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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0045]

RIN 1904–AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; completion of review; confirmation of rulemaking.

SUMMARY: This document announces the completion of a review of the final rule amending energy conservation standards for ceiling fans, published on January 19, 2017, and confirms that compliance will remain as required with that January 19 final rule, without change.

DATES: The effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 82 FR 6826 on January 19, 2017, remains September 30, 2017. The compliance date of that rule remains January 21, 2020.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2017, the United States Department of Energy (''DOE'') temporarily postponed the effective date of its final rule amending the energy conservation standards for ceiling fans published in the **Federal Register** on January 19, 2017. See 82 FR 8806. The January 31st rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. Therefore, DOE further temporarily postponed the effective date of that energy conservation standards regulation until September 30, 2017, to allow the Secretary the opportunity to accomplish this task. See 82 FR 14427, Mar. 21, 2017.

The Secretary has completed his review of the energy conservation standards regulation for questions of fact, law, and policy, and determined that the rule will be implemented without change. In this notice, DOE confirms that the effective date of the final rule amending the energy conservation standards for ceiling fans remains September 30, 2017, and that the compliance date remains January 21, 2020, as originally published.

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

Daniel R. Simmons,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2017–10633 Filed 5–23–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD; Amendment 39–18871; AD 2017–09–09]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats California LLC Seating Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Zodiac Seats California LLC seating systems. This AD was prompted by a determination that the affected seating systems may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. This AD requires removing affected seating systems. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 28, 2017.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5595; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Zodiac Seats California LLC seating systems. The NPRM published in the **Federal Register** on April 20, 2016 (81 FR 23212) (''the NPRM''). The NPRM was prompted by a determination that the affected seating systems may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. The NPRM proposed to require removing affected seating systems. We are issuing this AD to prevent serious injury to the occupant during forward impacts in emergency landing conditions.

After the NPRM comment period closed, we reopened the comment

period to allow additional time for interested parties to comment on the NPRM (81 FR 41466, June 27, 2016).

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Withdraw the NPRM

The Industry Ad Hoc Committee (which consists of Bombardier, Embraer, HAECO Cabin Solutions, Zodiac Seats California, Zodiac Seats France, Zodiac Seats UK, and Zodiac Seats US) and Zodiac Seats California (commenting independently) questioned the basis for the requirements of the proposed AD. We infer they are requesting we withdraw the NPRM. The Industry Ad Hoc Committee and Zodiac Seats California stated the proposed AD is not supported on a technical basis and is based only on limited research. The Industry Ad Hoc Committee asked if there have been any aerospace incidents or accidents documenting the specific neck injuries being mitigated by the proposed AD. The Industry Ad Hoc Committee and Zodiac Seats California stated there has been no correlation to develop proper costs/benefits related to the type of injury mechanism specified in the NPRM with respect to actual accident injuries. The Industry Ad Hoc Committee and Zodiac Seats California cited multiple accidents where news and investigative reports from the accidents did not mention serious neck injuries.

We do not agree to withdraw the NPRM. The intent of this AD is to provide a safe outcome for passengers during a survivable crash by preventing serious injuries, such as a transection of the neck during forward impacts in emergency landing conditions. We find that sufficient data exist to demonstrate that affected seating systems might cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. We note that the commenters have identified several accidents that were survivable with seating systems that are not subject to this AD. The comparison of those seating systems to the ones identified in this AD is not valid.

We have identified an unsafe condition and determined corrective action is required. Therefore, we have not revised this AD in this regard. We have provided additional details on the unsafe condition in the comment responses that follow.

Request To Revise Applicability To Exclude Seating Systems With a Certain Design

Zodiac Seats California requested that we exclude new seating systems that have been built with design solutions that remove the unsafe condition. Zodiac Seats California recommended that we refine table 1 to paragraphs (c), (g), (i), (j), and (k) of the proposed AD to further identify part numbers by specifying the part number, and then use parenthetical groups in order to segregate the part numbers for the redesigned seating systems.

We agree because the redesigned seating systems are not affected by the identified unsafe condition. The redesigned seating systems have new part numbers. Table 1 to paragraphs (c), (g), (i), (j), and (k) of the proposed AD was based upon the Zodiac Seats California technical standard order (TSO) authorization. We have revised table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD by providing additional part number details to specify only those seats having the unsafe condition.

Also, the part number format for model number 4170 in table 1 to paragraphs (c), (g), (i), (j), and (k) of the proposed AD has been revised to reflect the current format.

Request To Revise Applicability To Exclude Certain Part Numbers

Bombardier requested that we exclude certain parts from the applicability of the proposed AD. Bombardier stated that seats that do not have meal/food trays nor upper literature pockets, such as part numbers 41763002–( )–( ), 41765002–( )–( ), and 41767002–( )–( ), should be excluded. Bombardier stated that these seats are either: (1) Installed at a pitch range of 41 inches to 42 inches or a pitch of 45 inches, making it unlikely that a passenger seated behind this seat would be susceptible to neck injuries during forward impacts addressed in the proposed AD; or (2) are the last row in front of a bulkhead, and thus no passengers would ever impact the last row of seats when subjected to the forward impacts addressed in the proposed AD. Bombardier also recommended that the format of ''41XX( )–( )–( )'' be revised to ''41XXXXXXXX–( )–( ) to specify additional detail.

We partially agree with the commenter's request. The initial installation controls the seating positions at a defined pitch range. However, table 1 to paragraphs (c), (g), (i), (j), and (k) of the proposed AD was established based on the TSO authorization of the seating systems and addresses both the initial installation and secondary market in which the seating system may have been modified after issuance of the type certificate.

Therefore, we have revised paragraph (c) of this AD to exclude part numbers 41763002–( )–( ), 41765002–( )–( ), and 41767002–( )–( ), but only if the seats have not been modified to add a food tray or an upper literature pocket. We also revised the part number format in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD to specify additional detail.

Request To Revise Applicability To Exclude Certain Parts Based on Installation Instructions

Zodiac Seats California requested that we exclude seats from the applicability of the proposed AD based on how they were originally installed. Zodiac Seats California stated that certain seats do not have the injurious condition cited in the NPRM due to how they were installed. Zodiac Seats California cited the following examples: Last row seats that do not have aft-mounted food tables; seats installed at pitches at 39.5 inches or greater; and seats installed at pitches greater than 41 inches that do not have aft-mounted food tables on the forward exit seat. Zodiac Seats California identified multiple part numbers that should be excluded.

We do not agree. While the Zodiac Seats California ''Instructions for Installation and Limitations'' provides guidance for the installation of the seating systems, it is not mandatory that installers follow the guidance. The seats may be modified in the secondary market in which seat configurations and airplane interior installations may occur without Zodiac Seats California's or the airplane original equipment manufacturer's participation. Therefore, we cannot exclude seats based on the original installation. In addition, dynamic 16g head injury criteria (HIC) tests at a seat pitch of 39.5 inches using the FAA 50-percentile Hybrid II Anthropomorphic Test Device (ATD) may lead to the conclusion that the unsafe condition does not exist; however, the tests do not evaluate a range of occupants. We have not changed this AD in this regard.

Request To Revise Applicability To Exclude Seats on The Boeing Company Model MD–90–30 Airplanes

Zodiac Seats California requested that we revise the applicability of the proposed AD by excluding model number 4170 seats installed on The Boeing Company Model MD–90–30 airplanes. Zodiac Seats California stated

that the MD–90–30 installation does not require 16g row-to-row HIC tests because Model MD–90–30 airplanes are not required to comply with 14 CFR 25.562(c)(5) and (c)(6). Delta Airlines (Delta) requested that we clarify whether the AD is applicable to Model MD–90–30 airplanes.

We agree to clarify the applicability because seat model number 4170 includes a group of seating systems that share a design feature that does not provide occupant impact protection. Known installations include both Model MD–90–30 and Model 717–200 airplanes. Excluding Model MD–90–30 airplanes would put passengers on those airplanes at risk for a potential serious injury. In addition, compliance with FAA standards that are in place at the time of certification (including Model MD–90–30 certification requirements) does not preclude the possibility that an unsafe condition will be identified in the future, which is the case here.

Paragraph (c) of this AD identifies affected seating systems, which are installed on, but not limited to, the airplanes identified in paragraphs (c)(1) through (c)(9) of this AD. Although Model MD–90–30 airplanes with affected seating systems are included in the applicability of this AD as a result of the phrase ''but not limited to,'' we have added this model to paragraph (c)(1) of this AD for clarification. The phrase ''but not limited to'' also covers any other aircraft that these seats may have been installed on via the secondary market, such as seats that have been excessed from one air carrier and put onto another airplane not identified in this AD via a supplemental type certificate or other installation approval method. These seating systems may cause serious injury to passengers during forward impacts when subjected to certain inertia forces; therefore, these seating systems are subject to the requirements of this AD.

