deferred charges for the two types of acquiring closed-end funds because of limited sample size.

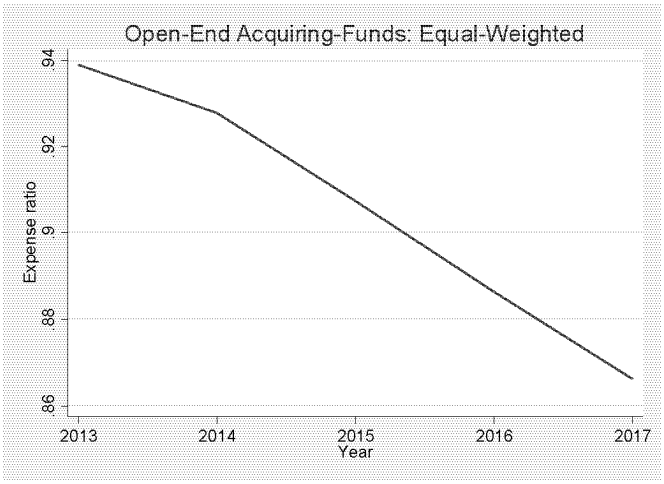
There is some evidence of a decrease in the fund of funds expense ratio over time. According to an ICI report, the equal-weighted (value-weighted) average of the expense ratio of target date open-end funds has decreased from 1.23% (0.67%) in 2008 to 0.85% (0.44%) in 2017.[252] Figure 1 Panels A–C below show a decrease in the equal-weighted average of the expense ratio for open-end funds and ETFs and an increase in the expense ratio for closed-end funds between 2013 and 2017.

[251] *See supra* footnote 249.

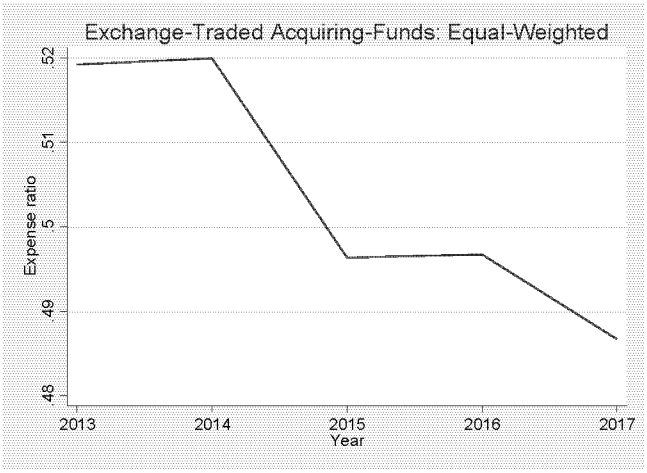
[252] ICI Research Perspective, Trends in the Expenses and Fees of Funds, 2017, April 2018, p. 14.

Figure 1: Equal-weighted average of acquiring funds' expense ratio over time

Panel A: Open-end acquiring funds

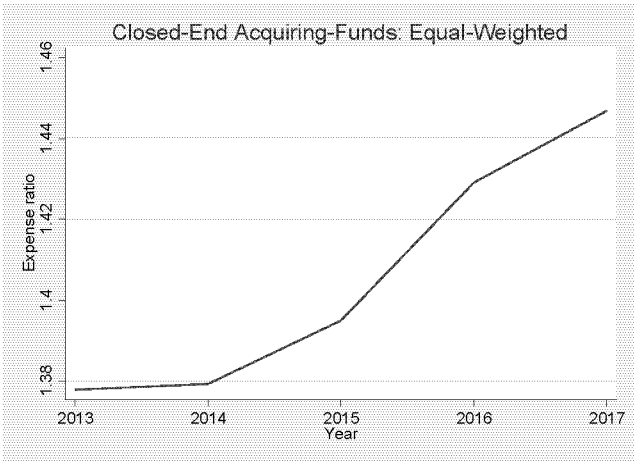


Panel B: Exchange-traded acquiring funds



This figure reports the equal-weighted average of the expense ratio for acquiring funds by fund type between 2013 and 2017. Panel A shows the average expense ratio for open-end funds, Panel B for ETFs, and Panel C for closed-end funds. Expense ratio is the percentage of fund assets, net of reimbursements, used to pay for operating expenses and management fees, including 12b–1 fees, administrative fees, and all other asset-based costs incurred by the fund, except brokerage costs. The expense ratio for acquiring funds is retrieved from the acquiring fund's annual report and it does not include the acquired funds' expense ratio. ETMFs and BDCs are excluded from this figure because we have not identified any acquiring ETMFs and BDCs. There is no historical structured data for the expense ratio of UITs. Data is retrieved from Morningstar Direct and is winsorized at the 1 and 99% levels.

Panel C: Closed-end acquiring funds



This figure reports the equal-weighted average of the expense ratio for acquiring funds by fund type between 2013 and 2017. Panel A shows the average expense ratio for open-end funds, Panel B for ETFs, and Panel C for closed-end funds. Expense ratio is the percentage of fund assets, net of reimbursements, used to pay for operating expenses and management fees, including 12b-1 fees, administrative fees, and all other asset-based costs incurred by the fund, except brokerage costs. The expense ratio for acquiring funds is retrieved from the acquiring fund's annual report and it does not include the acquired funds' expense ratio. ETMFs and BDCs are excluded from this figure because we have not identified any acquiring ETMFs and BDCs. There is no historical structured data for the expense ratio of UITs. Data is retrieved from Morningstar Direct and is winsorized at the 1 and 99% levels.

Table 4 provides descriptive statistics on acquiring funds' investment strategy by fund category as of June 2018. The table shows that the most frequent investment category for acquiring funds is the ''Allocation'' category, which includes target dates funds—42% of the acquiring funds belong to the ''Allocation'' investment category.

TABLE 4—NUMBER OF ACQUIRING FUNDS BY INVESTMENT CATEGORY

	U.S. equity	Sector equity	International equity	Taxable bond	Municipal bond	Allocation	Alternative	Commodities	Total
Open-end	438	97	412	290	23	1,316	248	17	2,841
UITs	90	74	18	146	185	423	33	0	969
ETFs	39	28	192	24	2	41	83	15	424
Closed-end	10	11	7	31	11	25	13	0	108
Total	577	210	629	491	221	1,805	377	32	4,342

This table presents the number of acquiring funds by investment category as of June 2018. ETMFs and BDCs are excluded from this table because we have not identified any acquiring ETMFs and BDCs. ''U.S. Equity'' funds are those that maintain at least 85% exposure to equity and investing at least 70% of assets in US-domiciled securities. ''Sector Equity'' funds are usually equity funds, in that they maintain at least 85% exposure to equity. ''International Equity'' funds include stocks domiciled in diverse countries outside the U.S. though most invest primarily in developed markets. ''Taxable Bond'' funds invest at least 80% of assets in securities that provide bond or cash exposure. ''Municipal Bond'' funds are generally defined by state or national focus and duration exposure. Funds in the ''Allocation'' category seek to provide income and capital appreciation by investing in multiple asset classes. This category is comprised of target date funds, convertibles, world, and tactical allocation funds. ''Alternative'' funds employ a unique investment approach designed to offer returns different from those of the long-only investments in the stock, bond, or commodity markets. ''Commodities'' funds invest in direct holdings or derivative securities that provide exposure to changes in price of commodities.

We request comment on the following:

- Do you agree with our estimate of acquiring funds that rely on section 12(d)(1)(G)? Do you agree with the methodology we use to identify acquiring funds that rely on section 12(d)(1)(G) as described in footnote 244 above? If not, please provide an alternative methodology to identify acquiring funds that rely on section 12(d)(1)(G) to invest in other funds.
- Our analysis identified no acquiring BDCs, no acquiring ETMFs, no acquired UITs, and no acquired ETMFs as of June 2018. Have commenters identified acquiring BDCs, acquiring ETMFs, acquired UITs, or acquired ETMFs? If so, how prevalent are arrangements involving these fund types?

2. Current Regulatory Framework

The existing regulatory framework for funds of funds comprises the current set of statutory provisions and rules governing funds of funds, the exemptive orders we have granted to allow certain funds of funds, and relevant no-action and interpretive letters. Section I.B. above describes in detail the current set of statutory provisions governing funds of funds. Below we discuss in more detail the fund of funds exemptive order process and we provide a summary of the existing regulatory framework.

a. Exemptive Order Process

Certain funds rely on individual exemptive orders granted by the Commission to invest in other funds beyond the limits of section 12(d)(1). The process of obtaining an exemptive

order imposes direct administrative costs on acquiring funds associated with the preparation and revision of an application and consultations with Commission staff. We estimate that the administrative cost associated with obtaining an exemptive order permitting an acquiring fund to invest in an acquired fund beyond the limits of section 12(d)(1) is approximately $100,000. Once a fund adviser/sponsor obtains exemptive relief to structure a fund of funds, the adviser/sponsor may apply this relief to multiple funds of funds. The administrative cost associated with the exemptive order process may be borne both by the fund adviser/sponsor and by the fund. Nevertheless, we lack data to estimate how the administrative cost associated with the exemptive order process is split between the fund adviser/sponsor and the fund.

The exemptive order process also imposes indirect costs on funds and their advisers/sponsors because it introduces delays and uncertainty to fund investments. In 2017, for non-ETF (ETF) fund of funds exemptive orders, the average time from the date a fund filed its initial application for exemptive relief to the date the Commission issued the related exemptive order was 377 (321) days and the average number of application revisions was 3 (2.4).[253] Until the Commission grants exemptive relief, fund advisers/sponsors are not permitted to create certain fund of funds and so acquiring funds must forgo certain investments in other funds. In addition, the exemptive order process may lead to uncertainty regarding whether the fund will be able to obtain exemptive relief and regarding the exact terms of the exemptive relief.

As a result of the direct and indirect costs of the exemptive order process, acquiring funds might forego certain investments or funds of funds might not be launched in the first place because they have concluded that the costs of seeking an exemptive order would exceed the anticipated benefits of the investment. Nevertheless, the direct and indirect costs of the exemptive order process are partially moderated by the fact that each exemptive order can be used by multiple funds within the same fund complex and the costs of the exemptive order application process are one-time costs.

We request comment on the following:

- Do you agree with our $100,000 administrative cost estimate for a fund to apply for exemptive relief? If not, please provide an estimate of how much it would cost a fund to apply for exemptive relief. Is the cost different for acquiring and acquired funds?[254] Does the cost vary with fund size? How is this cost split between the fund adviser/sponsor and the fund?

b. Exemptive Order Conditions

Funds relying on exemptive orders to develop funds of funds also must comply with the terms and conditions of the exemptive relief. These terms and conditions are designed to prevent the historical abuses that led Congress to enact section 12(d)(1). Existing orders include conditions designed to mitigate the risks of undue influence, duplicative and excessive fees, and overly complex structures.[255]

Undue Influence. To prevent an acquiring fund from exercising undue influence over the acquired fund, existing exemptive orders include the following conditions. First, existing orders mandate that an acquiring fund and its advisory group cannot control an acquired fund unless the acquired fund is part of the same group of investment companies or the acquiring fund's sub-adviser serves as the acquired fund's primary adviser. The Act creates a rebuttable presumption that any person who directly or indirectly beneficially owns more than 25% of the voting securities of a company controls the company.[256] Second, existing orders include a set of voting provisions that differ depending on the type of acquired fund. Third, existing exemptive orders require acquired fund boards to make certain findings and adopt procedures to prevent overreaching and undue influence by the acquiring fund and its affiliates once the investment in an acquired fund that is not part of the same group of investment companies exceeds the section 12(d)(1) limits. Fourth, exemptive orders require that acquiring and acquired funds enter into participation agreements that state that the funds understand and agree to comply with the terms and conditions of the order. This requirement allows acquired funds to block the acquisition of their shares by acquiring funds that could exercise undue influence over them by refusing to enter into a participation agreement with those funds.

Duplicative and Excessive Fees. Current orders contain conditions designed to prevent duplicative and excessive fees. For management companies, our exemptive orders: (i) Limit sales charges and service fees charged by the acquiring fund to those set forth in the FINRA's sales charge rule; (ii) require an acquiring fund's adviser to waive fees otherwise payable to it by the acquiring fund in an amount at least equal to any compensation received from an acquired fund that is not part of the same group of investment companies by the adviser, or an affiliated person of the adviser, other than advisory fees paid to the adviser or its affiliated person by such an acquired fund, in connection with the investment by the acquiring fund in such acquired fund; and (iii) require the acquiring fund board to find that advisory fees are based on services provided that are in addition to, rather than duplicative of, the services provided by an adviser to an acquired fund. For UITs, our exemptive orders: (i) Limit sales charges and service fees charged by the acquiring fund to those set forth in the FINRA's sales charge rule and (ii) require UIT depositors to deposit only acquired funds that do not assess a sales load or that waive any sales loads. For separate accounts funding variable insurance contracts, our exemptive orders require that each acquiring fund should represent in its participation agreement with an acquired fund that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the acquiring fund unless the insurance company has made a certification to the acquiring fund.

Complex Structures. Current orders contain conditions designed to limit complex fund structures because complex structures historically have been associated with excessive fees and

[253] ETF fund of funds exemptive order applications are typically submitted together with applications related to the formation and operation of ETFs, and these unrelated aspects of the applications could bias the cited statistics on the duration and the number of revisions of the fund of funds exemptive order process. For this reason, statistics for non-ETF and ETF applications for exemptive order are discussed separately.

There is variation in the duration of the exemptive order process from the date of the initial filing to the date the order is issued. In 2017, for non-ETF (ETF) exemptive order applications, the duration of the exemptive order process varied from 98 (43) to 1,205 (2,318) days from the date of the first filing to the date the order was issued, and the number of the revisions varied from 2 (1) to 6 (6). Data is retrieved from the Investment Company Act Notices and Orders Category Listing, *available at https://www.sec.gov/rules/icreleases.shtml* (accessed on June 11, 2018).

[254] Acquired funds may apply for exemptive relief to be able to sell their shares to acquiring funds beyond the limits of section 12(d)(1)(B) of the Act.

[255] In addition to the exemptive order conditions, fund investors are protected from potential abusive practices that section 12(d)(1) was designed to prevent as a result of the fiduciary obligations of acquiring and acquired funds' boards of directors and investment advisers.

[256] *See also supra* footnotes 79–82.

investor confusion.[257] Specifically, our current orders prohibit an acquired fund from investing in other funds beyond the limits in section 12(d)(1). The exemptive order conditions contain a number of exceptions to the complex structures prohibition. In particular, acquired funds are permitted to buy shares of lower-tier funds in reliance on section 12(d)(1)(E) of the Act, for short-term cash management purposes, in a subsidiary that is wholly-owned and controlled by the acquired fund, or as part of the receipt of securities as a dividend or as a result of a plan of reorganization of a company.

c. Relevant Statutory Provisions

As an alternative to obtaining an exemptive order, open-end funds and UITs could rely on section 12(d)(1)(G) to invest in other funds that are in the same group of investment companies beyond the limits of section 12(d)(1). Section 12(d)(1)(G) limits funds' investment flexibility by only permitting investments in government securities and short-term paper in addition to unlimited investments in funds that belong in the same group of investment companies. Rule 12d1–2 relaxes the investment restrictions of section 12(d)(1)(G) by providing funds relying on section 12(d)(1)(G) with the ability to invest in: (i) Securities of funds that are not in the same group of investment companies up to the limits in section 12(d)(1)(A) or (F); (ii) securities of money market funds in reliance on rule 12d1–1; and (iii) stocks, bonds, and other securities. The Commission also has issued exemptive orders granting funds relief from rule 12d1–2(a) to the extent necessary to permit an acquiring fund that invests in acquired funds in reliance on section 12(d)(1)(G) of the Act to invest in financial instruments that may not be ''securities.''

Funds also can structure fund of funds arrangements in reliance on 12(d)(1)(E), which allows an acquiring fund to invest all of its assets in a single fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund.

Lastly, funds can structure funds of funds in reliance on 12(d)(1)(F), which permits funds to take small positions (up to 3% of another fund's securities) in an unlimited number of other funds. A fund relying on section 12(d)(1)(F) may be restricted in its ability to redeem shares of the acquired fund and is prohibited by the Act from using its voting power to influence the outcome of shareholder votes held by the acquired fund.

d. Relevant No-Action and Interpretive Letters

The staff of the Division of Investment Management has issued a line of letters stating that the staff would not recommend enforcement action to the Commission under sections 12(d)(1)(A) or (B) of the Act if a fund acquires the securities of other funds in certain circumstances. We understand that certain industry practices have developed in connection with the staff-level relief provided in these letters. In particular, we understand that: (i) Some funds have created three-tier master-feeder structures for tax management, cash management, or portfolio management purposes; (ii) other funds have invested in assets that may not be securities, but have otherwise complied with the restrictions in rule 12d1–2; [258] (iii) sponsors of UITs have deposited units of existing trusts into portfolios of future UIT series; (iv) foreign pension funds and profit sharing funds, and foreign subsidiaries and feeder funds have invested in other funds beyond the limits of section 12(d)(1); and (v) foreign funds have invested in other funds under section 12(d)(1) to the same extent as private funds.

The staff letters also state that, for purposes of rule 12d1–2(a)(1) under the Act, the term ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, does not include closed-end funds. Under this staff position, open-end funds, or UITs may invest in a closed-end fund under rule 12d1–2(a)(1) even if the closed-end fund is part of the same group of investment companies.

[257] Concerns about complex structures are partially mitigated by funds' disclosures. For example, funds are required to report their portfolio holdings on a semi-annual basis in the shareholder reports. Acquiring funds are required to report the aggregate expenses of the acquired and acquiring funds in their prospectuses. Further, feeder funds must disclose in their registration statements that they invest in master funds. These disclosure requirements complement the complex structure conditions in the current exemptive orders.

[258] The Commission has previously issued exemptive orders to funds that rely on section 12(d)(1)(G) to allow those funds to invest in futures contracts and other financial instruments. *See, e.g.,* KP Funds, *et al.,* Investment Company Act Release Nos. 30545 (June 3, 2013) [78 FR 34413 (June 7, 2013)] (notice) and 30586 (July 1, 2013) (order); Financial Investors Trust and Hanson McClain Strategic Advisors, Inc., Release Nos. 30521 (May 15, 2013) [78 FR 30346 (May 22, 2013)] (notice) and 30554 (order). Following those orders, the staff of the Division of Investment Management issued a no-action letter stating that it would not recommend enforcement action to the Commission under section 12(d)(1)(A) or (B) of the Act against a fund of funds that meets all of the provisions of section 12(d)(1)(G) and rule 12d1–2, except to the extent that it invests in assets that might not be securities under the Act.