Request To Revise Applicability To Include Components of Seating Systems

United Parcel Service (UPS) requested that we revise the applicability of the proposed AD to include airplanes with components of the affected seating systems installed. UPS stated that the applicability of the proposed AD affects all airplanes equipped with the seating systems identified in paragraph (c) of the proposed AD. UPS added that paragraph (k) of the proposed AD has requirements that affect additional airplanes, and proposed that the applicability should specify all airplanes that may have components of the subject seat systems installed. Delta stated that the language in paragraph (k) of the proposed AD places an excessive burden on operators that may use components as spares on other seating systems.

We do not agree to change the applicability of this AD in this regard. However, we do agree to clarify the intent of paragraph (k) of this AD. Paragraph (k) only applies to airplanes affected by the applicability specified in paragraph (c) of this AD, *i.e.,* airplanes on which affected seating systems are installed. Paragraph (k) of this AD does not prohibit installing components on airplanes that have seating systems that are not included in the applicability specified in paragraph (c) of this AD. We have not changed this AD in this regard.

Request To Revise Applicability to Exclude Seat Systems Having Part Number 4157x003–( )–( )

Embraer requested that we revise the applicability to exclude part number 4157x003–( )–( ). Embraer stated that part is no longer affected by the unsafe condition identified in the NPRM.

We agree that part number 4157x003–( )–( ) is not affected by the identified unsafe condition. As stated previously, we have revised table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD to clearly identify affected parts; that table does not include part number 4157x003–( )–( ).

Request To Delay Issuance of the Proposed AD

Austrian Airlines AG (which consists of Air Dolomiti, Austrian Airlines, and Lufthansa CityLine) stated that no technical option (such as a technical modification from Zodiac Seats California) is included in the proposed AD to keep the system on the airplane after the 60-month time limit for eliminating the unsafe condition.

We infer the commenter is requesting that we delay the proposed AD until a modification of affected seating systems is available. We do not agree with the commenter's request. We have determined that an unsafe condition exists and that the requirements in this AD are needed to address that unsafe condition. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of a modification of the seating system if sufficient data are submitted to substantiate that the modification would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Allow an Alternative Method of Compliance

Zodiac Seats California, SkyWest Airlines, and Delta requested that we allow modification of the seats via a Zodiac service bulletin. Skywest stated that paragraph (g) of the proposed AD only allows for the removal of the seats. Skywest stated that if the request cannot be added to the proposed AD, alternative methods of compliance (AMOCs) will be requested to be able to use service bulletins to modify the seats. Delta stated that Zodiac is developing a seating system design that removes the unsafe condition by modifying the seats. Zodiac Seats California proposed to add the implementation of eight service bulletins as a solution to the proposed AD requirements. Zodiac Seats California stated it has been working with the FAA's Los Angeles ACO to identify a solution that can be implemented on in-service seats.

We acknowledge the work that Zodiac Seats California has done to address the identified unsafe condition on the affected seating systems. However, Zodiac Seats California has not developed design solutions to correct the unsafe condition for each of the seating systems (all relevant service bulletins have not been issued). Once all the service bulletins have been issued, we can determine if they adequately address the identified unsafe condition. We do not consider that delaying this action until after the release of the manufacturer's planned service information is warranted, since the actions required by this AD adequately address the unsafe condition. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Extend Compliance Time

Austrian Airlines AG requested that we allow more time for compliance. The commenter stated that additional time for compliance is needed so that suitable alternative seating systems could be procured and installed (*i.e.,* time is needed for research and certification).

We do not agree to extend the compliance time in this AD. Operators must comply with the actions in this AD within the compliance times specified in this AD in order to address the identified unsafe condition. The compliance times in this AD are based on the relative risk to safety resulting from non-compliance with 14 CFR

25.785 and the identified unsafe condition. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety.

Request To Clarify the Determination of the Unsafe Condition for Previously Certified Seats

Austrian Airlines AG stated that the proposed AD does not mention why the Model 4157( )–( )–( ) seats were certified on Bombardier Inc. Model ''CRJ 900 airplanes'' and Embraer S.A. Model ERJ 190 airplanes about five years ago, but now do not fulfill FAA seat certification requirements.

Zodiac Seats California stated that since the seats identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of the proposed AD were certified prior to the FAA accepting ''Nij < 1'' as a proposed means of evaluating neck injury, those seats should not be subject to an AD. Zodiac Seats California noted that when the regulations for HIC and spine loads were introduced, seats certified prior to that time were not required to be removed or modified.

We infer the commenters are requesting that we clarify our determination of the unsafe condition on previously certificated seats. We agree to provide clarification. As part of seat certification requirements (14 CFR 21.605(a)(3), amendment 21–67, and 14 CFR 21.603(a)(1), amendment 21–92), an applicant makes a statement of conformance certifying that they have met the requirements of the applicable regulations and that the article concerned meets the applicable TSO that is effective on the date the application is made. Complying with FAA standards that are in place at the time of certification does not preclude the possibility that an unsafe condition will be identified in the future, which is the case here. Therefore, we have not revised this AD in this regard.

Regarding the use of ''Nij < 1 '' for evaluating neck injuries, the method was originally proposed by Zodiac Seats California in 2015 to define the limits of the unsafe condition, and the method was accepted by the FAA. In 2016, the Industry Ad Hoc Committee asked for and received clarification from the FAA on this method. 49 CFR 571.208 currently defines a criterion for neck tension and compression, as well as a criterion that combines the effect of the neck-bending moment and axial force, called Nij.

Request To Revise Unsafe Condition Language

The Industry Ad Hoc Committee and Zodiac Seats California requested that we revise the language for the unsafe condition in the proposed AD. The commenters stated that the focus should be on the injury mechanism that both industry and FAA find to be unacceptable (direct neck contact), and that we should delete the description of head motion and excessive neck loading. The commenters stated the Zodiac Seats California data do not support statements in the NPRM that refer to unimpeded sliding motion down the back of the seat occurring during testing. The commenters noted that the seats were certified according to certain regulations and, after a later review, the FAA determined that the interaction between the neck/chin and tray table was not acceptable. The commenters agreed that direct neck interaction and soft tissue contact is not acceptable. However, the commenters stated that Zodiac Seats California has been working to redesign and recertify some of the seat models.

The commenters also expressed disagreement that to show compliance with 14 CFR 25.785, the ATD must demonstrate an unimpeded sliding motion down the back of the seat. The commenters stated that a review of the ATD head motion during a dynamic test is subjective and inaccurate, and there is no established level of performance defined in 14 CFR 25.785 or in any other part 25 regulation with regard to sliding head motion or neck injury. The Industry Ad Hoc Committee referred to a Zodiac Seats California report that does not corroborate the statements specified in the proposed AD.

The Industry Ad Hoc Committee and Zodiac Seats California stated that the associated criterion establishing proper evaluation to prevent a serious injury provided by the FAA is incomplete for validating airplane interior performance and practically impossible to duplicate. The Industry Ad Hoc Committee and Zodiac Seats California noted that the FAA is still actively developing and clarifying both the measuring techniques and requirements to support the NPRM. The Industry Ad Hoc Committee and Zodiac Seats California stated the rationale for the NPRM creates an inconsistent interpretation of 14 CFR 25.785 when it includes requiring an unimpeded sliding motion of the head and neck bending without verifying this condition does not exist across other seat designs. The Industry Ad Hoc Committee and Zodiac Seats California also asked how an applicant is expected to ensure compliance to 14 CFR 25.785 using guidance published in Advisory Circular (AC) 25–17A (''Transport Airplane Cabin Interiors Crashworthiness Handbook''), May 18, 2009, for all other areas on the seat within potential head strike range not specifically impacted during a 14 CFR 25.562 test event.

We do not agree with the request to revise the unsafe condition language. However, we will further explain our assessment. The FAA and Agência Nacional de Aviação Civil (ANAC) (Brazil) reviewed seven videos from the technical standard order authorization for TSO–C127a seating systems. Based on the video, the FAA characterized the interaction of the ATD chin and the tray table into five cases: two that are normal (typical) interactions, and three that are not. In the two typical interactions, the head either slides down the seat back and tray table unimpeded, or the head crushes the tray table inward and dislodges it downward. The FAA and Zodiac Seats California agreed that two of the abnormal cases are unsafe and corrective action is required.

The remaining interaction involves a scenario where the bottom of the chin (the area closest to the face) catches the top of the tray table, dislodging the table downward as the head slides down the seat back. This condition, which was limited to seating systems with the marketing identification of Slim Plus, needed further investigation. On June 2, 2015, Zodiac Seats California proposed the pass/fail criteria for the investigation of those seating systems in which one or both ATD exhibited this interaction. In August 2015, the FAA witnessed testing of three seating systems at the Zodiac Seats California facility to evaluate this interaction. Zodiac Seats California concluded that design changes to the upper literature pocket and food tray table are necessary.

This AD does not specify that ATD interaction between the ATD and seat back must be a sliding motion. The unsafe condition is based upon the Los Angeles ACO's review of TSO –C127, TSO–C127a, and TSO–C127b videos from numerous applicants (including, but not limited to, Embraer Aero Seating Technologies, Recaro, and TIMCO) for seating systems. The Zodiac Seats California design is such that a new potential injury to the occupant is introduced with neck/chin interaction. Zodiac Seats California proposed a method of compliance to quantify the injury for these seating systems (including the use of Nij), and the FAA found the methodology to be acceptable. However, compliance with Nij is not being required by this AD.

Regarding the requests to revise the unsafe condition description, this information was included in the Discussion section of the NPRM, which is not restated in this final rule. Therefore, there is no need to revise this final rule in this regard.

Request To Clarify the Determination of Unsafe Condition

The Industry Ad Hoc Committee and Zodiac Seats California stated the NPRM was initiated with inconclusive data, creating a non-standard approach within industry based on a number of unanswered questions. The commenters requested clarification of how the unsafe condition was determined. The commenters questioned if the FAA has determined that an ''unimpeded sliding motion'' and/or Nij is the right criteria for evaluating neck injury in aircraft interiors.

The Industry Ad Hoc Committee and Zodiac Seats California also stated that evaluation of potential neck injury severity by reviewing test videos of the Hybrid II ATD head motion along the seat back surface is inaccurate and subjective. The Industry Ad Hoc Committee and Zodiac Seats California reiterated that it is not possible to determine the extent of neck bending loads leading to neck injury by video evaluation only. The Industry Ad Hoc Committee and Zodiac Seats California stated that any new regulatory performance criteria defined by the FAA must be developed through comprehensive research to assess validity, repeatability, and feasibility. The Industry Ad Hoc Committee concluded that the FAA should establish appropriate injury criteria with FAA research data, follow the proper rulemaking process, and perform a cost benefit analysis of new regulations on type certificate/supplemental type certificate projects. The Industry Ad Hoc Committee requested that FAA continue research with the FAA Hybrid III ATD and fully substantiate Nij pass/fail criteria before establishing a threshold of Nij < 1 and associated force/moment limits for row-to-row dynamic impact tests, which forces the industry to a more conservative value than necessary. The Industry Ad Hoc Committee noted the seat supplier community has already attempted to clarify and mitigate the FAA's concerns and has offered a more specific evaluation method.

Delta suggested that further testing and industry discussion should take place prior to any rulemaking that would allow inclusion of National Highway Traffic Safety Administration (NHTSA) neck criteria and potential neck interactions into injury testing requirements to comply with 14 CFR 25.785.

We agree to clarify our determination of the unsafe condition. No new criteria have been established by the FAA. However Zodiac Seats California has proposed, and the FAA accepted, criteria that substantiated the unsafe condition. The use of Nij has been volunteered and accepted as one means of demonstrating compliance to 14 CFR 25.785.

The FAA reviewed screen captures when Zodiac Seats California approached the FAA with a concern of the ATD and seat back interaction. The FAA advised Zodiac Seats California to revise the design to address the interaction. We acknowledge that loads and injury cannot be evaluated by video only and note that Zodiac Seats California proposed criteria that included neck bending loads to determine whether the FAA concern about injuries was substantiated. The potential for injury was quantified and substantiated.

We do not agree that additional research is necessary to establish the human tolerance for neck injuries. The Nij, as implemented by NHTSA, was specifically intended to evaluate an injurious combined tension/extension loading condition that can be created by airbag interaction or when the ATD chin hangs up on a protruding seat back feature (*e.g.,* downward sliding is arrested, chin catches, hangs or impedes with a tray ledge or other seat feature).

Therefore, the FAA finds that when a quantitative assessment is necessary, the NHTSA Nij and load limit criteria are well-suited to assessing the injury potential of seat back interactions and airbag/wall interactions. We have not changed this AD in this regard.

Request To Clarify the Determination of the Injury Criteria and the Effect on the Regulations

Delta requested that we provide additional details on the relevant information evaluated for this NPRM. Delta asked that we further define the testing and findings that were used to determine new injury mechanisms and neck bending loads that were found to contribute to the unsafe condition on previously approved seats. Delta also requested confirmation that the NPRM does not formalize the FAA's position that new neck injury mechanisms should be included in injury criteria requirements of 14 CFR 25.785. Delta also requested that we confirm that the NPRM does not redefine or add requirements to 14 CFR 25.785. Delta stated that Nij < 1 is not injury criteria under 14 CFR 25.562 or 14 CFR 25.785.

We agree to provide clarification. This AD does not redefine or add requirements to 14 CFR 25.785. However, new seating system designs are introducing new serious injury mechanisms that are considered unsafe conditions. When the new injury mechanisms are observed, it is up to industry to identify them as injurious even when criteria to define them may not exist, and to develop safety features that minimize those injuries or remove the injury mechanisms. This AD does not impose, nor does it identify, new criteria to quantify such injury mechanisms.

However, if a test method would be proposed to quantify the injury in an AMOC, we would review the AMOC proposal for corrective action to these seating systems. The use of Nij and its tension, compression, flexion, extension, rotation, neck impact, and chin-concentrated loading is one method of showing the system is not injurious. This AD does not mandate using particular criteria; however, the use of Nij was a method proposed by Zodiac Seats California and found acceptable by the FAA.

Request To Revise the Parts Installation Limitations and Prohibition

Bombardier, Embraer, and Zodiac Seats California requested that we delay the implementation of paragraph (i) of the proposed AD, ''Parts Installation Limitations: Seating Systems.'' Embraer also requested that we delay the implementation of paragraph (k) of the proposed AD, ''Parts Installation Prohibition: Components of Seating Systems.'' Bombardier requested that we change ''As of the effective date of this AD, no person may install . . .'' in paragraph (i) of the proposed AD to a date that would be approximately six months after the effective date of the AD. Zodiac Seats California requested that we allow installation of seats, except for part numbers 4157( )–( )–( ) and 4175( )–( )–( ), to be installed for several months after the effective date of the AD.

Bombardier stated that it currently deliveries Model CRJ900 and Q400 airplanes that have the affected seats to operators outside of the United States. Bombardier noted that Transport Canada Civil Aviation (TCCA) has stated it will adopt the FAA's AD immediately and added that Zodiac Seats California has not certified alternative seats. Bombardier stated that since operators will refuse delivery of airplanes without seats, it requests delaying the effective date of paragraph

(i) of the proposed AD. Bombardier stated that additional time is necessary to completely assess the situation and provide a suitable plan in order to not affect future production deliveries.

Embraer requested that we revise paragraph (i) of the proposed AD, as well as paragraph (k) of the proposed AD, to allow certain defined part numbers to be installed on newly manufactured aircraft beyond the effective date. Embraer stated that paragraph (i) of the proposed AD will effectively stop deliveries of Model ERJ 170 and ERJ 190 airplanes. Embraer stated no other seat replacements are currently available and, therefore, the proposed AD would affect the delivery of 16 airplanes from Embraer to the United States. Embraer stated that the proposed change would result in a negligible increase in the number of seats affected by the proposed AD.

We disagree with the commenters' requests. Zodiac Seats California has confirmed that affected seats are not being delivered to aircraft manufacturers and only seats with a new design (*i.e.,* seats that are not affected by this AD) are being delivered. Therefore, production delivery of aircraft should not be impacted. Operators that receive aircraft with the affected seats have the compliance time of 60 months to comply with this AD.

We have determined that this AD should prohibit installation of the unsafe parts as of the effective date of this AD, except under certain conditions, as specified in paragraphs (i)(1) and (i)(2) of this AD. We have not changed this AD in this regard. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance times for parts installations if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety.

Request To Revise the Parts Installation Provisions

Skywest Airlines requested that we change the text in the parts installation provisions of paragraph (j) of the proposed AD from " . . . other than those installed as direct spares, . . . " to " . . . other than those installed as direct spares, or on production aircraft, ..." The commenter stated that paragraphs (i) and (j) of the proposed AD do not adequately address the installation of affected seats on newly built airplanes.

We do not agree with the request to allow the installation of known affected seating systems on production airplanes. The intent of paragraphs (i) and (j) of this AD is to limit the introduction of known unsafe parts in the worldwide fleet. Granting the request would increase the population of seating systems that may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. We have not revised this AD in this regard.