C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation of Rule Proposal

Where possible, we have sought to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the rule proposal. However, we are unable to reliably quantify many of the economic effects in light of the uncertainty about how market participants would react to the changes in regulatory structure under the rule proposal. For example, we are unable to estimate the number of new funds of funds that potentially would be created as a result of the adoption of the rule proposal, because we do not have information about the extent to which the exemptive order application process and the conditions associated with exemptive relief limit the creation of funds of funds. Further, we do not have information needed to estimate likely changes in investor demand for funds of funds following the potential adoption of the rule proposal. Therefore, much of the discussion below is qualitative in nature, although we try to describe, where possible, the direction of the economic effects.

We request comment on the following. In providing comment on the questions below, please describe your methodology and, where possible, identify sources of data.

- Would the rule proposal result in a change in the number of funds of funds? Please estimate the potential change in the number of funds of funds as a result of the rule proposal.
- Our analysis shows no acquiring BDCs and ETMFs as of June 2018. Would the rule proposal result in an increase in the number of acquiring BDCs and ETMFs? If not, why not?
- Would the rule proposal affect the diversity of available funds of funds? If yes, how and why would the rule proposal affect the diversity of available funds of funds?
- Would the rule proposal affect investor demand for funds of funds? If yes, in which direction and through which mechanisms would the rule proposal affect investor demand for funds of funds? Please estimate the potential change in investor demand for funds of funds as a result of the rule proposal.
- Would existing acquiring funds change their investments as a result of the rule proposal, if adopted? Why and in which ways? Relatedly, would funds that invest in acquiring funds be required to change their investments as a result of the rule proposal? If yes, in which ways?

• What is the net effect of the proposed conditions in rule 12d1–4 and the elimination of certain conditions that are included in our exemptive orders on administrative costs for both acquiring and acquired funds?

1. Benefits and Costs

a. Funds' Investment Flexibility

It is unclear ex-ante how the rule proposal would affect funds' investment flexibility. On one hand, proposed rule 12d1–4 would expand funds' investment flexibility by expanding the scope of permissible acquiring and acquired funds relative to the current exemptive orders. On the other hand, the conditions in proposed rule 12d1–4 and the proposed rescission of rule 12d1–2 and the exemptive orders would restrict certain funds' investment flexibility and would require certain acquiring funds to change their investments in acquired funds compared to the baseline.

Our current exemptive orders permit only certain funds to invest in other funds beyond the limits of section 12(d)(1).[259] Proposed rule 12d1–4 would expand the scope of permissible acquiring and acquired funds by permitting all open-end funds, UITs, ETFs, ETMFs, listed and unlisted closed-end funds, and listed and unlisted BDCs to invest in open-end funds, UITs, ETFs, ETMFs, listed and unlisted closed-end funds, and listed and unlisted BDCs beyond the limits of section 12(d)(1). By expanding the scope of permissible acquiring and acquired funds, proposed rule 12d1–4 would enhance acquiring funds' investment flexibility and would increase acquired funds' access to financing.

At the same time, the rule proposal would limit funds' investment flexibility in order to protect fund investors from undue influence, duplicative and excessive fees, and complex structures. First, proposed rule 12d1–4 would prohibit an acquiring fund that acquires more than 3% of an acquired fund's outstanding shares from redeeming or submitting for redemption or tendering for repurchase more than 3% of the acquired fund's total outstanding shares in any 30-day period. This condition would limit funds' investment flexibility because it would reduce a fund's ability to quickly change its portfolio.[260] Untabulated analysis shows that as of June 2018, out of the 4,342 acquiring funds, 809 hold more than 3% of an acquired fund's outstanding shares and would thus be affected by the proposed limit on fund redemptions.[261] In addition, between January 2017 and June 2018, 0.76% (0.16%) of the redemptions of listed (unlisted) acquired fund shares exceeded the 3% redemption limit.[262] Hence, we expect that the impact of the redemption limit on funds' investment flexibility would likely be small.

Second, proposed rule 12d1–4 and the rescission of the exemptive orders would limit funds' investment flexibility by limiting certain multi-tier structures. Our current exemptive orders prohibit an acquired fund from investing in other funds beyond the limits in section 12(d)(1), but they do not prohibit a fund from investing in an acquiring fund beyond the limits of section 12(d)(1).[263] Proposed rule 12d1–4 would provide that a fund relying on section 12(d)(1)(G) of the Act or on rule 12d1–4 may not acquire the outstanding voting securities of a fund that discloses in its registration that it may be an acquiring fund under the rule 12d1–4 in excess of the limits in section 12(d)(1)(A). Hence, proposed rule 12d1–4 would limit funds' investment flexibility by limiting multi-tier structures that are formed when a fund invests in an acquiring fund.

Third, section 12(d)(1)(G) requires an acquired fund to have a policy that prohibits it from acquiring any securities of a registered open-end fund or UIT in reliance on section 12(d)(1)(G) or (F), but section 12(d)(1)(G) does not require the acquired fund to have a policy that prohibits it from acquiring the securities of a fund in excess of the limits in section 12(d)(1)(A) in reliance on an exemptive order issued by the Commission. The rescission of the current exemptive orders could limit funds' investment flexibility in two possible ways. To the extent that a fund relying on section 12(d)(1)(G) invests in an acquired fund that then invests in underlying funds in reliance on an exemptive order, the rule proposal could require the section 12(d)(1(G) acquiring fund to change its investment. Alternatively, funds relying on section 12(d)(1)(G) could invest in the same acquired funds, but those acquired funds would be required to reduce their investments in other funds up to the limits of sections 12(d)(1)(A) of the Act. Our analysis shows no three-tier structures created in reliance on 12(d)(1)(G) and our exemptive orders that would be affected by the rescission of our exemptive orders. Nevertheless, our analysis is limited by data availability and hence potentially could underestimate the number of affected parties.

Fourth, the rescission of rule 12d1–2 would have a similar effect as the rescission of the exemptive orders on multi-tier structures for which the top-tier fund relies on section 12(d)(1)(G).[264] In particular, the rescission of rule 12d1–2 would force certain acquiring funds that currently rely on section

[259] *See* section II.A. for a detailed list of permissible acquiring and acquired funds under current exemptive relief.

[260] In particular, as proposed, we estimate that it could take up to 10 months for an acquiring fund that fully unwinds its investment in an acquired fund, if that fund holds 25% of the outstanding shares of the acquired fund (*i.e.,* up to the control limit), and must comply with the proposed rule's 3% redemption limit. Acquiring funds that meet the control exceptions in proposed rule 12d1–4(b)(1)(iii) could hold more than 25% of an acquired fund's outstanding securities and would require additional time to unwind their investment in an acquired fund.

[261] In this and subsequent analysis, we assume that all 4,342 acquiring funds identified in Table 1 above would rely on proposed rule 12d1–4 to invest in other registered funds or BDCs beyond the limits of section 12(d)(1), and thus would be subject to the proposed rule's conditions. To the extent that our analysis overestimates the number of acquiring funds that would rely on proposed rule 12d1–4, our analysis potentially overestimates the economic impacts of the proposed rule. We are unable to estimate the number of acquiring funds that would rely on proposed rule 12d1–4 because of data limitations and because we are unable to anticipate how acquiring funds may change their investment strategies in response to the proposed rule.

[262] The percentage of fund redemptions that are above the 3% limit in any 30-day period is expected to be different than the reported statistics during periods of high volatility or decreasing asset prices. As a robustness test, we examine fund redemptions between October 2007 and March 2009 (*i.e.,* a period with high volatility and decreasing asset prices), and find that 1.36% (0.4%) of the redemptions of listed (unlisted) acquired fund shares exceeded the 3% redemption limit. *See supra* footnote 125 for a description of the methodology used to estimate fund redemptions.

[263] For example, a fund could rely on section 12(d)(1)(G) to invest in an acquiring fund and that fund, in turn, could invest in another fund in reliance on an exemptive order.

[264] The rescission of rule 12d1–2 would not affect the investment flexibility of funds that currently rely on section 12(d)(1)(G) and rule 12d1–2 to structure two-tier funds of funds because funds could rely on proposed rule 12d1–4 to structure the same two-tier funds of funds. Funds that would continue to rely on section 12(d)(1)(G) would no longer be able to acquire securities of other funds that are not part of the same group of investment companies or invest directly in stocks, bonds, and other securities.

We estimate that there are 1,055 acquiring funds that rely on section 12(d)(1)(G) and rule 12d1–2 to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1) as of June 2018. *See supra* footnote 244 for identification methodology of 12(d)(1)(G) funds. Our methodology may overestimate the number of acquiring funds that rely on section 12(d)(1)(G) because our data does not allow us to differentiate between funds that rely on section 12(d)(1)(G) and funds that rely on an exemptive order to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1). Under the rule proposal, a fund relying on section 12(d)(1)(G) would still have flexibility to invest in money market funds that are not part of the same group of investment companies in reliance on the proposed amendments to rule 12d1–1.

12(d)(1)(G) to instead rely on proposed rule 12d1–4, and thus comply with the complex structures condition of the proposed rule. As a result, either the top-tier or the middle-tier acquiring funds could be required to change their portfolio to ensure compliance with the proposed rule. As mentioned above, our analysis shows no three-tier structures—where the top-tier fund relies on section 12(d)(1)(G) and the middle-tier fund relies on exemptive orders to invest in other funds beyond the limits of section 12(d)(1)—that would be required to modify their investments.

To the extent that the rule proposal would require some existing funds of funds to change their portfolios to ensure compliance with the rule proposal, portfolio changes could: (i) Impose transaction costs on acquiring funds; (ii) force acquiring funds to sell the shares of acquired funds at potentially depressed prices; (iii) disrupt the acquiring funds' investment strategy; (iv) impose liquidity demands on acquired funds as a result of the acquiring fund redemptions; and (v) have tax implications, which would depend on whether the acquiring fund would sell appreciated or depreciated shares of acquired funds. Any negative effects on acquired funds' liquidity or investment strategy as a result of the proposed rule's conditions potentially may be more pronounced for acquired funds that are not part of a group of investment companies. Academic literature suggests that funds tend to provide liquidity to affiliated funds that face liquidity shocks.[265] Any costs of portfolio changes would be mitigated by the fact that funds would be granted one year to bring their operations in compliance with the rule proposal.

We request comment on the following:

- Are there any three-tier structures created in reliance on 12(d)(1)(G) and our exemptive orders that would be affected by the rescission of our exemptive orders and the proposed conditions in rule 12d1–4?

- Are there any three-tier structures created in reliance on 12(d)(1)(G) and our exemptive orders that would be affected by the rescission of rule 12d1–2 and the proposed conditions in rule 12d1–4?

[265] Bhattacharya et al. 2013 shows that affiliated funds of funds ''provide an insurance pool against liquidity shocks to other funds in the family'' (Utpal Bhattacharya, Jung H. Lee, & Veronika K. Pool, *Conflicting Family Values in Mutual Fund Families,* 68 J. of Fin., 173 (Feb. 2013)).

b. Eliminate Need To Apply for Exemptive Order

In return for meeting certain conditions, proposed rule 12d1–4 would permit prospective acquiring funds to acquire the securities of other funds beyond the limits of section 12(d)(1)(A) of the Act without the expense and delay of obtaining an exemptive order.[266] Assuming that the number of exemptive orders granted by the Commission would stay the same absent the proposed rule, we estimate that by removing the need to obtain an exemptive order, the proposed rule would eliminate annual aggregate administrative costs to prospective acquiring and acquired funds of approximately $5,400,000 relative to the baseline.[267] Any direct administrative cost savings arising from removing the need to apply for an exemptive order are likely limited by the fact that each exemptive order can be used by multiple funds within the same fund complex and the costs of the exemptive order application process are one-time costs. Any cost savings to prospective acquiring and acquired funds derived from eliminating the need to apply for an exemptive order likely would be more pronounced for smaller funds because the administrative cost of the exemptive order application process likely does not vary with fund size, and thus may constitute a higher percentage of a smaller fund's assets.

The proposed rule also would remove the delay incurred by funds and their sponsors when applying for an exemptive order. As mentioned above, the average time it took a non-ETF (ETF) fund to obtain exemptive relief in 2017 was 377 (321) days.[268] If funds were not required to apply for an exemptive order, prospective acquiring funds would not be required to forgo investments in other funds while awaiting exemptive relief, which ultimately would increase the efficient allocation of fund assets because funds would be able to better determine the timing of their investments in other funds. Further, if the delay associated with the exemptive order process were removed, prospective acquiring funds would be able to bring new products to the market faster, which would expand investors' investment opportunities. Prospective acquired funds also would benefit because the acquiring funds' investments in them would increase their assets more quickly, and as a result the acquired funds could achieve economies of scale more quickly, ultimately benefitting the existing shareholders of the acquired funds.

The proposed rule also would remove the uncertainty associated with the exemptive order process. The exemptive order process presents uncertainties for funds because both the probability of obtaining an exemptive order and the exact terms of the exemptive order are uncertain. Uncertainty related to the exemptive order process may make funds more cautious when investing, thus potentially suppressing fund investment and growth.[269] Nevertheless, the effects of the proposed rule on uncertainty likely would be limited by the fact that the terms of exemptive relief for funds of funds have become to a large extent standardized and the approval of applications for exemptive relief has become somewhat routine.

Investors may benefit from these direct and indirect cost reductions if prospective funds pass these savings through to investors by lowering fees and expenses. The degree of potential reduction of fund fees and expenses depends on the level of competition in the fund industry. To the extent that the fund industry is competitive, we believe that funds would pass to investors a higher percentage of cost savings arising from the proposed rule. Conversely, if the level of competition is low, fund advisers, sponsors, and other service providers would retain a higher percentage of cost savings arising from the proposed rule rather than passing these cost savings to investors. Academic literature provides conflicting evidence regarding the level of

[266] Existing funds of funds that currently rely on exemptive orders that provide relief similar to proposed rule 12d1–4 have already incurred the cost of the exemptive order process. Hence, these funds would not benefit from eliminating the need to apply for an exemptive order under proposed rule 12d1–4.

[267] In 2017, the Commission granted 14 non-ETF fund of funds orders and 40 ETF fund of funds orders (*see, supra* footnote 253 for the source of the exemptive order data). Hence, the proposed rule could result in annual aggregate administrative cost savings to funds of funds equal to $5,400,000, *i.e.,* $5,400,000 = (14 non-ETF fund of funds orders + 40 ETF fund of funds orders) × $100,000 administrative cost per exemptive order. The cost savings associated with removing the need to apply for exemptive relief for ETF fund of funds as discussed here are separate from the cost savings associated with removing the need to apply for exemptive relief for ETFs as discussed in the ETF proposing release. *See* 2018 ETF Proposing Release, *supra* footnote 34, at n. 206.

[268] *See supra* footnote 253 for the source of the exemptive order data.

[269] Academic literature provides evidence consistent with the idea that uncertainty has negative effects on investment and growth. *See, e.g.,* Nick Bloom, Stephen Bond, & John Van Reenen, *Uncertainty and Investment Dynamics,* 74 Rev. of Econ. Stud., 391 (Apr. 2007); Nicholas Bloom, *The Impact of Uncertainty Shocks,* 77 Econometrica, 623 (May 2009); Scott R. Baker, Nicholas Bloom, & Steven J. Davis, *Measuring Economic Policy Uncertainty,* 131 The Q. J. of Econ., 1593 (Nov. 2016).

competition in the fund industry. On one hand, a number of papers provide some evidence that the U.S. fund industry is competitive and that higher competition in the fund industry is associated with lower fund fees and expenses.[270] On the other hand, a number of papers suggest that price competition is not prevalent in the fund industry.[271] We believe there are two potential explanations as to why prior literature provides conflicting evidence on the level of competition in the fund industry. First, prior literature uses different sample periods, focuses on different market segments, and uses different units of observation (*i.e.,* individual funds versus fund families). Second, it is possible that funds do not compete on fees, but instead compete on performance and services.

Further, the cost savings to prospective funds of avoiding the exemptive order process under proposed rule 12d1–4 could potentially increase the number of funds of funds available to investors.[272] The Commission granted 14 non-ETF fund of funds orders and 40 ETF fund of funds orders in 2017.[273] We are unable to estimate the number of new funds of funds that would be created following the potential adoption of the proposed rule, but we believe that the number of new funds of funds would be higher than the number of funds of funds that were created as a result of the exemptive orders granted in 2017.

Academic research suggests that investment decisions are sensitive to the number of available investment opportunities.[274] Hence, investor demand for funds of funds could increase as a result of the increased number of funds of funds under the proposed rule. As an alternative to investing in funds of funds, investors could meet their investment objectives by assembling a portfolio of funds through discretionary or non-discretionary separate accounts with a broker/dealer or investment adviser or by investing directly in funds without the intermediation of broker/dealers or investment advisers. Nevertheless, funds of funds could represent an efficient alternative to such a strategy because fund of funds investors can avoid minimum investment requirements, can invest in funds that have been closed to new investors, can invest in funds that are restricted to a particular investor type, can avoid certain transaction costs, and can enjoy lower recordkeeping and monitoring costs relative to investors that directly invest in multiple funds.[275] As a result, the entry of new funds of funds could increase investor demand for funds of funds because it would provide investors the opportunity to obtain diversified exposure to different asset classes through a single, professionally managed portfolio at a potentially lower cost compared to investing in a portfolio of funds through discretionary or non-discretionary separate accounts.

c. New and Omitted Conditions

Proposed rule 12d1–4 would include new conditions relative to the conditions in our current exemptive orders, and would omit certain conditions contained in our exemptive orders that are no longer necessary in light of the new conditions of proposed rule 12d1–4. The new conditions of proposed rule 12d1–4 are designed to limit the acquiring funds' undue influence over the acquired funds, limit the creation of complex fund structures, and limit duplicative and excessive fees for acquiring fund investors. We discuss the benefits and costs of each of the new and omitted conditions of proposed rule 12d1–4 in detail below.

Undue Influence—Voting condition. Proposed rule 12d1–4 allows both investment companies and all other members of the acquiring fund advisory group to either use pass-through or mirror voting for acquired funds that are closed-end funds.[276] In contrast, the exemptive orders only allow investment companies to either use pass-through or mirror voting, but require any other member of the acquiring fund advisory group to use mirror voting for acquired funds that are closed-end funds. The economic effects of proposed rule 12d1–4 for acquired funds that are closed-end funds are likely immaterial because both investment companies and all other members of the acquiring fund advisory group are already restricted in their ability to vote under our current exemptive orders by being required to use pass-through or mirror voting.

Acquiring funds that hold shares of funds that are not closed-end funds would be required to use pass-through or mirror voting more frequently under proposed rule 12d1–4 relative to the exemptive orders because: (i) Pass-through or mirror voting is required at a lower ownership level under proposed rule 12d1–4 and (ii) the requirement for pass-through or mirror voting is unconditional under proposed rule 12d1–4.[277]

The more frequent use of pass-through or mirror voting for acquiring

[270] *See, e.g.,* John C. Coates, IV & R. Glenn Hubbard, *Competition in the Mutual Fund Industry: Evidence and Implications for Policy,* Harvard L. & Econ. Discussion Paper No. 592 (Aug. 2007); Sunil Wahal & Albert (Yan) Wang, *Competition among Mutual Funds,* 99 J. of Fin. Econ., 40 (Jan. 2011); Ajay Khorana & Henri Servaes, *What Drives Market Share in the Mutual Fund Industry,* 16 Rev. of Fin., 81 (Oct. 2011); Burton G. Malkiel, *Asset Management Fees and the Growth of Finance,* 27 J. of Econ. Persp., 97 (Spring 2013). Further, an ICI April 2018 study suggests that the fund of funds industry is competitive: ''Strong asset growth and competitive pressures, fueled by individuals saving for retirement and new target date mutual fund entrants, continue to put downward pressure on target date mutual fund expense ratios.'' (*See supra* footnote 252, p. 28).

[271] For example, Freeman and Brown (2001) argue that there is lack of price competition in the fund industry (John P. Freeman & Steward L. Brown, *Mutual Fund Advisory Fees: The Cost of Conflicts of Interest,* 26 The J. of Corp. L., 609 (Spring 2001)). Further, Barber et al. (2005) find no relation between fund operating expenses and fund flows (Brad M. Barber, Terrance Odean, & Lu Zheng, *Out of Sight, Out of Mind: The Effects of Expenses on Mutual Fund Flows,* 78 J. of Bus., 2095 (Nov. 2005)). Gil-Bazo and Ruiz-Verdú (2009) shows that funds with worse before-fee performance charge higher fees (Javier Gil-Bazo & Pablo Ruiz-Verdú, *The Relation between Price and Performance in the Mutual Fund Industry,* 64 J. of Fin., 2153 (Oct. 2009)).

[272] Our analysis identified no acquiring BDCs as of June 2018. We expect that the effect of the rule proposal on the number of acquiring BDCs will be limited because BDCs are prohibited from making any investment unless, at the time of the investment, at least 70% of the BDC's total assets are invested in securities of certain specific types of companies, which do not include funds (*see supra* footnote 37).

[273] *See supra* footnote 267.

[274] *See* Benartzi and Thaler (2001) presenting survey evidence and plan-level statistics that support the idea that retirement plan investors practice ''1/n'' diversification across all available investment alternatives (Shlomo Benartzi & Richard H. Thaler, *Naive Diversification Strategies in Defined Contribution Saving Plans,* 91 a.m. Econ. Rev., 79 (Mar. 2001)). But, Huberman and Jiang (2006) demonstrate that individual-level analysis of 401(k) plan data yields different results from plan-level analysis, showing that individuals are less sensitive to the overall number of investment alternatives, but may practice ''1/n'' within a smaller subset of alternative investments (Gur Huberman & Wei Jiang, *Offering versus Choice in 401(k) Plans: Equity Exposure and Number of Funds,* 61 J. of Fin., 763 (Apr. 2006)).

[275] *See, e.g.,* Elton et al. (2015), which shows that ''additional expenses charged by TDFs are largely offset by the low-cost share classes they hold, not normally open to their investors'' (Edwin J. Elton, Martin J. Gruber, Andre de Souza, & Christopher R. Blake, *Target Date Funds: Characteristics and Performance,* 5 Rev. of Ass. Pric. Stud., 254 (May 2015)).

[276] The voting provisions for separate accounts in the proposed rule would be the same as the voting provisions in section 12(d)(1)(E)(iii)(aa) of the Act, which we believe most insurance product separate accounts already comply with. Thus, we do not believe the voting provisions for separate accounts would have an economic impact.

[277] The current exemptive orders require pass-through or mirror voting if an acquiring fund and its advisory group, in the aggregate, hold more than 25% of the acquired fund's outstanding voting securities as a result of a decrease in the outstanding voting securities of an acquired fund, but the proposed rule would require pass-through or mirror voting whenever the acquiring fund and its advisory group own more than 3% of the acquired fund's outstanding voting securities.

funds that hold shares of funds that are not closed-end funds under proposed rule 12d1–4 could limit the ability of acquiring funds to exercise undue influence over the acquired funds.

At the same time, the more frequent use of pass-through or mirror voting for acquiring funds that hold shares of funds that are not closed-end funds could increase distortions in the voting process. In particular, pass-through and mirror voting requirements can decrease the voting power of acquiring funds and consequently increase the voting power of the remaining acquired fund shareholders, potentially introducing distortions in the voting process. We expect that the distortive effect of mirror voting could be more pronounced than the distortive effect of pass-through voting because pass-through voting allows the acquiring fund to vote in accordance with the instructions of its shareholders while mirror voting requires the acquiring fund to vote in the same proportion as the vote of all other holders of the acquired fund shares, which effectively nullifies the voting power of the acquiring fund. The economic effect of any distortions in the voting process is unclear ex-ante and would depend on: (i) The percentage of acquired fund shares that are held by non-fund shareholders and funds that are not subject to the voting conditions; (ii) the composition of the shareholders (*e.g.,* retail versus institutional investors);[278] and (iii) how frequently votes are close and so the acquiring fund's voting could determine the outcome of the vote.

At the same time, the more frequent use of pass-through or mirror voting under proposed rule 12d1–4 relative to the exemptive orders for acquired funds that are not closed-end funds would impose voting restrictions on acquiring funds, and thus could reduce funds' incentives to acquire large blocks of shares and potentially support value-increasing actions through their voting.[279]

An additional cost of the voting provision of proposed rule 12d1–4 for acquired funds that are not closed-end funds is that acquiring funds would be required to more frequently engage in pass-through or mirror-voting and incur the associated costs. We estimate that all funds subject to the voting provision of proposed rule 12d1–4 would incur a one-time burden to update their proxy voting policies and related voting disclosures to reflect that the fund is subject to the voting provisions of the proposed rule. This one-time burden would be equal to $6,246 per fund and would result in an aggregate one-time burden equal to $5,053,014.[280] We estimate that each year after the adoption of the proposed rule, mirror voting by acquiring funds subject to the voting condition would impose an aggregate annual ongoing burden of $4,499,165.[281] Pass-through voting by acquiring funds would impose an aggregate annual ongoing burden equal to $907,776.[282] Funds potentially could pass any higher administrative costs associated with the new voting provisions to their shareholders in the form of higher operating expenses. Any such additional administrative costs would be partially mitigated by the fact that funds currently relying on exemptive orders already have in place policies and procedures to implement pass-through and mirror voting.[283]

The voting provisions of proposed rule 12d1–4 are more streamlined than the voting provisions under our current exemptive orders because the same voting provisions apply for both closed-end and other types of acquired funds, and the same voting provisions apply regardless of whether the voting party is an investment company or not.[284] Untabulated analysis shows that as of June 2018, out of the 4,342 acquiring funds, 809 hold more than 3% of an acquired fund's outstanding shares.[285] Hence, we expect that the proposed rule's pass-through and mirror voting provisions could be binding in certain circumstances.

We request comment on the following:

- How do funds currently cast their votes in shareholder meetings? What is the cost of the current voting procedures? What are the determinants of the costs of the current voting procedures? Please provide a breakdown of the costs of the current voting procedures by type of cost.
- What is the initial and ongoing cost of a mirror voting procedure? What are the determinants of the costs of mirror voting? Do funds currently have in place procedures for mirror voting? How frequently is mirror voting currently used by funds? Please provide a breakdown of the costs for mirror voting by type of cost.
- What is the initial and ongoing cost of a pass-through voting procedure? What are the determinants of the costs of pass-through voting? Do funds currently have in place procedures for

[278] There are large differences in voting involvement by institutional investors compared to retail investors (*see, e.g.,* Broadridge and PwC, 2018, ProxyPulse: 2018 Proxy Season Review, available at *https://www.broadridge.com/_assets/pdf/broadridge-2018-proxy-season-review.pdf*).

[279] Academic literature provides some evidence that shareholder activism has a positive effect on target funds (*see, e.g.,* Martin Cherkes, Jacob S. Sagi, & Z. Jay Wang, *Managed Distribution Policies in Closed-End Funds and Shareholder Activism,* 49 J. of Fin. and Quant. An., 1311 (Oct./Dec. 2014); Michael Bradley, Alon Brav, Itay Goldstein, & Wei Jiang, *Activist Arbitrage: A Study of Open-Ending Attempts of Closed-End Funds,* 95 J. of Fin. Econ., 1 (Jan. 2010)). Academic literature provides mixed evidence on whether funds are activist investors, *i.e.,* tend to vote with or against the management of the target companies (*see, e.g.,* Dragana Cvijanovic, Amil Dasgupta, & Konstantinos E. Zachariadis, *Ties that Bind: How Business Connections Affect Mutual Fund Activism,* 71 J. of Fin., 2933 (Dec. 2006); Rasha Ashraf, Narayanan Jayaraman, & Harley E. Ryan, Jr., *Do Pension-Related Business Ties Influence Mutual Fund Proxy Voting? Evidence from Shareholder Proposals on Executive Compensation,* 47 J. of Fin. and Quant. An., 567 (Jun. 2012); Gerald F. Davis, & E. Han Kim, *Business Ties and Proxy Voting by Mutual Funds,* 85 J. of Fin. Econ., 552 (Aug. 2007)). There is some evidence, however, of increased activism by funds, other than hedge funds, over time (*see, e.g.,* J.P. Morgan, *The 2017 Proxy Season: Globalization and a New Normal for Shareholder Activism,* available at *https://www.jpmorgan.com/jpmpdf/1320739681811.pdf*).

[280] This estimate is based on the following calculation: $5,053,014 = ($1,176 one-time internal burden + $5,070 one-time external burden) × 809 acquiring funds. *See infra* footnotes 350 and 353.

[281] This estimate is based on the following calculation: $4,499,165 = ($1,176 ongoing annual internal burden + $400 ongoing annual external burden) × 793 acquiring funds × 3.6 mirror votes per year. *See infra* footnotes 354, 356, and 358.

[282] This estimate is based on the following calculation: $907,776 = ($11,760 ongoing annual internal burden + $4,000 ongoing annual external burden) × 16 acquiring funds × 3.6 pass-through votes per year. *See infra* footnotes 355, 357, and 359.

[283] We expect that certain funds that currently rely on section 12(d)(1)(G) and rule 12d1–2 to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1) would rely on proposed rule 12d1–4 following the potential adoption of the rule proposal. Those funds would incur the administrative costs to set up policies and procedures to implement pass-through and mirror voting because they currently do not have in place these policies and procedures. We estimate that there are 1,055 acquiring funds that rely on section 12(d)(1)(G) and rule 12d1–2 to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1) as of June 2018 (*see supra* footnote 264). We are unable to estimate how many of those funds would decide to rely on proposed rule 12d1–4 to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1) because of data limitations and complexity and uncertainty of such an estimate. We are also unable to estimate the extent to which the costs of developing policies and procedures to implement pass-through and mirror voting would reduce fund incentives to rely on proposed rule 12d1–4 instead of section 12(d)(1)(G) and amended rule 12d1–1.

[284] The voting provisions of proposed rule 12d1–4 are not applicable when an acquiring fund is within the same group of investment companies as an acquired fund or the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor (*see supra* section II.C.1.b).

[285] Due to data limitations we use total rather than voting shares outstanding for this analysis. Data is retrieved from Morningstar Direct and Morningstar Investment Company Holdings databases.

pass-through voting? How frequently is pass-through voting currently used by funds? Please provide a breakdown of the costs for pass-through voting by type of cost.

- What are the initial and ongoing costs of mirror voting procedures for funds that rely on sections 12(d)(1)(E) and (F)? What are the initial and ongoing costs of pass-through voting procedures for funds that rely on sections 12(d)(1)(E) and (F)? Are there any funds other than those that rely on exemptive orders and sections 12(d)(1)(E) and (F) that implement pass-through or mirror voting procedures?
- Are there any economic effects associated with the voting provisions of proposed rule 12d1–4 that are not discussed in this section? What are these effects? Is there any data available to estimate the magnitude of these effects? For example, is there any data on the extent to which pass-through votes are actually voted?
- Would funds choose to use mirror voting over pass-through voting or the other way around under proposed rule 12d1–4? What would determine this decision?
- How many of the funds that currently rely on section 12(d)(1)(G) and rule 12d1–2 to invest in funds that are part of the same group of investment companies beyond the limits of section 12(d)(1) would rely on proposed rule 12d1–4 following the potential adoption of the rule proposal?

Undue Influence—Redemption limit. To prevent overreaching and undue influence, current exemptive orders typically require that: (i) Fund boards make certain findings and adopt procedures and (ii) acquiring and acquired funds enter into participation agreements. Proposed rule 12d1–4 would replace these conditions with the requirement that acquiring funds cannot redeem or tender for repurchase more than 3% of the acquired fund's voting shares in any 30-day period.

Omitting the board and participation agreement requirements contained in our current exemptive orders would result in cost savings for funds. We estimate that implementing and monitoring compliance with the conditions associated with acquiring and acquired funds' findings and procedures takes 10 internal burden hours of acquiring and acquired funds' staff time each year, monetized to an annual burden of $3,892, and imposes an external annual cost of $5,470 per acquiring or acquired fund.[286] Accordingly, by eliminating these conditions, we estimate aggregate annual internal cost savings of $14,240,828 for existing acquiring funds and $9,811,732 for existing acquired funds under the proposed rule, as well as aggregate external cost savings of $20,014,730 for existing acquiring funds and $13,789,870 for existing acquired funds.[287]

Additionally, we estimate that negotiating the terms and entering into a participation agreement would initially cost each fund between $6,000 and $12,000. We also estimate that, on average, each acquiring fund enters into participation agreements with 3 new acquired funds each year. Accordingly, we estimate that existing acquiring and acquired funds would realize an aggregate initial annual cost savings of $98,793,000 as a result of the proposed rule's elimination of the need to draft participation agreements.[288] In addition, funds would no longer incur the costs associated with implementing the terms and monitoring compliance with participation agreements. We estimate that for each fund the ongoing costs are half of the initial one-time cost of negotiating the terms and entering into a participation agreement. Hence, the annual cost savings for acquiring and acquired funds as a result of eliminating the need to implement the terms and monitor compliance with the participation agreements would be approximately $181,120,500.[289]

By omitting the participation agreement requirement, proposed rule 12d1–4 also could limit acquired funds' ability to block the acquisition of their shares by certain acquiring funds by refusing to enter into participation agreements with those funds.[290] Restricting the ability of funds to decide on who invests in them could have a negative effect on acquired funds' performance, assuming that acquired funds would no longer be able to block the acquisition of their shares by certain acquiring funds that they believe may exercise undue influence over them. Nevertheless, other provisions of proposed rule 12d1–4, such as the redemption limit, would mitigate the risk that acquiring funds could exercise undue influence over acquired funds under proposed rule 12d1–4. At the same time, restricting the ability of funds to determine which acquiring funds may invest in them could have a positive effect on acquired funds' performance, assuming that acquired funds otherwise would block activist investors, who could have a positive effect on acquired funds' governance and operations, and thus have a positive effect on fund performance.[291]

[286] This 10 hour estimate is based on our analysis, which shows that each acquiring fund invests, on average, in 12 acquired funds and each acquired fund has sold its shares, on average, to 17 acquiring funds. To estimate the average number of acquired and acquiring funds, we use the investments of 3,659 acquiring funds (*i.e.,* 4,342 acquiring funds from Table 1 above less 683 acquiring funds that solely invest in unregistered acquired funds) in 2,521 acquired funds (*i.e.,* 2,521 acquired funds from Table 1 above) because only registered investment companies and BDCs that invest in other registered investment companies and BDCs beyond the limits of section 12(d)(1) are currently required to enter into participation agreements under our exemptive orders. *See also supra* section II.A. for an overview of the types of arrangements that have been permitted by our exemptive orders.

[287] These estimates are based on the following calculations:

For internal costs, 4 hours × $317 hourly rate for a senior portfolio manager = $1,268; 4 hours × $480 blended hourly rate for an assistant general counsel ($449) and a chief compliance officer ($511) = $1,920; 2 hours × $352 hourly rate for a compliance attorney = $704. $1,268 + $1,920 + $704 = $3,892; $3,892 × 3,659 acquiring funds = $14,240,828 and $3,892 × 2,521 acquired funds = $9,811,732. *See supra* footnote 286 (describing the estimate of 3,659 affected acquiring funds).

For external costs, 1 hour × $400 hourly rate for outside counsel = $400 and 1 hour × $5,070 hourly rate for board of directors = $5,070. $400 + $5,070 = $5,470; $5,470 × 3,659 acquiring funds = $20,014,730 and $5,470 × 2,521 acquired funds = $13,789,870.

In this and subsequent analysis, our estimates may overestimate cost savings because we assume that all existing acquiring funds that invest in at least one registered fund or BDC and all acquired registered funds and BDCs currently rely on exemptive orders, and would rely on proposed rule 12d1–4.

Our estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report'').

[288] These estimates are based on the following calculations: 3 new acquired funds × 3,659 acquiring funds × ($6,000 + $12,000)/2 average cost of negotiating the terms and entering into a participation agreement = $98,793,000. *See supra* footnote 286 (describing the estimate of 3,659 affected acquiring funds). The cost savings brought by eliminating the need to draft a participation agreement only accrue to prospective acquiring-acquired fund pairs because funds in existing acquiring-acquired fund relationships have already incurred the cost of drafting a participation agreement.

[289] This estimate is based on the following calculation: 3,659 acquiring funds × 11 acquired funds that an acquiring fund invests in on average × ($6,000 + $12,000)/2 average cost of negotiating the terms and entering into a participation agreement × 0.5 of the cost of negotiating the terms and entering into a participation agreement = $181,120,500. *See supra* footnote 286 (describing the estimate of 3,659 acquiring funds).

[290] Under proposed rule 12d1–4, acquiring funds could still block the acquisition of their shares by all other funds by disclosing in their registration statements that they may be acquiring funds.

[291] *See supra* footnote 279.