Request To Clarify Prohibition of Components

Two commenters requested that we revise paragraph (k) of the proposed AD. Delta requested that we revise paragraph (k) of the proposed AD to prohibit only seat system components that directly contribute to the unsafe condition identified in the proposed AD. Delta stated that there are various components, such as cushions, seat covers, etc., that are not related to the unsafe condition.

UPS stated that the description of "component" is too generic. UPS stated it does not think the intent is to limit the installation of a certain restraint system, or even a bolt, on all airplanes because the part was installed on an affected seating system. UPS stated the proposed AD should identify specific parts that are prohibited from use.

We agree to clarify the prohibited components. There are items such as the seat cushions, seat pans, restraint systems, and track fittings that are not critical components of the injurious mechanism. We have revised paragraph (k) of this AD by replacing the text "any component" with "components critical to the unsafe condition mechanism." We have also added a sentence to the introductory text of paragraph (k) of this AD to specify that components critical to the unsafe condition mechanism are identified as the seat back assembly, including food tray assembly, food tray latch, food tray arms, hydraulic seat lock (hydrolock), and energy absorbing system.

Request To Revise Cost

Multiple commenters (SkyWest Airlines, UBS Equity Research—Aerospace and Defence, Bombardier, Austrian Airlines AG, Delta, Zodiac Seats California, and the Industry Ad Hoc Committee) requested that we clarify or increase the cost estimate. UBS Equity Research—Aerospace and Defence asked if the cost of seat modification is estimated to be $85 per seat or whether a replacement is necessary. Multiple commenters asked that the cost analysis include the costs to procure replacement seats; several commenters specified research costs, development costs, engineering certification costs, and the cost of seat replacement. The commenters also asked us to account for loss of revenue; several commenters noted that commercial airplanes cannot be operated for their intended purpose without seats installed. Skywest Airlines noted that the cost of replacement seats is estimated to be between $250,000 and $500,000 for the affected seats in one airplane. Bombardier suggested adding 2 work-hours for procuring and reinstalling alternate certified seats.

We do not agree to revise the costs specified in this AD. We have included the estimated cost of the actions required by this AD, which is applicable to the U.S. fleet. This AD requires removal of non-compliant seats, and we have included the costs for that action. Removing non-compliant seats addresses the unsafe condition and restores compliance to the airworthiness regulations.

While this AD does not require modifying or replacing seats, we recognize that operators could choose to replace non-compliant seating systems or modify affected seats. However, we are unable to make a reasonable assessment of how many seats would be required to be replaced or to assess the cost of modifying affected seats. Modifications would need to be approved as an AMOC in accordance the procedures specified in paragraph (l) of this AD. We also acknowledge that, for operators that remove non-compliant seats, there could a loss of revenue.

We also do not consider it appropriate to attribute the costs associated with airplane "down time" to an AD. Normally, compliance with an AD will not necessitate any additional down time beyond that of a regularly scheduled maintenance hold. Even if additional down time is necessary for some airplanes in some cases, we do not have sufficient information to evaluate the number of airplanes that may be affected or the amount of additional down time that may be required. Therefore, attempting to estimate such costs is impractical. We have not revised this AD in this regard.

Request To Clarify "Vague" Terminology

The Industry Ad Hoc Committee and Zodiac Seats California stated that the proposed AD used subjective and "vague" terms such as "catch" and "unimpeded sliding motion down." The Industry Ad Hoc Committee requested that the FAA work with industry to develop additional research and avoid these terms. The Industry Ad Hoc Committee suggested terms such as

''directly impedes the head's downward sliding motion'' and ''chin hang-up.''

We agree to provide further clarification. Our review of certification testing has shown that in dynamic seat tests, impact of an ATD head onto a typical transport passenger seat back normally results in an initial head strike followed by an unimpeded sliding motion down the back of the seat. In addition, as stated in the Discussion section of the NPRM, the design of the affected seating systems introduced new injury mechanisms, such that the chin can ''catch'' on the seats, causing high neck bending loads and direct concentrated loading on the neck. We have not changed this AD in this regard.

Request for Collaborative Research

Boeing recommended an all-inclusive, industry-wide research and data analysis evaluation to develop a common and measurable standard with acceptable limitations for any new requirement such as neck injury criteria. Boeing stated it welcomes a collaborative research approach with the FAA and industry partners to develop appropriate neck injury criteria for aircraft seats prior to any rulemaking activity.

We agree that a collaborative research approach is beneficial. As early as October 2007, during the Fifth Triennial International Aviation Fire and Cabin Safety Research Conference, industry was notified of the potential for seat back interaction to produce high neck loads. The data available at that time, however, did not indicate that neck injury was a significant risk in most of the forward facing configurations tested.

An example of this specific type of injury was brought to industry attention during The Seventh Triennial International Fire & Cabin Safety Research Conference in December 2013. The FAA welcomes additional research, as appropriate, and the development of appropriate neck injury criteria for aircraft seats.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 10,482 seating systems installed on, but not limited to, various transport category airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Removal	1 work-hour × $85 per hour = $85	$0	$85	$890,970

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(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),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–09–09 Zodiac Seats California LLC: Amendment 39–18871; Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD.

(a) Effective Date

This AD is effective June 28, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Zodiac Seats California LLC seating systems having the model numbers and part numbers identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD, as installed on, but not limited to, the airplanes identified in paragraphs (c)(1) through (c)(9) of this AD; all type certificated models in any category; except that model number 4157 seating systems having part numbers 41763002–( )–( ), 41765002–( )–( ), and 41767002–( )–( ) that have not been modified to add a food tray or an upper literature pocket are not affected by this AD. If any model number 4157 having part number 41763002–( )–( ), 41765002–( )–( ), or 41767002–( )–( ) is modified to add a food tray or an upper literature pocket, the requirements of this AD apply.

(1) The Boeing Company Model 717–200 airplanes and Model MD–90–30 airplanes.

(2) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(3) Bombardier, Inc. Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(4) Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes.

(5) Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–145XR airplanes.

(6) Embraer S.A. Model ERJ 170–100 LR airplanes.

(7) Embraer S.A. Model ERJ 170–200 LR, and –200 STD airplanes.

(8) Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes.

(9) Embraer S.A. Model ERJ 190–200 LR airplanes.

TABLE 1 TO PARAGRAPHS (c), (g), (i), (j), AND (k) OF THIS AD—AFFECTED SEATING SYSTEMS

Model No.	Part No. (where x = 2, 3, 4, 5, 6, or 7)	Description
4157	4157x001–( )–( )	Double Seat Assembly System.
4157	4157x002–( )–( )	Double Seat Assembly System.
4157	4158x001–( )–( )	Double Seat Assembly System.
4157	4158x002–( )–( )	Double Seat Assembly System.
4157	4175x001–( )–( )	Double Seat Assembly System.
4157	4175x002–( )–( )	Double Seat Assembly System.
4157	4176x001–( )–( )	Double Seat Assembly System.
4157	4176x002–( )–( )	Double Seat Assembly System.
4157	4177x001–( )–( )	Double Seat Assembly System.
4157	4177x002–( )–( )	Double Seat Assembly System.
4157	4178x001–( )–( )	Double Seat Assembly System.
4157	4178x002–( )–( )	Double Seat Assembly System.
4170	4169x001–( )–( )	Double Seat Assembly System.
4170	4170x001–( )–( )	Triple Seat Assembly System.
4170	4171x001–( )–( )	Single Seat Assembly System Exit Row.
4170	4172x001–( )–( )	Double Seat Assembly System Exit Row.
4184	4184x002–( )–( )	Double Seat Assembly System.

(d) Subject

Air Transport Association (ATA) of America Code 2520, Passenger Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by a determination that the affected seating systems may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. We are issuing this AD to prevent serious injury to the occupant during forward impacts in emergency landing conditions.

(f) Compliance

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

(g) Seating System Removal

Within 60 months after the effective date of this AD, remove all seating systems having a model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD.

(h) Definition of a ''Direct'' Spare

For the purposes of this AD, a ''direct'' spare has the same part number as the part it replaces.

(i) Parts Installation Limitations: Seating Systems

As of the effective date of this AD, no person may install on any airplane any Zodiac Seats California LLC seating systems having any model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD that are approved under technical standard order (TSO) TSO–C127a; except as specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Seating systems may be removed from service for the purpose of performing maintenance activities and reinstalled on airplanes operated by the same operator, but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(2) New seating systems may be installed as direct spares for the same part number seating systems, but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD. Seating systems installed as direct spares are subject to the applicable requirements and compliance times specified in this AD.

(j) Parts Installation Provisions: Installation and Rearrangement

Installation of a seating system having any model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD, other than those installed as direct spares, is considered a new installation that needs approval; except that re-arrangement of the existing installed seating systems on an airplane is acceptable until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD, provided the re-arrangement follows the same installation instructions and limitations as the original certification (*e.g.,* if the original limitations allowed 32-inch to 34-inch pitch, the new layout must be pitched within that range).

(k) Parts Installation Prohibition: Components of Seating Systems

As of the effective date of this AD, no person may install, on any airplane, any component critical to the unsafe condition mechanism of any seating system having any model number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD that is approved under TSO–C127a; except as specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD. Components critical to the unsafe condition mechanism are identified as the seat back assembly, including food tray assembly, food tray latch, food tray arms, hydraulic seat lock (hydrolock), and energy absorbing system.

(1) Components critical to the unsafe condition mechanism of seating systems specified in paragraph (g) of this AD may be removed from service and re-installed on airplanes operated by the same operator, but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(2) New components critical to the unsafe condition mechanism of seating systems may be installed as direct spares for the same part number components, but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(3) Components critical to the unsafe condition mechanism of seating systems specified in paragraph (g) of this AD that are installed as direct spares are subject to the applicable requirements and compliance times specified in paragraph (g) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov.*

(n) Material Incorporated by Reference

None.

Issued in Renton, Washington, on April 27, 2017.

Paul Bernado,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–10256 Filed 5–23–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 110, and 165

[Docket No. USCG–2016–0949]

RIN 1625–AA08; AA01, AA87

Special Local Regulation, Temporary Anchorages and Safety Zones: Sail Boston 2017; Port of Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting a temporary special local regulation, multiple safety zones, and temporary spectator anchorages before, during, and after Sail Boston 2017 in the Port of Boston, Massachusetts, to be held between June 16, 2017 and June 22, 2017. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during this event.

DATES: This rule is effective without actual notice from May 24, 2017 until June 22, 2017, except that the suspension of § 110.138 is effective from 8:00 a.m. on June 16, 2017, through 4:00 p.m. on June 17, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, May 15, 2017, until May 24, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0949 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background Information and Regulatory History

On March 24, 2017, the Coast Guard published a NPRM titled ''Special Local Regulations, Temporary Anchorages, and Safety Zones: Sail Boston 2017; Port of Boston, MA'' (82 FR 15014). There we stated why we issued the NPRM, and invited comments on our regulatory action. During the comment period that ended on April 24, 2017, we received no comments.

The Coast Guard is making this temporary rule effective less than 30 days after publication in the **Federal Register** pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication for good cause. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** because waiting the 30 days would be impracticable and or contrary to the public interest. It would be impracticable and or contrary to the public interest because the Sail Boston 2017 events will be taking place starting on a definite date of June 16, 2017, and if this rule is not made effective by the date then it would inhibit the Coast Guard's ability to perform its statutory mission to ensure the safety of the maritime public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 1221 through 1236, 2071 50 U.S.C. 191 and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones, anchorages and special local regulations.

The Captain of the Port (COTP) Boston has determined that this rule will provide for the safety of life on navigable waters and to protect the participating Tall Ships, private vessels, spectators, and the Port of Boston during Sail Boston 2017.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on March 24, 2017. The only change from the NPRM is that we added a ''NOTE'' following the regulatory text to advise the public that Boston Harbor is a ''NO-DISCHARGE ZONE.'' This rule adopts a temporary special local regulation, multiple safety zones, and temporary spectator anchorage grounds before, during and after Sail Boston 2017.

Temporary Spectator Anchorage Grounds

The Coast Guard will add temporary section 110.T01–0949 to establish thirteen temporary spectator anchorage grounds for spectator craft for the arrival of the participating Tall Ships on June 16, 2017 and the Sail Boston 2017 Parade of Tall Ships on June 17, 2017. This rule also includes the temporary suspension of 33 CFR 110.138, the Boston Harbor, Massachusetts anchorage ground, during the periods the new spectator anchorage grounds and regulations are temporarily established.

The anchorage regulations would temporarily establish spectator anchorage grounds for recreational, special use, fishing, and commercial vessels during the Sail Boston 2017 Parade of Tall Ships.

Special Local Regulations

In 1992, 2000, 2009, and 2012, similar events, including Sail Boston 1992, 2000, 2009, and War of 1812 in 2012, drew several hundred thousand spectators by land, as well as water, to Boston Harbor.

Recognizing the significant amount of recreational boating traffic this event is expected to draw, the Coast Guard will establish a special local regulation that would create vessel movement control measures in Boston Harbor that will be in effect during the entirety of the Sail Boston 2017 event. This section would be designated as section 100.T01–0949.

The special local regulation is needed to control vessel movement in order to facilitate timely law enforcement support vessels access to Maritime and transportation facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with dense vessel traffic.

Safety Zones

The Coast Guard is establishing safety zones in section 165.T01–0949. On June 16, 2017, tall ships participating in the parade of sail will rally in Broad Sound.

The Coast Guard is establishing a 100-yard safety zone surrounding participating Tall Ships while they are anchored in Broad Sound. The regulation would be enforced from June 16 to June 17.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

Although this regulation imposes temporary spectator anchorages, traffic control measures, and safety zones in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: Vessels needing to depart the temporary spectator anchorages may do so with permission from the COTP's designated on-scene representative and vessels will have sufficient transit room around the outer edge of the designated anchorages. The traffic control measures are confined to areas of minimal distance, they follow the natural flow of Boston Harbor traffic, they are in compliance with the navigational rules of the road, and crossovers have been established for vessels wanting to change direction. The 25-yard safety zone around participating Tall Ships while moored will have no impact to vessel movement in Boston Harbor and will only be in place during the 5 days of Sail Boston activities. Sail Boston, Inc. over the past 6 months has held multiple public meetings discussing Sail Boston 2017 events and during each meeting, these proposals have been discussed. An extensive advance notice will be made to mariners via appropriate means, which may include broadcast notice to mariners, local notice to mariners, facsimile, marine safety information bulletin, local Port Operators Group meetings, Harbor Safety Committee meetings, the Internet, USCG Sector Boston Homeport Web page, handouts, and local newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Similar restrictions were established for other Sail Boston events in 1992, 2000, 2009, and War of 1812 in 2012. Based upon the Coast Guard's experiences from those previous events of similar magnitude, these regulations have been narrowly tailored to impose the least impact on maritime interests while providing the necessary level of safety.

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 does not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit Boston Harbor 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 does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves suspending permanent anchorages, establishing temporary spectator anchorages, establishing temporary

safety zones, and traffic control measures to facilitate the safety of all vessels participating, watching the Parade of Tall Ships and the viewing of the moored Tall Ships during the Sail Boston 2017 event. These actions are categorically excluded from further review under paragraph 34 (f), (g), and (h) of Figure 2–1 of Commandant Instruction M16475.lD. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

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 parts 100, 110, and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T01–0949 to read as follows:

§ 100.T01–0949 Special Local Regulation: Sail Boston 2017; Port of Boston, MA.

(a) *Location:* This special local regulation establishes a regulated area to include all waters west of a line drawn from the monument at Castle Island in approximate position 42°20′21″ N., 71°00′37″ W., to the Logan Airport Security Zone Buoy ''24'' in approximate position 42°20′45″ N., 71°00′29″ W., and then to land in approximate position 42°20′48″ N., 71°00′27″ W., including the Reserved Channel to the Summer Street retractile bridge in approximate position 42°20′34″ N., 71°02′11″ W., the Charles River to the Gridley Locks at the Charles River Dam in approximate position 42°22′07″ N., 71°03′40″ W., the Mystic River at the Alford Street Bridge in approximate position 42°23′22″ N., 71°04′16″ W., and the Chelsea River to the McArdle Bridge in approximate position 42°23′09″ N., 71°02′21″ W.

(b) *Special Local Regulations.* (1) During the effective period, vessel operators transiting through the regulated area shall proceed in a counterclockwise direction at no wake speeds not to exceed five knots, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the directions and orders of the COTP or the COTP's representative, upon being hailed by siren, radio, flashing lights, or other means. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a federal, state or local law enforcement or safety vessel, or a location on shore.

(3) From 4 p.m. on June 17, 2017 through 8 a.m. on June 22, 2017, vessel control measures will be implemented. The traffic pattern will be in a counterclockwise rotation, such that all vessels shall stay generally as far to the starboard side of the channel as is safe and practicable.

(4) To facilitate commercial ferry traffic with minimal disruption, commercial ferries within the regulated area, moving between stops on their normal routes, will be exempt from the mandatory counterclockwise traffic pattern. This exemption does not give ferries navigational precedence or in any way alter their responsibilities under the Rules of the Road or any other pertinent regulations.