The redemption limit would protect acquired funds from the undue influence that acquiring funds could exercise over them through the threat of large-scale redemptions. However, the redemption limit would impose several costs on acquiring funds. First, the redemption limit would impose one-time and ongoing costs on acquiring funds because the funds would be required to monitor their fund redemptions to ensure that they do not violate the 3% redemption limit. The one-time costs could include: (i) Developing policies and procedures to ensure compliance with the redemption limit; (ii) planning, coding, testing, and installing system modifications to ensure compliance with the limit; (iii) integrating and implementing policies and procedures related to the redemption limit; and (iv) preparing training materials and administering training sessions for staff in affected areas. The ongoing costs include: (i) Continuous monitoring of fund redemptions and the percentage of acquired fund shares that the acquiring fund owns; (ii) periodic review of the policies and procedures put in place to monitor the redemption limit; (iii) system maintenance; and (iv) additional staff training. We estimate that the one-time internal hour burden of the redemption limit would be equal to 253 hours for each fund, monetized at $102,936, which would result in an aggregate internal burden of 1,098,526 hours, monetized at $446,948,112 for all acquiring funds.[292] We also estimate that the ongoing internal burden of the redemption limit would be equal to 20% of the initial burden of the redemption limit and thus would result in an aggregate ongoing annual internal burden of 219,705 hours, monetized at $89,389,622.[293] Further, we estimate that the one-time external cost of the redemption limit would be equal to $101,400 for each fund, which would result in an aggregate external cost of $440,278,800 for all acquiring funds.[294] We also estimate that the ongoing annual external cost of the redemption limit would be equal to 20% of the initial external cost of the redemption limit, and thus would result in an aggregate ongoing annual external cost of $88,055,760.[295]

Second, the proposed rule's redemption limit could impose liquidity constraints on current and prospective acquiring funds because acquiring funds would be unable to quickly liquidate their investments in other funds.[296] In particular, assuming that an acquiring fund would hold up to 25% of the outstanding shares of an acquired fund (*i.e.,* control limit) and assuming it would only be allowed to redeem 3% of the acquired fund shares in every 30-day period (*i.e.,* redemption limit), it would take the acquiring fund 10 months to fully unwind its investment in the acquired fund, assuming no other concurrent changes in the number of acquired fund shares that are unrelated to the acquiring fund's redemptions. Between January 2017 and June 2018, 0.76% (0.16%) of the redemptions of listed (unlisted) acquired fund shares exceeded the 3% redemption limit.[297] Hence, fund redemptions in excess of 3% in any 30-day period during this 18-month sample period are not frequent. However, we acknowledge that this condition could have a larger impact during periods of decreasing prices or high volatility.[298] In addition, as of June 2018, 809 of the 4,342 acquiring funds hold over 3% of the outstanding shares of at least one acquired fund, and thus would be affected by the proposed rule's redemption limit. Any negative effects on acquiring funds' liquidity as a result of the proposed rule's redemption limit would potentially be more pronounced for acquiring funds that do not belong to a fund complex. The reason is that academic literature shows that funds tend to provide liquidity to affiliated funds in the event of adverse liquidity shocks.[299]

Third, the redemption limit could affect funds' investments for the following reasons. The proposed redemption limit would be more binding for acquiring funds that hold unlisted versus listed funds because acquiring funds can dispose of their investments in listed acquired funds in the secondary market without regard for the redemption limit. Hence, as a result of the proposed rule, acquiring funds would likely favor investments in listed over unlisted acquired funds. 41% of the acquired funds (in terms of total gross assets) are currently listed on national securities exchanges. In addition, acquiring funds may favor investments in larger acquired funds because it would be easier to stay below 3% of the acquired fund's outstanding securities and thus not trigger the 3% redemption limit when investing in larger rather than smaller acquired funds.[300]

Lastly, the redemption limit could affect acquiring funds' investments in affiliated funds. Currently, acquiring funds can rely on section 12(d)(1)(G) and rule 12d1–2 to invest in affiliated funds beyond the limits of section 12(d)(1) without a limit on fund redemptions. Following the proposed rescission of rule 12d1–2, some of these acquiring funds could decide to rely on proposed rule 12d1–4 to preserve their investment flexibility. These acquiring funds would be required to comply with

[292] This estimate is based on the following calculation: 115 hours × $324 hourly rate for a senior portfolio manager + 115 hours × blended hourly rate for assistant general counsel ($458) and chief compliance officer ($521) + 23 hours × $408 hourly rate for fund attorney time = $102,936 of one-time cost of redemption limit per fund; 1,098,526 hours = 4,342 acquiring funds × 253 hours of internal burden of redemption limit per fund; $446,948,112 = 4,342 acquiring funds × $102,936 of one-time cost of redemption limit per fund. *See supra* footnote 287 for the source of salary data.

This figure overestimates the total one-time cost associated with the redemption limit because it assumes each acquiring fund would incur these costs on an individual basis. These costs, however, likely would be allocated among multiple acquiring funds within a fund complex. In addition, this figure overestimates the total one-time cost associated with the redemption limit because it includes acquiring funds that rely on proposed rule 12d1–4 solely to purchase and sell acquired fund shares in secondary market transactions. The redemption limit would not apply to secondary market transactions in acquired fund shares.

[293] These estimates are based on the following calculations: 219,705 hours = 20% × 1,098,526 initial hour burden of redemption limit. $89,389,622 = 20% × $446,948,112 of aggregate one-time internal cost of redemption limit.

[294] These estimates are based on the following calculations: 20 hours × $5,070 hourly rate for board of directors = $101,400; 4,342 acquiring funds × $101,400 = $440,278,800.

[295] This estimate is based on the following calculation: $88,055,760 = 20% × $440,278,800 of aggregate one-time external cost of redemption limit.

[296] The impact of the redemption limit on acquiring funds' ability to redeem their investments in other funds could be exacerbated during periods of large fund outflows. In particular, large fund redemptions would decrease the acquired funds' shares outstanding. This decrease in the acquired funds' shares outstanding would further restrict acquiring funds' ability to redeem their investments in acquired funds because the redemption limit is expressed in terms of the acquired funds' shares outstanding. At the same time, the redemption limit could have a positive effect on acquired funds' liquidity because it would slow fund outflows. This positive effect of the redemption limit on acquired funds could be particularly important during periods of poor performance when fund outflows are more pronounced and the risk that acquiring funds exercise undue influence over the acquired fund through the threat of large scale redemptions is also more pronounced.

[297] The frequency for acquiring funds that redeem more than 0.5%, 1%, and 5% of the shares of acquired funds that are listed (are not listed) on an exchange is 4.11%, 2.18%, and 0.40% (0.61%, 0.37%, and 0.07%), respectively.

[298] *See supra* footnote 262 for descriptive statistics on fund redemptions between October 2007 and March 2009 (*i.e.,* a period with high volatility and decreasing asset prices).

[299] *See supra* footnote 265.

[300] Any decrease in the attractiveness of open-end funds as acquired funds because they are unlisted would be mitigated at least partially by an increase in the attractiveness of open-end funds as acquired funds because open-end funds are larger than most registered funds and thus acquiring funds' holdings in open-end funds are less likely to violate the 3% limit of the redemption condition.

the proposed rule's redemption limit, which would apply to their investments in both affiliated and unaffiliated acquired funds. As a result, these acquiring funds may decide to reduce the proportion of their assets invested in affiliated acquired funds to mitigate the cost of the redemption limit.[301]

Fourth, the redemption limit could distort the prices of the underlying securities of the acquired funds by limiting the acquiring funds' ability to sell shares.[302] In particular, the redemption limit could moderate the trading activity of informed traders with negative information, slowing the flow of negative new information to the market, and thus reducing the speed of price discovery and creating temporary deviations of prices from their fundamental values.

Fifth, the control, voting, and redemption conditions in proposed rule 12d1–4 are designed to prevent an acquiring fund from being able to unduly influence an acquired fund, while the provisions in our exemptive orders target certain instances where an acquiring fund may seek to influence an acquired fund (*e.g.,* purchase shares in underwritings in which an affiliate of the acquiring fund is the principal underwriter). We believe that the conditions in the proposed rule provide protection against a broader set of circumstances than the targeted and prescriptive provisions in our exemptive orders and therefore would enhance investor protection. On the other hand, to the extent that the provisions of the proposed rule would not provide protection against all sets of circumstances that the provisions in our exemptive orders explicitly provide protection against, the proposed rule could weaken investor protection.

In addition, the fact that the redemption limit only applies to primary but not secondary market trading could limit the extent to which the redemption limit protects listed acquired funds from acquiring funds' undue influence because selling pressure in the secondary market could depress the prices of listed acquired funds.[303] As a result, acquiring funds could use the threat of large scale secondary market sales that could depress asset prices to exert undue influence over the acquired funds. Acquired funds could be interested in the price of their shares in the secondary market because, among other things, they potentially could be interested in raising additional capital. We believe that the risk of fund asset prices deviating from their fundamental values is mitigated by the likelihood that arbitrageurs would trade and correct such deviations in the long run. Nevertheless, literature provides some evidence of persistent deviations of fund asset prices from their fundamental values.[304]

We request comment on the following:

- Do you agree with our cost savings estimate that would arise from omitting the requirements associated with acquiring and acquired fund boards' findings and procedures? If not, please provide a cost savings estimate that would arise from omitting the requirements associated with acquiring and acquired fund boards' findings and procedures. How many hours do funds spend annually, on average, to implement and monitor compliance with the board findings and procedures required by our orders? What is the job description of each party involved in this process? What is the average hourly wage for each party involved? Do costs differ for acquiring and acquired funds? If yes, in which ways?
- Are there any economic effects that would arise from omitting the board requirements under our exemptive orders that are not discussed in the economic analysis?
- Do you agree with our cost savings estimate that would arise from omitting the requirements to negotiate the terms and enter into a participation agreement? If not, please provide a cost savings estimate for each fund that would arise from omitting the requirement to negotiate the terms and enter into a participation agreement. What is the job description of each party involved in negotiating the terms and entering into the participation agreements? What is the average hourly wage for each party involved? Into how many participation agreements does each acquiring fund enter each year on average?
- Do you agree with our cost savings estimate that would arise from omitting the requirement to implement and monitor compliance with participation agreements? If not, please provide a cost savings estimate that would arise from omitting the requirement to implement and monitor compliance with the participation agreements. What is the job description of each party involved in implementing and monitoring compliance with the participation agreements? What is the average hourly wage for each party involved?
- Are there any economic effects that would arise from omitting the requirement for acquiring and acquired funds to enter into participation agreements beyond those discussed in the economic analysis? For example, would omitting the requirement for a participation agreement change the way in which acquiring funds acquire other funds? Would acquiring funds change the frequency with which they acquire funds through intermediaries? Would such a change have any economic effects? Would acquired funds change their agreements with intermediaries?
- Are our cost estimates for the redemption limit accurate? If not, what types of one-time costs would the redemption limit impose to acquiring funds? What types of ongoing costs would the redemption limit impose to acquiring funds? Please provide an estimate for the one-time and ongoing costs of the redemption limit. What is the job description of each party involved in implementing and monitoring compliance with the redemption limit? What is the average hourly wage for each party involved?
- Is our description of the economic effects of the redemption limit accurate?

[301] The cost of the redemption limit increases with the acquiring fund's ownership of the acquired fund. Under proposed rule 12d1–4, acquiring funds are prohibited from acquiring unaffiliated funds beyond the control limit, but they may acquire an unlimited amount of shares of affiliated funds. Hence, to the extent that acquiring funds would acquire the maximum permissible amount in affiliated and unaffiliated funds, the potential cost of the redemption limit would be higher for fund investments in affiliated funds than in unaffiliated funds.

[302] Literature provides evidence that short selling constraints can harm price discovery (*see, e.g.,* Alessandro Beber & Marco Pagano, *Short-Selling Bans Around the World: Evidence from the 2007–09 Crisis,* 68 J. of Fin., 343 (Feb. 2013); Charles M. Jones & Owen A. Lamont, *Short-Sale Constraints and Stock Returns,* 66 J. of Fin. Econ., 207 (Nov./Dec. 2002)). Redemption limits could affect price discovery similar to short selling constraints because both redemption limits and short selling constraints impose limits on sales.

[303] For example, Chordia et al. (2002) show that asset prices are temporarily affected by buying and selling pressures (Tarun Chordia, Richard Roll, & Avanidar Subrahmanyam, *Order Imbalance, Liquidity, and Market Returns,* 65 J. of Fin. Econ., 111 (Jul. 2002)). Literature also shows that demand and supply shocks can result in price reactions that reverse slowly. For example, Duffie (2010) shows that price reversals following price responses to demand and supply shocks can be slow due to impediments to capital movement, such as search costs (Darrell Duffie, *Presidential address: Asset Price Dynamics with Slow Moving Capital,* 65 J. of Fin., 1237 (Aug. 2010)).

[304] *See, e.g.,* Engle and Sarkar (2006), Buetow and Henderson (2012), Madhavan and Sobczyk (2016), and Petajisto (2017) for empirical evidence on premiums and discounts for ETFs (Robert Engle & Debojyoti Sarkar, *Premiums-Discounts and Exchange Traded Funds,* 13 J. of Der., 27 (Summer 2006); Gerald W. Buetow & Brian J. Henderson, *An Empirical Analysis of Exchange-Traded Funds,* 38 J. of Port. Manag., 112 (Summer 2012); Ananth Madhavan & Aleksander Sobczyk, *Price Dynamics and Liquidity of Exchange-Traded Funds,* 14 J. of Inv. Manag., 1 (2016); Antti Petajisto, *Inefficiencies in the Pricing of Exchange-Traded Funds,* 73 Fin. Anal. J., 24 (1st Quarter 2017)).

Are there any economic effects of the redemption limit that are not discussed in the economic analysis? For example, could the redemption limit increase acquiring funds' costs to monitor their investments by forcing them to invest in multiple funds in lieu of investing in a single fund to avoid the limit on fund redemptions? Other than the parties identified in the economic analysis, please identify any other parties that could be differentially affected by the redemption limit.

• Would the redemption limit together with the control and voting provisions of proposed rule 12d1–4 appropriately protect acquired funds from acquiring funds' undue influence?

Duplicative and excessive fees. As discussed above, the current exemptive orders contain certain conditions designed to prevent duplicative and excessive fees for acquiring fund shareholders.[305] Proposed rule 12d1–4 would replace these conditions with the following conditions. For management companies, proposed rule 12d1–4 would require the acquiring fund's adviser to evaluate the complexity of the structure and the aggregate fees associated with the acquiring fund's investment in acquired funds and find that it is in the best interest of the acquiring fund to invest in acquired funds. The acquiring fund's adviser must make this finding before investing in acquired funds in reliance on the proposed rule and with such frequency as the acquiring fund's board deems reasonable and appropriate, but in any case, no less frequently than annually. The acquiring fund's adviser must report its finding and the basis for the finding to the acquiring fund's board of directors to enable the board to exercise effective oversight. Additionally, the proposed rule would require the acquiring fund to maintain and preserve a written record of the adviser's finding, the basis for the finding, and the adviser's reports to the board.

For UITs, on or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor must evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in acquired funds, and find that the fees of the UIT do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit. The proposed rule would require the acquiring fund to maintain and preserve a written record of the finding of the principal underwriter or depositor.

For separate accounts, the proposed rule would require an acquiring fund to obtain a certification from the insurance company issuing the separate account that it has determined that the fees borne by the separate account, acquiring fund and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act. The proposed rule would also require the acquiring fund to maintain and preserve a written record of each certification obtained by the acquiring fund.

We believe that omitting the requirements contained in our current exemptive orders likely would not have an economic effect. First, the FINRA sales charge rule remains applicable to certain funds of funds regardless of the proposed rule's requirements. Second, current exemptive orders require that the acquiring fund's adviser should waive advisory fees and the acquiring fund's board should make certain findings regarding advisory fees. These requirements also are part of the advisers' and boards' fiduciary duties.[306] Consequently, advisers and boards would fulfill these requirements regardless of the proposed rule's conditions.

We also believe that the fee conditions of the proposed rule might better protect acquiring fund shareholders from duplicative and excessive fees because they are broader than the requirements included in the exemptive orders. For example, the requirement in the exemptive orders that the acquiring fund board should find that advisory fees are based on services provided that are in addition to, rather than duplicative of, the services provided by an adviser to an acquired fund is redundant in light of a fund board's fiduciary duties and statutory obligations. Under proposed rule 12d1–4, the adviser should evaluate the complexity of the fund of funds structure and also evaluate aggregate fees of all tiers in the fund of funds arrangement with an eye towards duplication. Further, the proposed rule includes a number of additional requirements that are not included in the exemptive orders and are tailored to the characteristics of certain categories of acquiring funds. For example, the proposed rule would impose different fee conditions for management companies and UITs to account for the unique characteristics of UITs.

At the same time, the fee conditions of the proposed rule would result in one-time and ongoing implementation and monitoring costs. A management company's adviser would bear one-time costs to evaluate the complexity of the structure and aggregate fees associated with the acquiring fund's investment in acquired funds. The proposed rule does not require an acquiring fund's adviser to evaluate the complexity of the structure and aggregate fees in connection with every investment in an acquired fund, and advisers may consider developing policies and procedures to evaluate the complexity of the fund of funds' structure and the aggregate fees associated with the acquiring fund's investment in acquired funds. The Commission staff estimates that the evaluations would impose an initial cost of $28,615 per fund resulting in an aggregate initial cost of $96,518,395.[307]

The ongoing costs for management companies include: (i) Advisers' initial and periodic evaluation, as frequently as required by the board, of the complexity of the structure and aggregate fees and expenses associated with their investments in acquired funds; (ii) advisers' preparation and reporting of their finding and the basis for the finding to the acquiring fund's board of directors; and (iii) the recordkeeping costs associated with maintaining and preserving a written record of the adviser's finding, the basis for the finding, and the adviser's reports to the board. The Commission staff estimates that the evaluations—including board oversight responsibilities, recordkeeping obligations, and the board engaging outside counsel to review the evaluations—would impose ongoing annual costs of $32,237 per fund resulting in an aggregate ongoing annual cost of $108,735,401.[308]

UITs' principal underwriters or depositors would bear one-time costs to evaluate the fund of funds' complexity and the aggregate fees associated with the UIT's investment in acquired funds. The one-time cost to evaluate the fund of funds' complexity and the aggregate fees would be equal to $13,405 per UIT

[305] *See supra* section VI.B.2.b.

[306] *See, e.g., supra* footnotes 148 and 149.

[307] This estimate is based on the following calculation: ($11,005 initial internal burden per management company + $17,610 initial external burden per management company) × 3,373 acquiring management companies = $96,518,395. *See* also *infra* footnotes 365 and 368.

[308] This estimate is based on the following calculation:

($2,887 ongoing internal annual burden per management company + $5,870 ongoing annual external burden per management company) × 3,373 acquiring management companies = $29,537,361. *See* also *infra* footnote 367 and 369.

(8 hours × $400 hourly rate for outside counsel + 4 hours × $5,070 hourly rate for board of directors) × 3,373 acquiring management companies = $79,198,040. *See supra* footnote 287 for the source of salary data.