(5) Vessel operators transiting the waterway between the World Trade Center and Fish Pier must enter and keep to the starboard side of the channel, proceeding as directed by the on-scene COTP's representative. Vessel traffic shall move in a counterclockwise direction around a turning point as marked by an appropriate on-scene COTP's representative.

(6) Vessel operators transiting this area must maintain at least a twenty five (25) yard safe distance from all participating Sail Boston Tall Ships and must make way for all deep draft vessel traffic underway in the area.

(7) When a vessel greater than 125 feet enters the waterway between the World Trade Center and the Fish Pier, no other vessel will be allowed to enter until the larger vessel departs that area, unless authorized by the on-scene COTP's representative.

(8) From 10 p.m. through 8 a.m. daily, while the regulated area is in effect, only vessels which are tenants within the channels of the World Trade Center and the Fish Pier will be authorized access.

(9) The COTP may control the movement of all vessels operating on the navigable waters of Boston Harbor when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, or other temporary hazards circumstance.

(10) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center).

(11) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) *Enforcement period.* This regulation is will be enforced from 4 p.m. on June 17, 2017 through 8 a.m. on June 22, 2017.

PART 110—ANCHORAGE REGULATIONS

■ 3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 33 U.S.C. 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 110.138 [Suspended]

■ 4. From 8:00 a.m. on June 16, 2017, through 4:00 p.m. on June 17, 2017, suspend § 110.138.

■ 5. Add § 110.T01–0949 to read as follows:

§ 110.T01–0949 Temporary Anchorages: Sail Boston 2017; Port of Boston, MA.

(a) *Anchorages.* All anchorages in this paragraph are applicable as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational requirements specified in paragraph (b) and (c) of this section. All coordinates are NAD 1983.

(1) *Anchorage 1.* (i). All waters bounded by the following coordinates: 42°22′06″ N./071°02′43″ W., 42°22′11″ N./071°02′39″ W., 42°22′07″ N./071°02′32″ W., and 42°22′03″ N./071°02′35″ W.

(ii) This anchorage ground is designated for the exclusive use of

recreational vessels that are 45 feet or less in length and have superstructures that do not exceed 10 feet in height.

(2) *Anchorage 2.* (i) All waters bounded by the following coordinates: 42°21′41″ N./071°02′25″ W., 42°21′47″ N./071°02′20″ W., 42°21′35″ N./071°01′53″ W., and 42°21′29″ N./071°01′58″ W.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels that are 45 feet or less in length and have superstructures that do not exceed 10 feet in height.

(3) *Anchorage 3.* (i) All waters bounded by the following coordinates: 42°21′26″ N./071°01′51″ W., 42°21′32″ N./071°01′47″ W., 42°21′25″ N./071°01′33″ W., and 42°21′19″ N./071°01′37″.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels that are 45 feet or less in length and their height above water does not to exceed 50 feet.

(4) *Anchorage 4.* (i) All waters bounded by the following coordinates: 42°21′19″ N./071°01′37″ W., 42°21′25″ N./071°01′33″ W., 42°21′09″ N./071°01′02″ W., and 42°21′04″ N./071°01′06″.

(ii) This anchorage ground is designated for the exclusive use of inspected and uninspected small passenger vessels (certificated by the Coast Guard under subchapters T and K of chapter I of title 46, Code of Federal Regulations), and charter vessels that do not exceed 50 feet in height above the water line.

(5) *Anchorage 5.* (i) All waters bounded by the following coordinates: 42°21′04″ N./071°01′06″ W., 42°21′09″ N./071°01′02″ W., 42°20′48″ N./071°00′29″ W., and 42°20′47″ N./071°00′29″.

(ii) This anchorage ground is designated for the exclusive use of inspected and uninspected small passenger vessels (certificated by the Coast Guard under subchapters T and K of chapter I of title 46, Code of Federal Regulations), and charter vessels that do not exceed 50 feet in height above the water line.

(6) *Anchorage 6.* (i) All waters bounded by the following coordinates: 42°20′09″ N./070°59′39″ W., 42°20′23″ N./070°59′32″ W., 42°20′19″ N./071°59′17″ W., and 42°20′07″ N./070°59′24″.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(7) *Anchorage 7.* (i) All waters bounded by the following coordinates: 42°20′06″ N./070°59′23″ W., 42°20′36″ N./070°59′06″ W., 42°20′34″ N./070°58′31″ W., and 42°20′05″ N./070°58′45″.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(8) *Anchorage 8.* (i) All waters bounded by the following coordinates: 42°20′06″ N./070°58′43″ W., 42°20′35″ N./070°58′28″ W., 42°20′33″ N./070°57′29″ W., and 42°20′05″ N./070°57′31″.

(ii) This anchorage ground is designated a general anchorage with no restrictions.

(9) *Anchorage 9.* (i) All waters bounded by the following coordinates: 42°19′45″ N./070°59′55″ W., 42°19′58″ N./070°59′55″ W., 42°19′57″ N./070°58′47″ W., and 42°19′44″ N./070°58′47″.

(ii) This anchorage ground is designated as general transient anchorage for all vessels that do not exceed 50 feet in height above the water line, with no overnight anchoring. This anchorage is only applicable from 6 a.m. on June 17, 2017 until 4 p.m. on June 17, 2017.

(10) *Anchorage 10.* (i) All waters bounded by the following coordinates: 42°19′44″ N./070°58′44″ W., 42°19′58″ N./070°58′47″ W., 42°19′55″ N./070°57′28″ W., and 42°19′43″ N./070°57′35″.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels with no overnight anchoring. This anchorage is only applicable from 6 a.m. on June 17, 2017 until 4 p.m. on June 17, 2017.

(11) *Anchorage 11.* (i) All waters bounded by the following coordinates: 42°20′30″ N./070°56′30″ W., 42°21′58″ N./070°56′05″ W., and 42°21′32″ N./070°55′27″.

(ii) This anchorage ground is designated for the exclusive use of late arriving recreational vessels and no overnight anchoring. This anchorage is only applicable from 6 a.m. on June 17, 2017 until 4 p.m. on June 17, 2017.

(12) *Anchorage 12.* (i) All waters bounded by the following coordinates: 42°20′07″ N./070°56′28″ W., 42°21′43″ N./070°54′51″ W., 42°21′18″ N./070°54′29″ W., and 42°20′05″ N./070°55′51″.

(ii) This anchorage ground is designated for the exclusive use of late arriving recreational vessels and no overnight anchoring. This anchorage is only applicable from 6 a.m. on June 17, 2017 until 4 p.m. on June 17, 2017.

(13) *Anchorage 13.* (i) All waters bounded by the following coordinates: 42°19′55″ N./070°56′40″ W., 42°20′06″ N./070°56′28″ W., 42°20′05″ N./070°55′51″ W., and 42°19′51″ N./070°56′05″.

(ii) This anchorage ground is designated for the exclusive use of inspected and uninspected small passenger vessels (certificated by the Coast Guard under subchapters T and K of chapter I of title 46, Code of Federal Regulations), and charter vessels. This anchorage is only applicable from 6 a.m. on June 17, 2017 until 4 p.m. on June 17, 2017.

(b) *The regulations.* The anchorages designated in paragraphs (a)(1) through (13) of this section are subject to the following regulations:

(1) *General Operational Requirements for all anchorages.* Vessel operators using any of the anchorages established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor during marine events.

(ii) Vessel operators shall comply with the directions and orders of the COTP or the COTP's representatives, upon being hailed by siren, radio, flashing lights, or other means. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a Federal, state, or local law enforcement or safety vessel, or a location on shore.

(iii) Vacate anchorages after termination of their effective periods.

(iv) Buoy with identifiable markers and release anchors fouled on lobster trap lines if such anchors cannot be freed or raised.

(v) Display anchor lights when anchoring at night in any anchorage.

(vi) Do not leave vessels unattended in any anchorage at any time.

(vii) Do not tie off to any aid to navigation or buoy.

(ix) Maintain at least 20 feet of clearance if maneuvering between anchored vessels.

(x) Do not nest or tie off to other vessels in that anchorage.

(xi) Based on COTP approval and direction, vessels commercially engaged in the collection and legal disposal of marine sewage may operate within spectator anchorages during the applicable periods.

(2) [Reserved]

(c) *Enforcement dates.* This section will be enforced from 8:00 a.m. on June 16, 2017 through 4:00 p.m. on June 17, 2017 unless otherwise noted.