$29,537,361 + $79,198,040 = $108,735,401.

resulting in an aggregate initial cost of $12,989,445.[309] Further, UITs would bear ongoing annual recordkeeping costs equal to $388 per UIT resulting in an aggregate ongoing annual recordkeeping cost of $375,972, and they would not bear any other ongoing implementation or monitoring costs because they are only required to evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in an acquired fund at the time of initial deposit.[310]

Lastly, separate accounts would bear initial recordkeeping costs equal to $310 per separate account resulting in an aggregate initial recordkeeping cost of $205,530.[311] Separate accounts also would bear ongoing recordkeeping costs equal to $78 per separate account resulting in an aggregate ongoing annual recordkeeping cost of $51,714.[312] The rest of the fee conditions in the proposed rule are the same as the requirements in the current exemptive orders, and thus they would not impose additional costs to separate accounts funding variable insurance products.

We request comment on the following:

- Do you agree with our assessment that omitting the requirements in our exemptive orders that relate to duplicative and excessive fees would not have an economic effect? If not, what economic effect do you expect this omission would have?
- Do you agree with our assessment that the duplicative and excessive fee conditions of proposed rule 12d1–4 would better protect acquiring fund shareholders from duplicative and excessive fees than the conditions in our exemptive orders? If not, why not?
- Do you agree with our cost estimates for implementation and monitoring of compliance with the duplicative and excessive fee conditions of proposed rule 12d1–4? If not, please provide a cost estimate to implement and monitor compliance with the duplicative and excessive fee conditions of proposed rule 12d1–4. What types of one-time costs would the fee conditions involve? What types of ongoing costs would the fee conditions involve (*e.g.,* recordkeeping costs)? What is the job description of each party involved in the implementation and monitoring of compliance with each fee condition of proposed rule 12d1–4? What is the average hourly wage for each party involved in the implementation and monitoring of compliance with each fee condition of proposed rule 12d1–4?

Complex structures. The current exemptive orders prohibit an acquired fund from investing in other investment companies beyond the limits in section 12(d)(1), but they do not prohibit a fund from investing in an acquiring fund beyond the limits in section 12(d)(1). In line with the current exemptive orders, proposed rule 12d1–4 would prohibit an acquired fund from investing beyond the statutory limits in both registered funds and private funds subject to limited exceptions.[313]

The rule proposal also would expand the complex structures prohibitions included in the exemptive orders in the following ways. First, proposed rule 12d1–4 would prohibit an investment company that is relying on section 12(d)(1)(G) of the Act or proposed rule 12d1–4 from acquiring, in excess of the limits in section 12(d)(1)(A) of the Act, the outstanding voting securities of a fund that discloses in its most recent registration statement that it may be an acquiring fund in reliance on rule 12d1–4, thereby limiting fund of funds arrangements in which the acquired fund is itself an acquiring fund.[314] Second, the rescission of the current exemptive orders would result in the prohibition of multi-tier structures formed in reliance on section 12(d)(1)(G) and the exemptive orders. As discussed above, an acquiring fund relying on section 12(d)(1)(G) currently could invest in an acquired fund that invests in another fund in reliance on an exemptive order.

The rule proposal would enhance investor protection because the additional complex structures conditions included in the rule proposal would limit the creation of multi-tier structures that historically have been associated with duplicative and excessive fees and investor confusion.

At the same time, the rule proposal would impose costs on funds that could be required to change their portfolio to ensure compliance with the rule proposal. In particular, multi-tier structures that were formed in reliance on section 12(d)(1)(G) and on exemptive orders would need to be restructured. Funds relying on section 12(d)(1)(G) would be required to reallocate their investments to acquired funds that do not invest in underlying funds beyond the limits of section 12(d)(1) in reliance on an exemptive order. Alternatively, acquiring funds relying on section 12(d)(1)(G) could invest in the same acquired funds, but those acquired funds would incur costs to reduce their investments in other funds to comply with the limits of section 12(d)(1) of the Act.[315]

As of June 2018, there were 2,033 multi-tier structures. Some of these structures are within the statutory limits or are in compliance with the exceptions to the complex structures conditions contained in the proposed rule, and thus would not be affected by the proposed rule and the rescission of the exemptive orders. The remaining multi-tier structures would be required to modify their investments to ensure compliance with proposed rule 12d1–4 and the rescission of the exemptive orders. As of June 2018, there were: (i) 231 three-tier structures for which both the first- and second-tier funds invested in other funds beyond the limits in section 12(d)(1); and (ii) no three-tier structures for which the first-tier fund relies on 12(d)(1)(G) to invest in the middle-tier fund and the middle-tier fund relies on exemptive orders to invest in the bottom-tier fund beyond the limits of section 12(d)(1).

Proposed rule 12d1–4 would prohibit an investment company that is relying on section 12(d)(1)(G) of the Act or proposed rule 12d1–4 from acquiring, in excess of the limits of section 12(d)(1)(A) of the Act, the outstanding voting securities of a fund that discloses in its most recent registration statement that it may be an acquiring fund in reliance on rule 12d1–4.[316] We estimate that complying with this disclosure requirement would impose a one-time

[309] This estimate is based on the following calculation: ($11,005 initial internal burden per UIT + $2,400 initial external burden per UIT) × 969 acquiring UITs = $12,989,445. *See* also *infra* footnotes 373 and 376.

[310] This estimate is based on the following calculation: $388 ongoing annual recordkeeping cost per UIT × 969 acquiring UITs = $375,972. *See* also *infra* footnote 375. In contrast to management companies, UITs do not charge management fees, but they charge sales charges. To the extent that the proposed rule would increase operating costs for UITs, UITs could pass through to investors any such cost increases in the form of higher sales charges.

[311] This estimate is based on the following calculation: $310 initial burden per separate account × 663 acquiring separate accounts = $205,530. *See also infra* footnote 380.

[312] This estimate is based on the following calculation: $78 ongoing annual burden per separate account × 663 acquiring separate accounts = $51,714. *See also infra* footnote 380.

[313] Proposed rule 12d1–4 wound permit an acquired fund to invest in other funds beyond the statutory limits (i) for short-term cash management purposes; (ii) in connection with inter-fund lending or borrowing transactions; (iii) in connection with master-feeder structures or investments in wholly-owned subsidiaries; or (iv) as a result of receiving fund shares as a dividend distribution or as a result of a plan reorganization.

[314] *See* proposed rule 12d1–4(b)(4)(i) and (ii). Proposed rule 12d1–4 would, however, permit an acquiring fund to be an acquired fund in connection with master-feeder arrangements and interfund borrowing and lending transactions.

[315] *See supra* section VI.C.1.a. for a detailed discussion of the costs of portfolio changes.

[316] *See* proposed rule 12d1–4(b)(4).

aggregate cost equal to $30,706,624 and an ongoing annual aggregate cost of $13,612,170.[317] Acquiring funds also would incur annual ongoing costs to review the disclosures of potential acquired funds equal to $553 per fund resulting in an aggregate annual ongoing cost of $2,401,126.[318] Lastly, funds that are acquired by 12(d)(1)(G) funds and currently rely on exemptive orders to invest in other funds beyond the limits of section 12(d)(1) would need to implement policies and procedures to monitor their investments in other funds beyond the limits of section 12(d)(1). We believe that any such additional costs are likely minimal because acquired funds already have policies and procedures to monitor their investments in other funds for compliance with the terms of the exemptive orders that could be leveraged to monitor compliance with the limits of the proposed rule.

Finally, as discussed in detail in section VI.C.1.c. above, the proposed restrictions on multi-tier structures would affect both current and prospective funds by restricting their investment flexibility. Proposed rule 12d1–4 would restrict funds' investment flexibility because: (i) It would limit funds' ability to acquire shares of acquiring funds beyond the limits of section 12(d)(1) and (ii) it would prohibit funds acquired by 12(d)(1)(G) funds from relying on exemptive orders to invest in other funds beyond the limits of section 12(d)(1).

We request comment on the impact of the complex structures conditions of proposed rule 12d1–4 on funds that would be required to modify their investments to comply with the condition. Please provide any available data or estimates in responding to these requests for comment.

- Would acquiring funds or acquired funds be required to change their portfolios to ensure compliance with the proposed complex structures conditions in the proposed rule? Would the complex structures conditions and the rescission of exemptive orders impose transaction costs on these funds?
- Would the complex structures conditions and the rescission of exemptive orders require funds to sell listed fund shares at potentially depressed prices? Would the fact that funds would be granted one year to bring their operations in compliance with the proposed rule mitigate any negative effects associated with the complex structures conditions?
- Would the complex structures conditions and the rescission of exemptive orders disrupt acquiring or acquired funds' investment strategies? In which ways?
- Would the complex structures conditions and the rescission of exemptive orders impose liquidity demands on acquired funds as a result of any potential fund redemptions?
- Would the complex structures conditions and the rescission of exemptive orders have tax implications for funds? If yes, in which ways?
- Are there any economic effects of the complex structure conditions that we have not identified? To the extent possible, please quantify any economic effects the economic analysis does not account for.

d. Assessment of Rule Proposal

Finally, existing acquired and acquiring funds relying on exemptive orders on which proposed rule 12d1–4 is based would incur a one-time administrative cost to assess whether their operations are consistent with the rule proposal. Further, existing acquiring funds would be required to decide whether to continue to rely on section 12(d)(1)(G) and amended rule 12d1–1 or instead rely on proposed rule 12d1–4 and comply with the associated conditions. We preliminarily believe this assessment would result in an aggregate cost of $22,750,845.[319]

2. Effects on Efficiency, Competition, and Capital Formation

a. Efficiency

Efficiency of current and prospective acquiring funds' asset allocation. The impact of the rule proposal on the efficiency of current and prospective acquiring funds' asset allocation is unclear ex-ante. On one hand, the rule proposal could promote the efficiency of funds' asset allocation. First, the proposed rule would eliminate the need for funds to apply for an exemptive order to structure certain funds of funds, and thus would eliminate the costs associated with the exemptive order process.[320] By eliminating the costs associated with the exemptive order process, the proposed rule would reduce frictions in funds' asset allocation and thus could promote the efficient allocation of funds' assets.

Second, the rule proposal would create a more consistent and efficient regulatory framework for funds of funds than the existing regulatory framework for the following reasons. First, proposed rule 12d1–4 would create a consistent framework for all registered funds and BDCs by providing the same investment flexibility to all registered funds and BDCs. Second, under the existing regulatory framework, substantially similar funds of funds are subject to different conditions. For example, an acquiring fund currently can rely on section 12(d)(1)(G) and rule 12d1–2 to invest in an acquired fund within the same group of investment companies or, alternatively, can rely on relief provided by the Commission to achieve the same investment objectives. The rule proposal would eliminate the existing overlapping and potentially inconsistent conditions for funds of funds and harmonize conditions across different fund arrangements. Regulatory consistency and efficiency could remove obstacles to funds' investments and operations because regulatory consistency and efficiency would decrease compliance and operating costs. By reducing compliance and operating costs, the rule proposal would further reduce frictions in asset allocation and could promote the efficient allocation of funds' assets.

Third, assuming that the proposed rule would increase funds' investment flexibility, it could increase the efficiency of funds' asset allocation because funds would be better able to diversify their investment portfolio. The proposed rule could increase funds' investment flexibility by expanding the scope of permissible acquiring and

[317] These estimates are based on the following calculations: $30,706,624 = 4,342 acquiring funds × ($1,602 one-time internal cost + $5,470 one-time external cost); $13,612,170 = 4,342 acquiring funds × ($400 ongoing annual internal cost + $2,735 ongoing annual external cost). *See infra* footnotes 341, 342, and 343.

[318] These estimates are based on the following calculations: 2 hours × $276.5 blended hourly rate for senior portfolio manager ($324) and intermediate portfolio manager ($229) = $553. $2,401,126 = 4,342 acquiring funds × $553 ongoing annual burden per acquiring fund. *See supra* footnote 287 for the source of salary data.

[319] We estimate that assessing the requirements of the proposed rule would require 5 hours of a compliance manager ($304 per hour) and 5 hours of a compliance attorney ($359 per hour), resulting in a cost of $3,315 (5 × $304 + 5 × $359) per fund. The total cost for the 6,863 acquiring and acquired funds that would rely on the proposed rule would thus be $22,750,845 (6,863 × $3,315). *See supra* footnote 287 for the source of salary data.

[320] The new and omitted conditions of proposed rule 12d1–4 would also affect the cost of operations of funds of funds. *See* section VI.C.1.c for a detailed discussion of the costs and benefits of the new and omitted conditions. Nevertheless, the net effect of the new and omitted conditions on the funds' cost of operations is unclear because we are unable to quantify the effect of many of these conditions. To the extent that the net effect of the new and omitted conditions would be to increase (decrease) the cost of operations for funds of funds, the new and omitted conditions (i) could result in higher (lower) fees and expenses for fund investors and (ii) could decrease (increase) the number of available funds of funds, which would ultimately harm (improve) the efficient allocation of the assets of the acquiring fund investors.

acquired funds relative to the current exemptive orders. Fourth, the limit on fund redemptions under proposed rule 12d1–4 would incentivize acquiring funds to hold smaller percentages of the acquired fund shares to mitigate any negative effects of the limits on fund redemptions, which could ultimately result in a more diversified fund portfolio.

On the other hand, the rule proposal could reduce the efficiency of funds' asset allocation for two reasons. First, proposed rule 12d1–4 could affect funds' investment objectives due to the differential effects of the redemption limit on listed versus unlisted acquired funds and large versus small acquired funds, which ultimately could harm the efficient allocation of funds' assets. Second, assuming that the rule proposal would reduce funds' investment flexibility by prohibiting certain currently permissible funds of funds, it could decrease the efficiency of funds' asset allocation because funds would be less able to diversify their investment portfolio.

Efficiency of the asset allocation of current and prospective acquiring fund investors. The impact of the rule proposal on the efficiency of the asset allocation of current and prospective acquiring fund investors is unclear ex-ante. On one hand, the rule proposal could promote the efficiency of investors' asset allocation. First, proposed rule 12d1–4 would reduce the cost of setting up a fund of funds by eliminating the need to apply for an exemptive order. To the extent that the fund industry is competitive,[321] fund advisers/sponsors could pass through to investors the cost savings associated with eliminating the need to apply for an exemptive order, which could result in lower fees and expenses for acquiring fund investors.[322] Lower fees and expenses, in turn, could translate into improved efficiency of investors' asset allocation because investors could achieve the same investment objectives at a potentially lower cost. Similarly, the rule proposal would create a more consistent and more efficient regulatory framework. Fund advisers/sponsors could also pass through to investors any cost savings associated with a more consistent and efficient regulatory framework, which could result in lower fees and expenses, and more efficient allocation of acquiring fund investors' assets. Second, assuming that proposed rule 12d1–4 would increase funds' investment flexibility, the proposed rule would increase the diversity of available funds of funds, which could promote the efficient allocation of acquiring fund investors' assets because investors would be better able to diversity their investment portfolio.

On the other hand, the rule proposal could reduce the efficiency of investors' asset allocation. In particular, proposed rule 12d1–4 could decrease the diversity of available funds of funds because (i) it could reduce acquiring funds' investment flexibility and (ii) it could affect funds' investment objectives due to the differential effects of the redemption limit on listed versus unlisted acquired funds and large versus small acquired funds, which could decrease acquiring fund incentives to invest in small and unlisted acquired funds. A decrease in the diversity of available funds of funds would harm the efficient allocation of investors' assets because investors would be less able to diversify their investment portfolio.

Efficiency of prices of acquired funds and their underlying assets. The impact of the rule proposal on the efficiency of prices is unclear ex-ante. On one hand, the rule proposal could harm the efficiency of prices of the underlying assets of acquired funds because, as described above, the redemption limit could slow down the incorporation of negative information about the underlying assets of the acquired funds. On the other hand, the rule proposal could have a positive impact on the efficiency of the prices of acquired funds and their underlying assets. Proposed rule 12d1–4 could (i) increase the diversity of funds of funds by increasing funds' investment flexibility; [323] (ii) increase the number of available funds of funds by eliminating the need to apply for an exemptive order, by creating a more consistent and more efficient regulatory framework, and by reducing the cost of setting up a fund of funds; and (iii) enhance investor protection against undue influence, duplicative and excessive fees, and complex structures. The potential increase in the diversity and number of funds of funds and the enhancement of investor protection could increase the attractiveness of funds of funds, and thus could increase investors' demand for funds of funds. The increased investor demand for funds of funds could increase investment rates, increase investments in acquiring funds, and thus increase investments in the acquired funds and the acquired funds' underlying assets (*i.e.,* stocks, bonds, etc.). An increased investment in the acquired funds and the acquired funds' underlying assets could increase trading interest for those assets. Higher trading interest could lead to higher liquidity, lower trading costs, improved information production, and thus more efficient prices for those assets.[324]

In addition, the rule proposal could increase the price efficiency of listed acquired funds (*i.e.,* ETFs, ETMFs, listed closed-end funds, and listed BDCs) because investors could increase their investments in those funds through investments in funds of funds rather than investing directly in those funds. Consequently, the funds' investor base could shift from individual investors to acquiring funds. The investment advisers of acquiring funds are arguably more sophisticated than individual investors. A shift of certain funds' investor base to more sophisticated investors could in turn result in more efficient prices for listed acquired funds, because noise trading would decrease.[325]

b. Competition

The impact of the rule proposal on fund competition is unclear ex-ante. On one hand, the rule proposal could promote competition in the fund industry for the following reasons. First, to the extent that proposed rule 12d1–4 would increase acquiring funds' investment flexibility, the proposed rule could promote competition in the fund industry because it would increase the diversity of available funds of funds.[326] Second, the rule proposal would level the playing field for funds by expanding the scope of permissible acquiring and

[321] *See supra* footnotes 270 and 271.

[322] Any effects of eliminating the need to apply for an exemptive order are limited by the fact that each exemptive order can be used by multiple funds within the same fund complex and the costs of the exemptive order application process are one-time costs.

[323] As discussed in section VI.C.1.a above, the net effect of the proposed rule on funds' investment flexibility is unclear. To the extent that the proposed rule would decrease funds' investment flexibility, it could decrease the diversity of available funds of funds.

[324] *See, e.g.,* Anat R. Admati & Paul Pfleiderer, *A Theory of Intraday Patterns: Volume and Price Variability,* 1 Rev. of Fin. Stud., 3 (Spring 1988); Tarun Chordia, Richard Roll & Avanidhar Subrahmanyam, *Liquidity and Market Efficiency,* 87 J. of Fin. Econ., 249 (Feb. 2008).

[325] *See, e.g.,* Eli Bartov, Suresh Radhakrishnan, & Itzhak Krinsky, *Investor Sophistication and Patterns in Stock Returns after Earnings Announcements,* 75 The Acc. Rev., 43 (Jan. 2000); Joseph D. Piotroski & Darren T. Roulstone, *The Influence of Analysts, Institutional Investors, and Insiders on the Incorporation of Market, Industry, and Firm-Specific Information into Stock Prices,* 79 The Acc. Rev., 1119 (Oct. 2004); Ekkehart Boehmer & Eric K. Kelley, *Institutional Investors and the Informational Efficiency of Prices,* 22 Rev. of Fin. Stud., 3563 (Sept. 2009).