Note 1 to § 110.T01–0949: Caution: The designated spectator anchorages in this section have not been specially surveyed or inspected and navigational charts may not

show all seabed obstructions or shallowest depths. Additionally, the anchorages are in areas of substantial currents. Mariners who use these temporary anchorages should take appropriate precautions, including using all means available to ensure vessels are not dragging anchor.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 7. Add § 165.T01–0949 to read as follows:

§ 165.T01–0949 Safety Zone: Sail Boston 2017; Port of Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983):

(1) All navigable waters from surface to bottom, within a 100-yard radius of each participating Tall Ship while anchored in Broad Sound.

(2) All navigable waters from surface to bottom, within 1000-yards ahead and astern and 100-yards on each side of participating Tall Ships, during their transit from anchorage to mooring.

(3) All navigable waters from surface to bottom, within 25-yards surrounding participating Tall Ships while moored at various locations throughout the Port of Boston.

(4) All navigable waters from surface to bottom, bounded within the following points (NAD 83): From 42°39.00″ N., 070°26.00″ W., thence to 42°39.00″ N., 070°24.00″ W., thence to 42°38.00″ N., 070°24.00″ W., thence to 42°38.00″ N., 070°26.00″ W., thence to the first point.

(b) *Regulations.* While these safety zones are being enforced, the following regulations, along with those contained in 33 CFR 165.23, apply:

(1) No person or vessel may enter or remain in a safety zone without the permission of the COTP, Sector Boston or the COTP's representative.

(2) Any person or vessel permitted to enter the safety zones shall comply with the directions and orders of the COTP or the COTP's representative. Upon being hailed by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when directed by the COTP or the COTP's representative.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center) to obtain permission.

(4) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) *COTP Representative.* The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, federal, state, or local law enforcement or safety vessel, or a location on shore.

(d) *Enforcement dates.* Paragraph (a)(1) of this section is applicable on June 16, 2017 through June 17, 2017. Paragraph (a)(2) of this section is applicable on June 17, 2017. Paragraph (a)(3) of this section is applicable on June 17, 2017 through June 22, 2017. Paragraph (a)(4) of this section is applicable on June 22, 2017 from 4 p.m. until 8 p.m.

Note 1 to § 165.T01–0949: Boston Harbor is a NO–DISCHARGE ZONE. No-discharge zones are designated bodies of water where the discharge of all boat sewage, whether treated or not, is prohibited and a violation of federal law. Boat pumpout facilities provide a convenient way to properly dispose of boat sewage. Many of the pumpouts in this area are pumpout vessels. These vessels have the capacity to bring the pumpout to the boater. In order to facilitate compliance with this no-discharge zone, the pumpout vessels will be allowed to maneuver through the regulated zones and anchorages grounds. For additional information on complying with vessel sewage discharge regulations and using pumpout facilities see *http://www.mass.gov/eea/agencies/czm/program-areas/coastal-water-quality/ndz/.*

Dated: May 15, 2017.

C.C. Gelzer,

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

[FR Doc. 2017–10336 Filed 5–23–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2017–0244; FRL–9962–86]

RIN 2070–AK35

Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the formaldehyde emission standards for composite wood products final rule, published in the **Federal Register** on December 12, 2016. EPA is publishing this direct final action to extend the Toxic Substances Control Act (TSCA) Title VI final rule compliance dates including: Extending the December 12, 2017 date for emission standards, recordkeeping, and labeling provisions until March 22, 2018; extending the December 12, 2018 date for import certification provisions until March 22, 2019; and extending the December 12, 2023 date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this direct final action will extend the transitional period during which the California Air Resources Board (CARB) Third Party Certifiers (TPC) may certify composite wood products under TSCA Title VI without an accreditation issued by an EPA TSCA Title VI Accreditation Body so long as the TPC remains approved by CARB, is recognized by EPA, and complies with all aspects of the December 12, 2016 final rule. Extension of these compliance dates and the transitional period for CARB TPCs adds regulatory flexibility for regulated entities, reduces compliance burdens, and helps to prevent disruptions to supply chains.

DATES: This final rule is effective on July 10, 2017 without further notice, unless EPA receives adverse comment by June 8, 2017. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0244, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Erik Winchester, National Program Chemicals Division, Office of Pollution

Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6450; email address: *winchester.erik@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be affected by this direct final rule if you manufacture (including import), sell, supply, offer for sale, test, or work with the certification of hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the Agency taking?

EPA shares the concerns of industry stakeholders regarding the time needed to comply with the provisions of the formaldehyde emission standards for composite wood products final rule (89 FR 89674), promulgated on December 12, 2016, and agrees that regulated entities should have at least the same amount of time to comply as initially allotted in the final rule. Therefore, EPA is extending the compliance dates for the December 12, 2016 final rule including: Extending the December 12, 2017 date for emission standards, recordkeeping, and labeling provisions, until March 22, 2018; extending the December 12, 2018 date for import certification provisions until March 22, 2019; and extending the December 12, 2023 date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this direct final action will extend the CARB TPC transitional period under § 770.7(d), which is currently set to end December 12, 2018, until March 22, 2019. EPA believes this action is necessary to provide adequate time, as explained in the December 12, 2016 final rule, for regulated entities to proceed with establishing business relationships with TPCs in order to certify composite wood products for use by downstream entities and prevent substantial disruption to the supply chain.

In addition, to clarify EPA's original intent regarding the compliance dates referenced in the December 12, 2016 final rule, and to better align with the final rule's preamble discussion, the Agency amended the text preceding the compliance dates from ''after'' to ''beginning.'' EPA intends regulated entities to begin complying with the referenced rule requirements as of the dates listed in the final rule.

EPA is also amending subparagraph § 770.15(e) to clarify that TPCs receive recognition after they apply to EPA, not after the conclusion of the transitional period as the codified text currently reads. EPA considers this an editorial change, and does not believe this is a substantive amendment to the codified text.

1. Direct Final Rule. EPA is publishing this direct final rule to allow regulated stakeholders the same amount of time to comply with the provisions of the formaldehyde emission standards for composite wood products final rule (89 FR 89674), promulgated on December 12, 2016, as initially allotted in the final rule. EPA received requests from the composite wood industry and support from other stakeholders requesting the extension of the compliance dates. These requests came after EPA published a delay of the effective date from February 10, 2017 until March 21, 2017, in the **Federal Register** notice on January 26, 2017, ''Delay of Effective Date for 30 Final Regulations Published by EPA between October 28, 2016 and January 17, 2017'' (82 FR 8499). The effective date was further delayed until May 22, 2017, in the **Federal Register** notice on March 20, 2017, ''Further Delay of Effective Dates for Five Final Regulations Published by EPA between December 12, 2016 and January 17, 2017'' (82 FR 14324). EPA believes the extension of the compliance dates and the transitional period will provide panel producers and TPCs with the intended time period to establish their TPC programs and ensure there is no interruption of the supply chain of certified composite wood products to downstream entities (*e.g.,* fabricators, importers, distributors, and retailers).

2. Proposed Rule. EPA believes that this action is non-controversial and does not expect to receive any adverse comments. However, in addition to this Direct Final Rule, elsewhere in this issue of the **Federal Register**, EPA is promulgating the action as a Notice of Proposed Rulemaking. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final action will not take effect. EPA would then address all adverse public comments in a response to comments document in a subsequent final rule, based on the proposed rule.

B. What is the Agency's authority for taking this action?

These regulations are established under authority of Section 601 of TSCA, 15 U.S.C. 2697.

III. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.,* because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0185.

C. Regulatory Flexibility Act (RFA)

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule extends, in response to two delays of the rule effective date, the compliance dates and transitional period for CARB TPCs to reflect the Agency's intended compliance periods post-effective date. This will reduce the burden on TPCs, panel producers, fabricators, importers, distributors, and retailers, because shortening of the compliance period by even a few months makes it more difficult for some of them to establish business relationships, certify product, and distribute certified product into commerce to downstream entities before the December 12, 2017 compliance date. EPA therefore concludes that this action will relieve or have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it does not concern an environmental health risk or safety risk. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As addressed in Unit II.A., this action would not materially alter the final rule as published, and will allow regulated entities the intended time to establish their supply-chain and certification programs under the final rule, post effective date.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to NTTAA section 12(d), 15 U.S.C. 272 note.

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

EPA has determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As addressed in Unit II.A., this action would not materially alter the final rule as published, and will allow regulated entities the intended time to establish their supply-chain and certification programs under the final rule, post effective date.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: May 17, 2017,

Louise P. Wise,

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

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

■ 1. The authority citation for Part 770 continues to read as follows:

Authority: 15 U.S.C. 2697.

■ 2. Revise § 770.2 to read as follows:

§ 770.2 Effective dates.

(a) This part is effective as of May 22, 2017.

(b) Laboratory and Product ABs that wish to accredit TPCs for TSCA Title VI purposes may apply to EPA beginning May 22, 2017 to become recognized.