[326] Funds can choose to compete through prices or through product differentiation. *See, e.g.,* Avner Shaked & John Sutton, *Relaxing Price Competition Through Product Differentiation,* 49 Rev. of Econ. Stud., 3 (Jan. 1982).

acquired funds and mandating the same conditions for similar funds of funds.[327] A more level playing field could increase competition in the fund industry because it would allow various funds to operate under similar conditions. Third, the rule proposal would contribute towards leveling the playing field for affiliated and unaffiliated acquired funds by imposing a limit on fund redemptions for both affiliated and unaffiliated acquired funds. Fourth, the rule proposal would create a more consistent and efficient regulatory framework than the current regulatory framework for funds of funds. To the extent that regulatory inefficiencies and inconsistencies could hamper funds' investment and growth, an increase in regulatory consistency and efficiency could result in the creation of more funds of funds, which could increase competition in the fund industry. Fifth, proposed rule 12d1–4 would remove the need to apply for an exemptive order and thus would decrease the cost of setting up a fund of funds. A decrease in the cost of setting up a fund of funds would lower the barriers to entry for new funds of funds, and thus could increase competition in the fund industry.

On the other hand, to the extent that the rule proposal would decrease funds' investment flexibility, it could harm competition among funds of funds because it would decrease the diversity of available funds of funds. In addition, proposed rule 12d1–4 would have a differential impact on publicly listed versus unlisted and large versus small funds, and this differential impact could harm competition in the fund industry. Specifically, the redemption limit under proposed rule 12d1–4 could provide an advantage to listed and large acquired funds because the redemption limit would be less binding for listed and large acquired funds. By providing a potential advantage to listed and large acquired funds and to the extent that there are economies of scale in fund operations, the proposed rule could have a negative effect on fund competition.

[327] As discussed in supra section I, the combination of statutory exemptions, Commission rules, and the exemptive orders has created a regime where substantially similar funds of funds are subject to different conditions. The rule proposal would level the playing field for funds because it would create a regime where similar funds of funds are subject to the same conditions. At the same time, any effects of leveling the playing field would be limited by the fact that different funds face different levels of restrictions on their investments that are unrelated to proposed rule 12d1–4 (*see, e.g., supra* footnote 37 for restrictions on BDC investments).

c. Capital Formation

The impact of the rule proposal on capital formation is unclear ex-ante. On one hand, the rule proposal could have a positive effect on capital formation. Specifically, the potential increase in fund investment flexibility, the potential leveling of the playing field as a result of the rule proposal, the increase in regulatory consistency and efficiency, and the decrease in the operating costs of prospective funds of funds as a result of removing the need to apply for an exemptive order could increase the number and diversity of funds of funds. An increase in the number and diversity of funds of funds could increase the demand for funds of funds, increase investor saving rates, increase investments in funds of funds, and ultimately increase demand for the funds of funds' underlying securities. Investor demand for funds of funds also could increase as a result of the new conditions of the proposed rule, which would enhance investor protection. As a result of the increased demand for the firms' equity and debt securities, companies would be able to issue new debt and equity at higher prices, which could lead to a decrease in the cost of capital of firms, and thus facilitate capital formation.[328] Nevertheless, we expect that any positive effects of the proposed rule on capital formation would be small.

On the other hand, assuming that single-tier funds and funds of funds are purely substitute investments, an increase in investors' demand for funds of funds could decrease the demand for single-tier fund structures. Consequently, under that assumption, there would be no change in the amount of money that flows to corporations and there would be no impact on capital formation as a result of the rule proposal.

D. Reasonable Alternatives

1. Retention of Existing Exemptive Relief

As discussed in section V above, we are proposing to rescind rule 12d1–2 and certain exemptive orders in connection with proposed rule 12d1–4 and amended rule 12d1–1. Alternatively, we could allow existing funds of funds to choose whether to operate under the existing regulatory framework or the new regulatory framework, and require only new funds of funds to comply with the new regulatory framework. The benefit of such an alternative would be that existing funds of funds would not incur the one-time switching costs from the existing regulatory framework to the new framework. At the same time, however, this alternative would subject existing funds of funds and new funds of funds to different sets of conditions. For example, existing funds of funds would be exempt from the proposal's new requirements relating to redemption limits, multi-tier structures, and duplicative and excessive fees. Consequently, unlike the proposal, this alternative would establish a less uniform regulatory framework governing fund of funds arrangements.

2. Allow Private and Unregistered Investment Companies To Rely on Proposed Rule 12d1–4

As discussed above, proposed rule 12d1–4 is based in part on previously granted exemptive relief and would permit registered funds and BDCs to invest in registered funds and BDCs beyond the limits in section 12(d)(1). Alternatively, we could expand the scope of the proposed rule to allow private funds and unregistered investment companies to rely on the rule as acquiring funds. Expanding the proposed rule in this manner would increase investment flexibility for those funds, would level the playing field for those funds, and would broaden the funding opportunities for acquired funds because private funds and unregistered investment companies could increase their investments in them.

Nevertheless, we preliminarily believe that there are risks associated with expanding proposed rule 12d1–4 to acquiring private funds and unregistered investment companies. First, private funds and unregistered investment companies are not registered with the Commission and would not be subject to the same reporting requirements (*i.e.,* Forms N–CEN and N–PORT) as the proposed acquiring funds.[329] Second, private funds and unregistered investment companies are not subject to recordkeeping requirements under the Investment Company Act, and therefore, may not maintain the same records as a registered investment company. Third, unregistered foreign funds' investments in U.S. registered funds have raised concerns of abuse and undue influence in the past, which gave raise to

[328] Academic literature provides evidence consistent with the idea that higher demand for a firm's securities could lead to lower cost of capital. *See, e.g.,* Douglas W. Diamond & Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. of Fin., 1325 (Sept. 1991).

[329] *See supra* footnote 47.

Congress's amendments to section 12(d)(1) in 1970.

3. Codify Current Conditions in Existing Exemptive Orders

As discussed above, proposed rule 12d1–4 would omit certain conditions contained in current exemptive orders that we believe are no longer necessary to prevent the abuses that section 12(d)(1) seeks to curtail in light of the new conditions being proposed. Proposed rule 12d1–4 also would include new conditions to address the potential for undue influence, complex structures, or duplicative and excessive fees. Alternatively, we could codify the conditions contained in existing exemptive orders rather than replacing certain conditions with alternative conditions as contained in the proposal.

This alternative approach would not impose the costs associated with the new conditions in the proposed rule, but it might impose costs to the extent that the conditions in the orders on which some funds of funds rely might not be identical to the conditions in this alternative proposed rule because of cross-sectional variation in the conditions of the exemptive orders. For example, this alternative would not limit an acquiring fund's ability to quickly redeem or tender a large volume of acquired fund shares to mitigate undue influence, which could impose liquidity constraints and restrict funds' investment flexibility. At the same time, this alternative would not result in cost savings associated with removing certain conditions that are no longer necessary in light of the new conditions, such as removing the need to enter into participation agreements. Nevertheless, we believe that this alternative approach would not be as effective at preventing the abuses that section 12(d)(1) seeks to curtail while eliminating conditions that are no longer necessary in light of the new conditions of proposed rule 12d1–4.

4. Restrict the Ability of an Acquiring Fund and Its Advisory Group To Invest in an Acquired Fund Above a Lower or Higher Limit Than the Proposed Control Limit

As discussed in section II.C.1 above, to address concerns about one fund exerting undue influence over another fund, proposed rule 12d1–4 is not available when an acquiring fund together with its advisory group controls the acquired fund. The proposed rule relies on the definition of ''control'' in the Act, including the rebuttable presumption that any person who directly or indirectly beneficially owns more than 25% of the voting securities of a company controls that company. The proposed rule includes an exception for funds that are in the same group of investment companies. The proposed rule also includes an exception when the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor.

As an alternative means of preventing undue influence, we could instead restrict the ability of an acquiring fund and its advisory group to invest in an acquired fund above a lower limit than the 25% limit used to define ''control'' in the Act. A lower limit could provide additional assurance that the proposed rule would protect investors from the abusive practices that section 12(d)(1) was designed to prevent because a lower percentage of ownership would reduce the risk that the acquiring fund could exercise undue influence over the acquired fund's strategy, management, or governance.[330] However, we expect that a lower limit could hamper the acquiring fund's ability to allocate its assets in an efficient and cost effective manner.[331]

We also could impose a lower limit while narrowing the scope of entities that would be assessed for the purposes of the ownership threshold. In particular, the ownership limit could apply only to the acquiring fund and other funds advised by the same adviser or by the adviser's control affiliates. As a result, acquiring funds would not be required to consider their non-fund affiliates' holdings when assessing whether they control an acquired fund, which would lessen compliance burdens for the acquiring funds. Nevertheless, our exemptive orders define control in terms of a fund and its advisory group. Consequently, funds likely have established already policies and procedures to monitor compliance with the aggregation requirement embedded in the proposed rule's definition of an acquiring fund's ''advisory group.'' In addition, other provisions of the Act and our rules also extend to affiliated persons of an investment adviser, and so funds (or their advisers) have experience developing compliance policies and procedures in those circumstances. Lastly, the risk of undue influence over an acquired fund would be more effectively addressed by requiring all entities within an advisory group to aggregate their holdings for purposes of the control condition because entities in the same advisory group could potentially coordinate to exercise undue influence over the acquired funds.[332]

Further, as an alternative, we could impose a limit lower than 25%, while imposing no limits on fund redemptions. The lower limit potentially would protect acquired funds from acquiring funds undue influence while allowing acquiring funds greater flexibility to liquidate their investments in acquired funds. As proposed, however, rule 12d1–4 balances these concerns by allowing acquiring funds to invest to a greater extent in acquired funds, subject to the proposed redemption limit.

Similarly, we could impose a limit higher than 25%, which would provide acquiring funds with greater investment flexibility. This alternative, however, would diverge from how control has been defined in the past under the Act. Moreover, we believe that a limit higher than 25% would be more likely to give rise to the abuses that section 12(d)(1) was designed to prevent because it would make it more likely that the acquiring fund could control the acquired fund and thus potentially could influence the acquired fund for the benefit of the acquiring fund's shareholders, advisers, or sponsors. Lastly, given the proposed rule's 3% redemption limit, acquiring funds likely would not take advantage of a higher limit because it would take an acquiring fund longer to unwind a larger position in an acquired fund.

5. Alternative Approaches to the Redemption Limit

a. Do Not Impose Redemption Limit

As discussed above, proposed rule 12d1–4 would prohibit an acquiring fund that acquires more than 3% of an acquired fund's outstanding shares from redeeming, submitting for redemption, or tendering for repurchase more than 3% of an acquired fund's total outstanding shares in any 30-day period. The purpose of this prohibition is to address concerns that an acquiring fund could threaten large-scale redemptions to unduly influence an

[330] As discussed in section II.B. above, section 17 of the Act generally restricts a fund's ability to enter into transactions with affiliated persons and thus provides some protection to acquired funds from acquiring funds' undue influence. Proposed rule 12d1–4 also contains a number of conditions aimed at protecting acquired funds from acquiring funds' undue influence.

[331] The control condition could, for example, limit an acquiring fund from obtaining the optimal level of risk exposure to another fund. Acquiring funds potentially could obtain similar levels of risk exposure at a higher cost by investing in multiple funds.

[332] For example, a family of target date funds tends to invest in different proportional allotments of the same underlying funds.

acquired fund. The proposed rule's 3% limit on fund redemptions in any 30-day period, however, could impose liquidity and investment flexibility constraints on current and prospective acquiring funds because acquiring funds would be unable to quickly liquidate their investments in funds if they hold more than 3% of the acquired fund's outstanding shares.

Alternatively, we could impose no limits on the redemptions of an acquired fund's shares. Instead, we could adopt conditions that generally require the acquired and acquiring fund boards to make certain findings and adopt procedures to prevent overreaching and undue influence by the acquiring fund and its affiliates once the acquired fund's investment exceeds the section 12(d)(1) limits, and also require the acquiring and acquired funds to enter into participation agreements. Similar, to section 12(d)(1)(F), we also could make rule 12d1–4's redemption provision permissive, by giving the acquired fund or its board the option to limit redemptions.

We believe that a redemption limit, together with the proposed control and voting conditions, are more protective of acquired funds because they provide protection against a broader set of circumstances than the targeted and prescriptive provisions in our exemptive orders. In addition, the redemption limit, together with the proposed control and voting conditions, may be more objectively tested as part of a fund's compliance program than the conditions currently found in our orders because they are based on numerical thresholds that are easily observable and verifiable.

b. Do Not Impose Redemption Limit for Funds Within the Same Group of Investment Companies

Proposed rule 12d1–4 imposes a redemption limit on all acquiring funds relying on the rule if they hold more than 3% of an acquired fund's outstanding voting securities. Alternatively, we could impose the redemption limit only on acquiring funds when: (i) The acquiring fund is not in the same group of investment companies as the acquired fund and (ii) the acquiring fund's investment sub-adviser is different from, and not in a control relationship with, the acquired fund's investment adviser or depositor. Such an approach would be similar to the exceptions to the control and voting conditions under proposed rule 12d1–4.

The benefit of such an alternative is that it would limit any costs associated with the redemption limit because any costs would be borne by only a subset of the acquiring funds.[333] In addition, such an alternative potentially would maintain investor protection because fund of funds arrangements involving control affiliates do not raise the same concerns regarding undue influence as other types of fund of funds arrangements. In circumstances where the acquiring fund and acquired fund share the same adviser or subadviser, the adviser or subadviser would owe a fiduciary duty to both funds, serving to protect the best interests of each fund. In addition, in cases where the arrangement involves funds that are advised by advisers that are control affiliates, the acquiring fund adviser is less likely to seek to benefit the acquiring fund at the expense of the acquired fund, nor do we believe that the acquiring fund would seek to influence the acquiring fund through its ownership interest in the acquired fund.

Nevertheless, acquiring funds that fall within the exceptions in rule 12d1–4(b)(1)(iii) are not constrained in their ability to control a fund and could acquire more than 25% of an acquiring fund's outstanding voting securities. As a result, we propose to subject these types of acquiring funds to the redemption limitation in proposed rule 12d1–4(b)(2).

c. Impose Aggregate Redemption Limit on Acquiring Fund and Its Advisory Group

As discussed above, the proposed 3% redemption limit in proposed rule 12d1–4 only would apply to individual acquiring funds and thus would not apply to entities within an acquiring fund's advisory group.[334] Hence, the proposed redemption limit would provide limited protection to acquired funds when the shares of the acquired funds are held by multiple acquiring funds within the acquiring fund's advisory group.

Alternatively, we could impose a 3% or higher aggregate redemption limit applicable to an acquiring fund and its advisory group. To the extent that these entities could coordinate their redemptions to exercise undue influence on acquired funds through the threat of large scale redemptions, this proposed alternative would better protect acquired funds from acquiring funds' undue influence. Nevertheless, we believe that imposing a 3% aggregate redemption limit on an acquiring fund and its advisory group could significantly harm the liquidity and investment flexibility of acquiring funds, and could impose a higher monitoring burden on acquiring funds. Hence, we are not proposing to impose a 3% aggregate redemption limit on acquiring funds and their advisory group.

6. Permit Multi-Tier Fund Structures

As discussed above, proposed rule 12d1–4 would limit the creation of multi-tier structures. As an alternative, we could allow certain multi-tier fund structures by allowing funds to invest in an acquiring fund or by allowing acquired funds to invest in other funds beyond the limits in section 12(d)(1)(A). While this alternative would provide additional flexibility to funds to meet their investment objectives, it could potentially lead to duplicative and excessive fees and investor confusion.[335] In particular, the organizational complexity of multi-tier fund structures could make it difficult for acquired fund investors to understand who really controls the fund. Additionally, we believe that the proposed rule's exceptions to the multi-tier structures prohibition provide sufficient investment and funding flexibility to acquiring and acquired funds.

VII. Paperwork Reduction Act

A. Introduction

Proposed new rule 12d1–4 contains a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[336] In addition, proposed rule 12d1–4 would affect the current collection of information burden of rule 0–2 under the Act.[337] The proposed amendments to Form N–CEN also would affect the collection of information burden under that form.[338]

The title for the new collection of information for rule 12d1–4 would be: ''Rule 12d1–4 Under the Investment Company Act of 1940, Fund of Funds Arrangements.'' The titles for the existing collections of information are: ''Rule 0–2 under the Investment

[333] Acquiring funds that invest in acquired funds beyond the limits of section 12(d)(1) when: (i) The acquiring fund is within the same group of investment companies as the acquired fund or (ii) the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor currently are not subject to redemption limits under section 12(d)(1)(G) and the exemptive orders.

[334] As discussed above, the control conditions in proposed rule 12d1–4 would apply to an acquiring fund's advisory group. *See supra* section II.C.1.

[335] Concerns of investor confusion are mitigated by fund disclosure requirements, such as prospectus and shareholder reports.

[336] 44 U.S.C. 3501 through 3521.

[337] 17 CFR 270.0–2.

[338] Form N–CEN [referenced in 17 CFR 274.101] under the Investment Company Act.

Company Act of 1940, General Requirements of Papers and Applications'' (OMB Control No. 3235–0636); and ''Form N–CEN'' (OMB Control No. 3235–0730). The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

We published notice soliciting comments on the collection of information requirements in the 2008 Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[339] We received no comments on the collection of information requirements.

We discuss below the collection of information burdens associated with proposed rule 12d1–4 and its impact on rule 0–2, as well as proposed amendments to Form N–CEN.

B. Rule 12d1–4

Proposed rule 12d1–4 would permit registered funds and BDCs that satisfy certain conditions to acquire shares of another fund in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission. The rule is designed to create a consistent and streamlined regulatory framework applicable to fund of funds arrangements while addressing investor protection concerns. The proposed rule would require an acquiring fund to disclose certain information in its registration statement, require an acquiring fund to follow certain procedures for voting an acquired fund's securities if certain ownership thresholds are met, require an acquiring fund's adviser (if the fund is a management company) or its principal underwriter or depositor (if the fund is a UIT) to make certain findings, require an acquiring fund (if the fund is a separate account funding a variable insurance contract) to obtain a certification from an insurance company issuing separate accounts, and require an acquiring fund to maintain certain records. These requirements are collections of information under the PRA.

The respondents to proposed rule 12d1–4 would be registered funds or BDCs. The collection of information would be mandatory only for entities that wish to rely on the new rule. Information provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law.

1. Disclosure Requirements

Under the proposed rule, a fund that relies on rule 12d1–4 (or intends to preserve flexibility to rely on rule 12d1–4) would be required to disclose in its registration statement that it is or may be an acquiring fund for purposes of rule 12d1–4.[340] The Commission staff estimates that complying with these disclosure requirements would impose a one-time internal hour burden of four hours, and an ongoing internal hour burden of one hour, on each acquiring fund to determine the disclosures appropriate to the fund and ensure that the appropriate disclosures are set forth in the fund's registration statement.[341] Additionally, the Commission staff estimates that these disclosure requirements would impose a one-time external cost burden of $5,470 [342] and an ongoing external cost burden of $2,735 on each acquiring fund relating to board review and consultation with outside counsel.[343] Amortized over three years, the internal hour burden would be two hours per acquiring fund [344] and the annual external cost burden would be $3,647 per acquiring fund.[345]

2. Voting Provisions

Under proposed rule 12d1–4, where an acquiring fund and its advisory group (in the aggregate) hold more than 3% of the outstanding voting securities of an acquired fund, the acquiring fund would be required to vote those securities using either pass-through voting or mirror voting, unless the acquiring fund is covered by certain exceptions to the requirement.[346] This provision is designed to minimize the influence that an acquiring fund and its advisory group may exercise over an underlying fund through voting.

For purposes of this analysis, we estimate that approximately 809 funds would be acquiring funds holding more than 3% of the outstanding voting securities of an acquired fund, and would not fall within any of the proposed exceptions to the voting requirement, and thus would be subject to the voting requirement.[347] We further estimate that each of these acquiring funds invests in, on average, approximately 11 underlying funds.[348]

As discussed above, acquiring funds subject to the proposed voting condition would have the option of using either pass-through voting or mirror voting to vote their shares of the underlying fund. We estimate that approximately 98% of the funds that become subject to the voting condition would choose to implement mirror voting. Accordingly, we estimate that a total of approximately 793 acquiring funds, investing in a total of approximately 7,930 underlying funds, would use mirror voting. We further estimate that approximately 16 acquiring funds (2% of the 809 funds described above), investing in a total of approximately 160 underlying funds, would use pass-through voting. For this analysis, we estimate that each acquiring fund subject to the voting provision will participate in one vote on the securities of each acquired fund every three years.[349]

We estimate that all funds subject to the voting condition of proposed rule 12d1–4 would incur a one-time internal burden of 3 hours, monetized to $1,176 and amortized to $392 annually over 3 years, to update their proxy voting policies and related proxy voting

[339] *See* 2008 Proposing Release, *supra* footnote 13.

[340] *See* proposed rule 12d1–4(b)(4).

[341] Monetized, the one-time four-hour internal burden translates to $1,602 and the ongoing one-hour internal burden translates to $400. These estimates are based on the following calculations: 4 hours × blended hourly rate of assistant general counsel (2 hours at $449/hour) and compliance attorney (2 hours at $352/hour) = $1,602; $400 = $1,602/4. *See supra* footnote 287 for the source of salary data.

[342] This estimate is based on the following calculation: 1 hour × $400 hourly rate of outside counsel + 1 hour × $5,070 hourly rate for board of directors = $5,470. *See supra* footnote 287 for the source of salary data.

[343] This estimate is based on the following calculation: 0.5 hour × $400 hourly rate of outside counsel + 0.5 hour × $5,070 hourly rate for board of directors = $2,735. *See supra* footnote 287 for the source of salary data.

[344] This estimate is based on the following calculation: (4 hours + 1 hour + 1 hour)/3 = 2 hours.

[345] This estimate is based on the following calculation: ($5,470 + $2,735 + $2,735)/3 = $3,647.

[346] *See* proposed rule 12d1–2(b)(1)(ii). As described above, in pass-through voting, the acquiring fund seeks voting instructions from its security holders and votes such proxies in accordance with their instructions. In mirror voting, the acquiring fund votes the shares it holds in the same proportion as the vote of all other holders.

[347] This estimate is based on data from the Morningstar Investment Company Holdings database.

[348] *Id.* This estimate of the average number of acquired funds per acquiring fund is based on the investments of the 4,342 acquiring funds summarized in Table 1, *supra* section VI.B.1. For purposes of this analysis, we assume that all existing acquiring funds would rely on proposed rule 12d1–4.

[349] This estimate takes into account the different voting frequencies of the types of acquired funds included in these calculations. For example, closed-end funds typically hold one vote per year, while mutual funds typically seek shareholder votes less frequently.

disclosures to reflect that the fund is subject to the voting procedures required under the rule.[350] In the aggregate, we estimate that funds subject to the proposed voting provision would incur a one-time internal burden of 2,427 hours, at a monetized value of $951,384.[351] Amortized over three years, the estimated burdens are one hour per fund, at a monetized value of $1,951.33. In the aggregate, amortized over three years, these estimated burdens equate to 809 hours and $951,384.[352] We further estimate that all funds subject to the voting condition of proposed rule 12d1–4 would incur a one-time external cost of $5,070 associated with the condition, or $1,690 amortized over 3 years.[353]

We estimate that each instance of mirror voting under the proposed voting condition would impose an annual internal burden of 3 hours on the acquiring fund to evaluate the votes of the other acquired fund's shareholders and submit its own votes, at a monetized internal cost of $1,176.[354] We further estimate that each instance of pass-through voting would impose an internal burden of 30 hours, which would include identifying the shareholders of record and their holdings, providing proxy statements to and otherwise communicating with those shareholders regarding the vote, compiling shareholder responses, and voting accordingly, at a monetized internal cost of $11,760.[355]

We estimate that compliance with the proposed voting condition also would impose external costs. For each instance of mirror voting, we estimate a cost of $400.[356] For each instance of pass-through voting, we estimate 10 hours of outside professional time, at a cost of $4,000.[357]

Accordingly, each year after the adoption of the proposed rule, in the aggregate, mirror voting by acquiring funds subject to the voting condition would impose an estimated internal annual burden of 8,564.4 hours with an external cost of $1,141,920.[358] Pass-through voting by acquiring funds would impose an estimated annual burden of 1,932 hours with an external cost of $230,400.[359] In the aggregate, the voting provision of proposed rule 12d1–4 therefore would impose an estimated internal annual burden of 10,292.4 hours with an external cost of $1,372,320.[360]

3. Management Companies—Adviser Evaluations and Board Oversight

In addition, in cases where the acquiring fund is a management company, proposed rule 12d1–4 would require the acquiring fund's adviser to evaluate the complexity of the structure and aggregate fees associated with the acquiring fund's investment in acquired funds, and find that it is in the best interest of the acquiring fund to invest in the acquired fund.[361]

Further, in cases where the acquiring fund is a management company, the proposed rule requires the acquiring fund's adviser to report to the acquiring fund's board of directors its finding that it is in the best interest of the acquiring fund to invest in the acquired fund and the basis for that finding.[362] The proposed rule requires this reporting before investing in acquired funds in reliance on the rule, and with such frequency as the board of directors of the acquiring fund deems reasonable and appropriate thereafter, but in any case, no less frequently than annually.[363]

Finally, an acquiring fund that is a management company would be required to maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (i) A written record of the adviser's finding that it is in the best interest of the acquiring fund to invest in the acquired funds; (ii) the basis for such finding; and (iii) any related reports provided by the adviser to the board of directors.[364]

These evaluations would impose both initial and ongoing burdens on management companies, related to both the evaluations themselves and the creation, review and maintenance of the aforementioned written materials associated with the evaluations. The Commission staff estimates the evaluations would impose an initial internal burden of 30 hours per fund.[365] Amortized over three years, this initial burden would equate to 10 hours per fund.[366] Because the rule requires ongoing evaluations with such frequency as the board of directors of the acquiring fund deems reasonable and appropriate, but in any case, no less frequently than annually, the Commission staff estimates that the evaluations (including the creation, review and maintenance of written materials associated with the evaluations) would impose an ongoing internal burden of 16 hours per fund.[367] Additionally, the staff estimates that these evaluations would impose an initial external cost of $17,610[368] and external annual ongoing costs of

[350] *See, e.g.,* 17 CFR 270.30b1–4 (rule 30b1–4 under the Act). This estimate of the one-time annual hour burden consists of 3 hours × $392 hourly rate for an in-house attorney. *See supra* footnote 287 for the source of salary data. 3 × $392 = $1,176 per fund. We do not believe that funds subject to the proposed voting provision would incur any ongoing time or cost burdens associated with proxy voting policies and procedures or related disclosures.

[351] These estimates are based on the following calculations: 809 acquiring funds × 3 hours = 2,427 hours; 809 acquiring funds × $1,176 = $951,384.

[352] These estimates are based on the following calculations: 2,427 hours/3 = 809 hours; $951,384/3 = $317,128.

[353] These estimates are based on the following calculations: 1 hour × $5,070 hourly rate for board of directors = $5070; 5,070/3 = $1,690. *See supra* footnote 287 for the source of salary data.

[354] This estimate is based on the following calculations: 3 hours × $392 hourly rate for in-house attorney = $1,176. *See supra* footnote 287 for the source of salary data.

[355] This estimate is based on the following calculations: 30 hours × $392 hourly rate for in-house attorney = $11,760. See *supra* footnote 287 for further explanation of salary data.

[356] This estimate is based on the following calculations: 1 hour × hourly rate for outside counsel of $400 = $400. *See supra* footnote 287 for further explanation of salary data.

[357] This estimate is based on the following calculations: 10 hours × hourly rate for outside counsel of $400 = $4,000. *See supra* footnote 287 for further explanation of salary data.

[358] These estimates are based on the following calculations: 793 acquiring funds × 3.6 mirror votes per year × 3 hours per mirror vote = 8,564.4 hours; 793 acquiring funds × 3.6 mirror votes per year × $400 per mirror vote = $1,141,920. (3.6 mirror votes per year = 11 (average number of acquired funds in which each acquiring fund invests)/3 years.) *See supra* footnote 348.

[359] These estimates are based on the following calculations: 16 acquiring funds × 3.6 pass-through votes per year × 30 hours per pass-through vote = 1,728 hours; 16 acquiring funds × 3.6 pass-through votes per year × $4,000 per pass-through vote = $230,400. (3.6 pass-through votes per year = 11 (average number of acquired funds in which each acquiring fund invests)/3 years.) *See supra* footnote 348.

[360] These estimates are based on the following calculations: 8,564.4 hours + 1,728 hours = 10,292.4 hours; $1,141,920 + $230,400 = $1,372,320.

[361] Proposed rule 12d1–4(b)(3)(i).

[362] *Id.*

[363] *Id.*

[364] Proposed rule 12d1–4(c).

[365] These burden hours translate to a monetized cost of $11,005 per fund. This estimate is based on the following calculation: 15 hours × $352 hourly rate for compliance attorney + 10 hours × $317 hourly rate for senior portfolio manager + 5 hours × $511 hourly rate for chief compliance officer = $11,005. *See supra* footnote 287 for the source of salary data. Amortized over three years, the monetized annual cost of the initial hour burden would be $3,590. This estimate is based on the following calculation: $11,005/3 = $3,669.

[366] This estimate is based on the following calculation: 30 hours/3 years = 10 hours per year.

[367] These 16 burden hours translate to a monetized annual cost of $2,887 per fund. This estimate is based on the following calculations: 6 hours × $352 hourly rate for compliance attorney = $2,112; 5 hours × $61 hourly rate for general clerk = $305; 5 hours × $94 hourly rate for senior computer operator = $470. See supra footnote 287 for the source of salary data.

[368] This estimate is based on the following calculation: 3 hours × $5,070 hourly rate for board of directors + 6 hours × $400 hourly rate for outside counsel = $17,610. *See supra* footnote 287 for the source of salary data.

$5,870 [369] per fund on management companies, relating to the need for board review and consultation with outside counsel.

4. UITs—Principal Underwriter or Depositor Evaluations

The proposed rule would also require that, in cases where the acquiring fund is a registered UIT, the UIT's principal underwriter or depositor must evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in acquired funds, and find that the UIT's fees do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit.[370] This evaluation must take place on or before of the date of initial deposit of portfolio securities into the UIT.[371]

An acquiring fund that is a UIT also would be required to maintain and preserve for a period of not less than five years, the first two years in an easily accessible place, the UIT's principal underwriter or depositor's finding that the UIT's fees do not duplicate the fees of the acquired funds and the basis for such finding.[372]

These evaluations would impose both initial and ongoing burdens on UITs, related to both the evaluations themselves and the creation, review and maintenance of the aforementioned written materials associated with the evaluations. The Commission staff estimates the evaluations would impose an initial internal burden of 30 hours per fund.[373] Amortized over three years, this initial burden would equate to 10 hours per fund.[374] Because the rule requires ongoing maintenance of written materials, the Commission staff estimates that the evaluations would impose an ongoing burden of five hours per fund, due to recordkeeping obligations related to the evaluations.[375] The Commission staff further estimates that these evaluations would impose an initial external cost of $2,400 for consultation with outside counsel.[376] In contrast to the external annual ongoing costs noted above for management companies, the Commission staff estimates that these evaluations would impose no external annual ongoing costs on UITs, because the rule would only require each UIT to make a single determination on or before of the date of initial deposit of portfolio securities into the UIT.[377]

5. Separate Accounts Funding Variable Insurance Contracts—Certificates

Additionally, the proposed rule would require that, with respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the acquiring fund must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees borne by the separate account, acquiring fund and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act (15 U.S.C. 80a–26(f)(2)(A)).[378] The acquiring fund would also be subject to the proposed rule's recordkeeping provisions.[379] An insurance company already is required to make these fee-related determinations, but obtaining the aforementioned certifications and maintaining the certifications for recordkeeping purposes would impose new burdens on the acquiring fund.

The Commission staff estimates that obtaining these certifications and maintaining them for recordkeeping purposes would impose a one-time internal hour burden of four hours, then an ongoing internal hour burden of one hour, on each acquiring fund. Amortized over three years, the internal hour burden would be two hours per acquiring fund.[380] The staff estimates that obtaining and maintaining the certifications would not require board review or consultation with outside counsel, and would therefore impose no additional external costs on these acquiring funds.

C. Rule 0–2

Section 6(c) of the Act provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Rule 0–2 under the Act, entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission.[381] We currently estimate for rule 0–2 a total hour burden of 5,340 hours at an annual time cost of $2,029,200.60 and the total annual external cost burden is $14,090,000.[382]

Proposed rule 12d1–4 would permit acquiring funds to invest in acquired funds beyond the limits in section 12(d)(1) of the Act subject to several conditions that are designed to limit the acquiring funds' control over the acquired funds, limit the potential for duplicative or excessive fees, and limit the construction of complex structures that may confuse investors. Many of these fund of funds arrangements are permitted under current Commission exemptive orders. Therefore, proposed rule 12d1–4 would alleviate some of the burdens associated with rule 0–2 because it would reduce the number of entities that require exemptive relief in order to operate. The Commission staff estimates that this reduction would decrease the annual aggregate burden by approximately $5,400,000 (approximately 33.5%).[383] Therefore, in the aggregate, we estimate that proposed rule 12d1–4 would result in a decrease of the annual burden of rule 0–2 to approximately 3,551 [384] hours at an

[369] This estimate is based on the following calculation: 1 hour × $5,070 hourly rate for board of directors + 2 hours × $400 hourly rate for outside counsel = $5,870. *See supra* footnote 287 for the source of salary data.

[370] Proposed rule 12d1–4(b)(3)(ii).

[371] *Id.*

[372] Proposed rule 12d1–4(c).

[373] These burden hours translate to a monetized cost of $11,005 per fund. This estimate is based on the following calculation: 15 hours × $352 hourly rate for compliance attorney + 10 hours × $317 hourly rate for senior portfolio manager + 5 hours × $511 hourly rate for chief compliance officer = $11,005. *See supra* footnote 287 for the source of salary data. Amortized over three years, the monetized annual cost of the initial hour burden would be $3,590. This estimate is based on the following calculation: $11,005/3 = $3,669.

[374] This estimate is based on the following calculation: 30 hours/3 years = 10 hours per year.

[375] These five burden hours translate to a monetized annual cost of $388 per fund. This estimate is based on the following calculation: 2.5 hours × $61 hourly rate for general clerk + 2.5 hours × $94 hourly rate for senior computer operator = $388. *See supra* footnote 287 for the source of salary data.

[376] This estimate is based on the following calculation: 6 hours × $400 hourly rate for outside counsel = $2,400. Amortized over three years, this initial cost is equal to $800 (based on a calculation of $2,400/3). *See supra* footnote 287 for the source of salary data.

[377] Proposed rule 12d1–4(b)(3)(ii).

[378] Proposed rule 12d1–4(b)(3)(iii).

[379] Proposed rule 12d1–4(c).

[380] This estimate is based on the following calculation: (4 hours + 1 hour + 1 hour)/3 = 2 hours. These two burden hours translate to a monetized annual cost of $155 per fund. This estimate is based on the following calculation: 1 hour × $61 hourly rate for general clerk + 1 hour × $94 hourly rate for senior computer operator = $155. *See supra* footnote 287 for the source of salary data.

[381] *See* Supporting Statement of Rule 0–2 under the Investment Company Act of 1940, General Requirements of Paper Applications (Nov. 23, 2016) (summarizing how applications are filed with the Commission in accordance with the requirements of rule 0–2), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-3235-008.*

[382] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2016.

[383] *See supra* footnote 267 and accompanying text. $5,400,000/($2,029,200.60 + $14,090,000) = 0.335.

[384] This estimate is based on the following calculation: 5,340 hours − (5,340 hours × 0.335) = 3,551 hours.

annual time cost of $1,349,418 [385] and an annual external cost of $9,369,850.[386]

D. Form N–CEN

Form N–CEN is a structured form that requires registered funds to provide census-type information to the Commission on an annual basis.[387] Today, the Commission is proposing an amendment to Form N–CEN to require management companies and UITs to report whether they relied on section 12(d)(1)(G) or rule 12d1–4 during the reporting period.[388]

In the Reporting Modernization Adopting Release, we estimated that the Commission would receive an average of 3,113 reports on Form N–CEN.[389] We estimated that the average annual hour burden per response for Form N–CEN for the first year to be 32.37 hours and 12.37 hours in subsequent years.[390] Amortizing the burden over three years, we estimated the average annual hour burden per fund per year to be 19.04 hours and the total aggregate annual hour burden to be 59,272 hours.[391] Finally, we estimated that all applicable funds will incur, in the aggregate, external annual costs of $2,088,176 to prepare and file reports on Form N–CEN.[392]

Based on Commission staff experience, we believe that our proposal to require management companies and UITs to report whether they relied on section12(d)(1)(G) or rule 12d1–4 during the reporting period would increase the estimated burden hours associated with Form N–CEN by approximately 0.1 hours,[393] both initially and on an ongoing basis.[394] Therefore, in the aggregate, we estimate that management companies and UITs will incur an annual burden of an additional 303.8 hours, to comply with the proposed amendments to Form N–CEN.[395] We estimate that there are no additional external costs associated with this collection of information.

E. Request for Comments

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The agency is submitting the proposed collections of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed rule should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–27–18. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–27–18, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

VIII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[396] It relates to proposed rule 12d1–4 and the proposed amendments to Form N–CEN under the Investment Company Act.

A. Reasons for and Objectives of the Proposed Actions

Proposed rule 12d1–4 would permit registered funds and BDCs that satisfy certain conditions to acquire shares of another fund in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission. The rule is designed to streamline and enhance the regulatory framework applicable to fund of funds arrangements. In addition, we propose to rescind rule 12d1–2 under the Act and individual exemptive orders for certain fund of funds arrangements to create a consistent and efficient rules-based regime for the formation and oversight of funds of funds. We also propose to amend rule 12d1–1 to allow funds that rely on section 12(d)(1)(G) to invest in money market funds that are not part of the same group of investment companies in reliance on that rule. Finally, our proposed amendments to Form N–CEN would allow the Commission to better monitor funds' reliance on rule 12d1–4 and section 12(d)(1)(G), and would assist the Commission with its accounting, auditing, and oversight functions.

B. Legal Basis

The Commission is proposing new rule 12d1–4 pursuant to the authority set forth in sections 6(c), 12(d)(1)(G) and (J), 17(b), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(d)(1)(G) and (J), 80a–17(b), and 80a–37(a)]. The Commission is proposing amendments to Form N–CEN under the authority set forth sections 8(b), 30(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(a), and 80a–37(a)].

[385] This estimate is based on the following calculation: $2,029,200.60 − ($2,029,200.60 × 0.335) = $1,349, 418.40.

[386] This estimate is based on the following calculation: $14,090,000 − ($14,090,000 × 0.335) = $9,369,850.

[387] *See* Reporting Modernization Adopting Release, *supra* footnote 48. The compliance date for Form N–CEN is June 1, 2018.

[388] Item C.7.a. of Form N–CEN currently requires funds to disclose if they are relying on rule 12d1–1. The Commission is proposing to add to Form N–CEN requirements that funds report if they are relying on section 12(d)(1)(G) or rule 12d1–4. *See* Proposed Items C.7.l. and m. of Form N–CEN (relating to management companies) and Proposed Items F.18 and F.19 (relating to UITs).

[389] *See* Reporting Modernization Adopting Release, *supra* footnote 48 at text accompanying n.1524.

[390] *See* Reporting Modernization Adopting Release, *supra* footnote 48 at text accompanying nn.1531–1532.

[391] *See* Reporting Modernization Adopting Release, *supra* footnote 48 at text accompanying nn.1533–1534.

[392] *See* Reporting Modernization Adopting Release, *supra* footnote 48 at text accompanying n.1538.

[393] This estimate stems from the Commission staff's understanding of the time it takes to complete initially complete and review items on Form N–CEN.

[394] We also have revised our estimate of the number of reports on Form N–CEN per year down from 3,113 reports to 3,038 reports to reflect updates to the industry data figures that were utilized in the Reporting Modernization Release. This estimate is based on the number of entities as of December 2017 that we expect will be required to make filings on Form N–CEN. *See* Reporting Modernization Adopting Release, *supra* footnote 48 at text accompanying n.1524.

[395] This estimate is based on the following calculation: 0.1 hours × 3,038 filers = 303.8 hours.

[396] 5 U.S.C. 603(a).

C. Small Entities Subject to the Proposed Requirements

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[397] Commission staff estimates that, as of June 2018, there were 59 open-end funds (including 10 ETFs), 32 closed-end funds, 6 UITs, and 19 BDCs that would be considered small entities that may be subject to proposed rule 12d1–4.[398] For the purposes of this analysis, we estimate that, of those 116 total entities, 8 entities (3 open-end funds, 4 closed-end funds, and 1 UIT) invest in other funds and thus may be subject to the proposed rule.[399]

D. Projected Board Reporting, Recordkeeping, and Other Compliance Requirements

We are proposing new rule 12d1–4 to streamline and enhance the regulatory framework applicable to fund of funds arrangements, the rescission of rule 12d1–2 and individual exemptive orders for certain fund of funds arrangements in order to create a consistent and efficient rules-based regime for the formation and oversight of fund of funds, and amendments to Form N–CEN to allow the Commission to better monitor funds' reliance on rule 12d1–4 and section 12(d)(1)(G) and assist the Commission with its accounting, auditing, and oversight functions.

A fund that relies on rule 12d1–4 (or intends to preserve flexibility to rely on rule 12d1–4) would be required to disclose in its registration statement that it is or at times may be an acquiring fund for purposes of rule 12d1–4. In addition, under proposed rule 12d1–4, where an acquiring fund and its advisory group (in the aggregate) hold more than 3% of the outstanding voting securities of an acquired fund, the acquiring fund would be required to vote those securities using either pass-through voting or mirror voting, unless the acquiring fund is covered by certain exceptions to the requirement. In cases where the acquiring fund is a management company, proposed rule 12d1–4 would require the acquiring fund's adviser to evaluate the complexity of the structure and aggregate fees associated with the acquiring fund's investment in acquired funds, and find that it is in the best interest of the acquiring fund to invest in the acquired funds. Proposed rule 12d1–4 also would require that, in cases where the acquiring fund is a registered UIT, the UIT's principal underwriter or depositor must evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in acquired funds, and find that the UIT's fees do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit. Additionally, the proposed rule would require that, with respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the acquiring fund must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees borne by the separate account, acquiring fund and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act.

To harmonize the overall regulatory structure in view of proposed rule 12d1–4, we are proposing to rescind existing exemptive orders (as discussed below) and rule 12d1–2, which would eliminate the flexibility of funds relying on section 12(d)(1)(G) to: (i) Acquire the securities of other funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F); and (ii) invest directly in stocks, bonds and other securities. We also propose to amend rule 12d1–1 to allow funds relying on section 12(d)(1)(G) to invest in money market funds that are not part of the same group of investment companies in reliance on that rule. Finally, we are proposing an amendment to Form N–CEN to require management companies and UITs to report whether they relied on section 12(d)(1)(G) or rule 12d1–4 during the reporting period.

Proposed new rule 12d1–4, the rescission of rule 12d1–2, and the amendments to rule 12d1–1 and Form N–CEN would change current reporting requirements for small entities that choose to rely on the rule. Entities eligible to rely on proposed rule 12d1–4 would be required to comply with the requirements of the rule only if they wish to rely on the rule's exemptions. Additionally, entities that are management companies or UITs and are relying on rule 12d1–4 would be required to report this reliance on Form N–CEN. For purposes of this analysis, Commission staff estimates, based on outreach conducted with a variety of funds, that small fund groups will incur approximately the same initial and ongoing costs as large fund groups. As discussed above, we estimate that each entity that relies on proposed rule 12d1–4 (and is subject to rule 12d1–4's voting provision) would incur the following annual time and cost burdens (with initial burdens amortized over the initial three years): (a) Two internal burden hours and $3,647 in external costs to satisfy new disclosure requirements;[400] (b) 1 internal burden hour and $800 in external costs to satisfy the proposed voting requirement;[401] (c) for management companies, 26 internal burden hours and $11,740 in external costs to satisfy the proposed complex structure and aggregate fees analysis requirement,[402] and for UITs, 15 internal burden hours and $800 in external costs to satisfy the proposed complex structure and aggregate fees analysis.[403] Furthermore, as discussed above, we estimate that each entity that relies on the proposed new rule would incur an additional annual time burden of 0.1 hours to comply with the amendments to Form N–CEN.[404]

Therefore, in the aggregate, we estimate that small entities would incur an annual internal burden of 221 additional hours and an annual external cost burden of $118,556 to comply with the requirements of proposed rule 12d1–4.[405] Furthermore, in the aggregate, we estimate that small entities would incur an annual burden of an additional 0.8 hours to comply with the amendments to Form N–CEN.[406]

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[397] *See* rule 0–10(a) under the Investment Company Act.

[398] This estimate is derived an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 30, 2018. There are currently no ETMFs or face-amount certificate companies that would be considered small entities. We estimate that no BDCs that are small entities invest in other funds.

[399] *Id.*

[400] *See supra* footnotes 340 through 345 and accompanying text.

[401] *See supra* footnotes 349 through 356 and accompanying text. We expect that small entities subject to the voting requirement would choose to use mirror voting rather than pass-through voting, and thus use our estimates for mirror voting here.

[402] *See supra* footnotes 365 through 369 and accompanying text.

[403] *See supra* footnotes 373 through 377 and accompanying text.

[404] *See supra* footnotes 393 through 394 and accompanying text.

[405] This estimate is based on the following calculations:

(2 internal burden hours and $3,647 in external costs) × 8 total small entities for disclosure requirements + (1 internal burden hour and $800 in external costs) × 8 total small entities for voting requirements + (26 internal burden hours and $11,740 in external costs) × 7 management company small entities for fee-related requirements + (15 internal burden hours and $800 in external costs) × 1 UIT small entity for fee-related requirements = 221 internal burden hours and $118,556.

[406] This estimate is based on the following calculations: 0.1 hours × 8 small entities = 0.8 hours.

In addition, the economic effects of proposed rule 12d1–4's redemption limit, discussed above in section VI.C.1.d, may disproportionately affect smaller entities by creating an incentive for acquiring funds to invest in larger acquired funds rather than smaller acquired funds. This may reduce the flow of capital to smaller potential acquired funds. We do not otherwise expect the proposal to generate significant economic impacts on smaller entities that are disproportionate to the general economic impacts, including compliance costs and burdens, discussed in sections VI and VII above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed fund of funds regulations.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to the proposed disclosure, findings, board reporting, and recordkeeping requirements: (i) Exempting small entities from some or all of the proposed requirements to rely on proposed rule 12d1–4, or establishing different disclosure or reporting requirements, or different disclosure frequency, for small entities to account for different levels of resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under proposed rule 12d1–4 for small entities; and (iii) using performance rather than design standards.

We do not believe that exempting or establishing different requirements for any subset of funds, including funds that are small entities, from proposed rule 12d1–4 or the proposed amendments to rule 12d1–1 and Form N–CEN or the proposed rescission of rule 12d1–2 and certain existing exemptive relief would permit us to achieve our stated objectives.[407] Nor do we believe that clarifying, consolidating or simplifying the various aspects of the proposal for small entities would satisfy those objectives. In particular, we do not believe that the interest of investors would be served by these alternatives. We believe that all investors, including investors in entities that are small entities, would benefit from the proposed rule and form amendments. We believe that our proposal strikes the right balance between allowing funds to engage in fund of funds arrangements while protecting such entities from the abuses that Congress sought to curtail in adopting section 12(d)(1). We believe that our proposed requirements are vital to that balance and important to all investors, irrespective of the size of the entity. We note that the current exemptive orders do not distinguish between small entities and other funds. Finally, we determined to use performance rather than design standards for all funds, regardless of size, because we believe that providing funds with the flexibility to determine how to implement the requirements of the rule allows them the opportunity to tailor these obligations to the facts and circumstances of the entities themselves.

G. General Request for Comment

The Commission requests comments regarding this analysis. We request comment on the number of small entities that would be subject to the proposed rules and whether the proposed rules would have any effects on small entities that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the proposed rules and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of the proposed rules and how they would affect small entities.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [408] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed rule and form amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Statutory Authority

The Commission is proposing new rule 12d1–4 pursuant to the authority set forth in sections 6(c), 12(d)(1)(G) and (J), 17(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(d)(1)(G) and (J), 80a–17(b), and 80a–37(a)]. The Commission is proposing an amendment to Form N–CEN under the authority set forth sections 8(b), 30(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(a), and 80a–37(a)].

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010) unless otherwise noted.

* * * * *

■ 2. Amend section 270.12d1–1 by revising paragraph (a) to read as follows:

§ 270.12d1–1 Exemptions for investments in money market funds.

(a) *Exemptions for acquisition of money market fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(G), 17(a), and 57 of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(B), 80a–12(d)(1)(G), 80a–17(a), and 80a–56)) and § 270.17d–1:

(1) An investment company (''acquiring fund'') may purchase and redeem shares issued by a money market fund; and

(2) A money market fund, any principal underwriter thereof, and a broker or a dealer may sell or otherwise dispose of shares issued by the money market fund to any acquiring fund.

* * * * *

§ 270.12d1–2 [Removed and Reserved]

■ 3. Remove and reserve section 270.12d1–2.

■ 4. Section 270.12d1–4 is added to read as follows:

[407] This includes exempting or establishing any different requirements relating to proposed rule 12d1–4's redemption limits. *See supra* section VI.C.1.d.

[408] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

§ 270.12d1–4 Exemptions for investments in certain investment companies.

(a) *Exemptions for acquisition and sale of acquired fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(C), 17(a), and 57 of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(C), 80a–17(a) and 80a–56):

(1) A registered investment company (other than a face-amount certificate company) or business development company (an ''acquiring fund'') may purchase or otherwise acquire the securities issued by another registered investment company (other than a face-amount certificate company) or business development company (an ''acquired fund''); and

(2) An acquired fund, any principal underwriter thereof, and any broker or dealer registered under the Securities Exchange Act of 1934 may sell or otherwise dispose of the securities issued by the acquired fund to any acquiring fund and any acquired fund may redeem or repurchase any securities issued by the acquired fund from any acquiring fund.

(b) *Conditions.*

(1) *Control.*

(i) The acquiring fund and its advisory group will not control (individually or in the aggregate) an acquired fund; and

(ii) If the acquiring fund and its advisory group, in the aggregate, hold more than 3% of the outstanding voting securities of an acquired fund, each of those holders will vote its securities in the manner prescribed by section 12(d)(1)(E)(iii)(aa) of the Act (15 U.S.C. 80a–12(d)(1)(E)(iii)(aa));

(iii) The conditions in paragraphs (b)(1)(i) and (ii) of this section do not apply when:

(A) The acquiring fund is in the same group of investment companies as an acquired fund; or

(B) The acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as an acquired fund's investment adviser or depositor.

(2) *Limited redemption.* An acquiring fund that holds shares of an acquired fund in excess of the limits of section 12(d)(1)(A)(i) of the Act (15 U.S.C. 80a–12(d)(1)(A)(i)) does not redeem or submit for redemption, or tender for repurchase, any of those shares in an amount exceeding 3% of the acquired fund's total outstanding shares during any thirty-day period in which the acquiring fund holds the acquired fund's shares in excess of that limit.

(3) *Fees and other considerations.*

(i) *Management companies.* If the acquiring fund is a management company, before investing in an acquired fund in reliance on this section, and with such frequency as the acquiring fund's board of directors deems reasonable and appropriate thereafter, but in any case, no less frequently than annually, the acquiring fund's investment adviser must evaluate the complexity of the structure and aggregate fees associated with the acquiring fund's investment in the acquired fund, and find that it is in the best interest of the acquiring fund to invest in the acquired fund. The acquiring fund's investment adviser must report its finding and the basis for the finding to the acquiring fund's board of directors.

(ii) *Unit investment trusts.* If the acquiring fund is a unit investment trust and the date of initial deposit of portfolio securities into a registered UIT occurs after the effective date of this section, the UIT's principal underwriter or depositor must evaluate the complexity of the structure and the aggregate fees associated with the UIT's investment in acquired funds and, on or before such date of initial deposit, find that the UIT's fees do not duplicate the fees of the acquired funds that the UIT holds or will hold at the date of deposit.

(iii) *Separate account funding variable insurance contracts.* With respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the acquiring fund must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees borne by the separate account, acquiring fund and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act (15 U.S.C. 80a–26(f)(2)(A)).

(4) *Complex fund structures.*

(i) An investment company must disclose in its registration statement that it is (or at times may be) an acquiring fund for purposes of this section;

(ii) No investment company may rely on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) or this section to purchase or otherwise acquire, in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a–12(d)(1)(A)), the outstanding voting securities of another investment company that discloses in its most recent registration statement that it may be an acquiring fund under this section; and

(iii) An acquired fund must not acquire the securities of another investment company (or companies that would be investment companies under section 3(a) of the Act but for the exclusions from that definition provided for in section 3(c)(1) or section 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)) in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a–12(d)(1)(A)) unless the acquired fund's investment is:

(A) In reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E));

(B) For short-term cash management purposes pursuant to § 270.12d1–1 or exemptive relief from the Commission;

(C) In a subsidiary that is wholly-owned and controlled by the acquired fund;

(D) The receipt of securities as a dividend or as a result of a plan of reorganization of a company; or

(E) The acquisition of securities of another investment company pursuant to exemptive relief from the Commission to engage in interfund borrowing and lending transactions.

(c) *Recordkeeping.* The acquiring fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place, a written record of:

(1) The finding required by paragraph (b)(3)(i) of this section and the basis for such finding, and the reports provided to the board of directors pursuant to paragraph (b)(3)(i) of this section;

(2) The finding required by paragraph (b)(3)(ii) of this section and the basis for such finding; and

(3) The certification from each insurance company required by paragraph (b)(3)(iii) of this section.

(d) *Definitions.* For purposes of this section:

Advisory group means either:

(1) An acquiring fund's investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor; or

(2) An acquiring fund's investment sub-adviser and any person controlling, controlled by, or under common control with such investment sub-adviser.

Group of investment companies means any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for purposes of investment and investor services.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 5. The general authority citation for part 274 continues to read as follows, and the sectional authorities for §§ 274.101 and 274.130 are removed:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8,

80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 6. Amend Form N–CEN [(referenced in § 274.101), by:

■ a. In Part C, revising Item C.7. and adding paragraphs k. and l.; and

■ b. In Part F, adding Item F.18. and Item F.19.

Note: The text of Form N–CEN does not and the amendments will not appear in the Code of Federal Regulations.

The revisions and additions read as follows:

FORM N–CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

* * * * *

Part C. Additional Questions for Management Investment Companies

* * * * *

Item C.7. Reliance on certain statutory exemption and rules. Did the Fund rely on the following statutory exemption or any of the rules under the Act during the reporting period? (check all that apply)

* * * * *

k. Rule 12d1–4 (17 CFR 270.12d1–4): ___

l. Section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)): ___

* * * * *

Part F. Additional Questions for Unit Investment Trusts

* * * * *

Item F.18. Reliance on rule 12d1–4. Did the Registrant rely on rule 12d1–4 under the Act (17 CFR 270.12d1–2) during the reporting period? [Y/N]

Item F.19. Reliance on section 12(d)(1)(G). Did the Registrant rely on the statutory exception in section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) during the reporting period? [Y/N]

* * * * *

By the Commission.

Dated: December 19, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27924 Filed 1–31–19; 8:45 am]

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This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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