Laboratory and Product ABs must be recognized by EPA before they begin to provide and at all times while providing TSCA Title VI accreditation services.

(c) TPCs that are not approved by the California Air Resources Board (CARB) that wish to provide TSCA Title VI certification services may apply to EPA beginning May 22, 2017 to become recognized. TPCs must be recognized by EPA and comply with all of the applicable requirements of this part before they begin to provide and at all times while providing TSCA Title VI certification services.

(d) Notwithstanding any other provision of this part, TPCs that are approved by CARB to certify composite wood products have until March 22, 2019 to become accredited by an EPA TSCA Title VI AB(s) pursuant to the requirements of this part. During this two-year transition period, existing CARB-approved TPCs and CARB TPCs approved during this transition period may carry out certification activities under TSCA Title VI, provided that they remain approved by CARB and comply with all aspects of this part other than the requirements of § 770.7(c)(1)(i) and (ii) and (c)(2)(iii) and (iv). After the two-year transition period, CARB-approved TPCs may continue to certify composite wood products under TSCA Title VI provided the TPC maintains its CARB approval, follows the requirements under this part, submits to EPA documentation from CARB supporting their eligibility for reciprocity and has received EPA recognition as an EPA TSCA Title VI TPC. All TPCs that are certifying products as compliant with TSCA Title VI, both during and after the transition period, are subject to enforcement actions for any violations of TSCA Title VI or these regulations.

(e) Beginning March 22, 2018, all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of composite wood products, and component parts or finished goods containing these materials, must comply with this part, subject to the following:

(1) Beginning March 22, 2018, laminated product producers must comply with the requirements of this part that are applicable to fabricators.

(2) Beginning March 22, 2024, producers of laminated products must comply with the requirements of this part that are applicable to hardwood plywood panel producers (in addition to the requirements of this part that are applicable to fabricators) except as provided at § 770.4.

(3) Beginning March 22, 2024, producers of laminated products that, as provided at § 770.4, are exempt from the definition of ''hardwood plywood'' must comply with the recordkeeping requirements in § 770.40(c) and (d) (in addition to the requirements of this part that are applicable to fabricators)

(4) Composite wood products manufactured (including imported) before March 22, 2018 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.

■ 3. In § 770.3 the term ''laminated product producer'' is revised to read as follows:

§ 770.3 Definitions.

* * * * *

Laminated product producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) laminated products on the premises. Laminated product producers are fabricators and, beginning March 22, 2024, laminated product producers are also hardwood plywood panel producers except as provided at § 770.4.

* * * * *

■ 4. In § 770.7, paragraph (d)(1) introductory text is revised to read as follows:

§ 770.7 Third-party certification.

* * * * *

(d) * * *

(1) *During transitional period.* The transitional period is defined as the period beginning on December 12, 2016 and ending on March 22, 2019. TPCs already approved by CARB and TPCs subsequently approved by CARB during the transition period must apply for EPA recognition in accordance with § 770.8 before they can certify any products under this part. Once recognized by EPA, CARB-approved TPCs become EPA TSCA Title VI TPCs and may certify composite wood products under TSCA Title VI until March 22, 2019 as long as they:

* * * * *

■ 5. In § 770.10, paragraph (a) is revised to read as follows:

§ 770.10 Formaldehyde emission standards.

(a) Except as otherwise provided in this part, the emission standards in this section apply to composite wood products sold, supplied, offered for sale, or manufactured (including imported) beginning March 22, 2018 in the United States. These emission standards apply regardless of whether the composite wood product is in the form of a panel, a component part, or incorporated into a finished good.

* * * * *

■ 6. In § 770.12, paragraph (a) is revised to read as follows:

§ 770.12 Stockpiling.

(a) The sale of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, is prohibited beginning March 22, 2018.

* * * * *

■ 7. In § 770.15, paragraphs (a) and (e) are revised to read as follows:

§ 770.15 Composite wood product certification.

(a) Beginning March 22, 2018, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are permitted to be sold, supplied, offered for sale, or manufactured (including imported) in the United States, unless the product is specifically exempted by this part.

* * * * *

(e) If a product is certified by a CARB-approved TPC that is also recognized by EPA, the product will also be considered certified under TSCA Title VI until March 22, 2019 after which the TPC needs to comply with all the requirements of this part as an EPA TSCA Title VI TPC under Section 770.7(d) in order for the product to remain certified.

* * * * *

■ 8. In § 770.30, paragraphs (b) introductory text, (c), and (d) are revised to read as follows:

§ 770.30 Importers, fabricators, distributors, and retailers.

* * * * *

(b) Importers must demonstrate that they have taken reasonable precautions by maintaining, for three years, bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or were produced before March 22, 2018 and by ensuring the following records are made available to EPA within 30 calendar days of request:

* * * * *

(c) Fabricators, distributors, and retailers must demonstrate that they have taken reasonable precautions by obtaining bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or that the composite wood products were produced before March 22, 2018.

* * * * *

(d) Beginning March 22, 2019, importers of articles that are regulated composite wood products, or articles that contain regulated composite wood products, must comply with the import certification regulations for ''Chemical Substances in Bulk and As Part of Mixtures and Articles,'' as found at 19 CFR 12.118 through 12.127.

* * * * *

[FR Doc. 2017–10548 Filed 5–23–17; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants

CFR Correction

■ In Title 50 of the Code of Federal Regulations, Part 17, § 17.95(c) to (e), revised as of October 1, 2016, on page 837, in § 17.95(e), the critical habitats for the Razorback Sucker and the Santa Ana Sucker are reinstated to read as follows:

§ 17.95 Critical habitat—fish and wildlife. (Continued)

* * * * *

(e) *Fishes.*

* * * * *

Razorback Sucker (*Xyrauchen texanus*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Westwater, UT/CO 1981; Hite Crossing, UT 1982; Glenwood Springs, CO 1988; Grand Junction, CO 1990; Delta, CO 1989; Navajo Mountain, UT/AZ 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Tuba City, AZ 1983; Lake Mead, NV/AZ 1981; Davis Dam, AZ/NV/CA 1982; Parker, AZ/CA 1980; Yuma, AZ/CA 1988; Safford, AZ 1991; Globe, AZ 1980; Clifton, AZ/NM 1975; Prescott, AZ 1982; Theodore Roosevelt Lake, AZ 1982; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979; Boulder City, NV/AZ 1978; Blythe, CA/AZ 1976; Trigo Mountains, AZ/CA 1988; Sedona, AZ 1982; Payson, AZ 1988; and U.S. Forest Service map: Tonto National Forest, Phoenix, AZ. The 100-year flood plain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the FEMA. In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the flood plain. Only areas of flood plain containing constituent elements are considered critical habitat.

Colorado: Moffat County. The Yampa River and its 100-year flood plain from the mouth of Cross Mountain Canyon in T.6N., R.98W., sec. 23 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., sec. 28 (6th Principal Meridian).

Utah: Uintah County; and Colorado: Moffat County. The Green River and its 100-year flood plain from the confluence with the Yampa River in T.7N., R.103W., sec. 28 (6th Principal Meridian) to Sand Wash in T.11S., R.18E., sec. 20 (6th Principal Meridian).

Utah: Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties. The Green River and its 100-year flood plain from Sand Wash at T.11S., R.18E., sec. 20 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., sec. 7 (6th Principal Meridian).

Utah: Uintah County. The White River and its 100-year flood plain from the boundary of the Uintah and Ouray Indian Reservation at river mile 18 in T.9S., R.22E., sec. 21 (Salt Lake Meridian) to the confluence with the Green River in T.9S., R.20E., sec. 4 (Salt Lake Meridian).

Utah: Uintah County. The Duchesne River and its 100-year flood plain from river mile 2.5 in T.4S., R.3E., sec. 30 (Salt Lake Meridian) to the confluence with the Green River in T.5S., R.3E., sec. 5 (Uintah Meridian).

Colorado: Delta and Mesa Counties. The Gunnison River and its 100-year flood plain from the confluence with the Uncompahgre River in T.15S., R.96W., sec. 11 (6th Principal Meridian) to Redlands Diversion Dam in T.1S., R.1W., sec. 27 (Ute Meridian).

Colorado: Mesa and Garfield Counties. The Colorado River and its 100-year flood plain from Colorado River Bridge at exit 90 north off Interstate 70 in T.6S., R.93W., sec. 16 (6th Principal Meridian) to Westwater Canyon in T.20S., R.25E., sec. 12 (Salt Lake Meridian) including the Gunnison River and its 100-year flood plain from the Redlands Diversion Dam in T.1S., R.1W., sec. 27 (Ute Meridian) to the confluence with the Colorado River in T.1S., R.1W., sec. 22 (Ute Meridian).

Utah: Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year flood plain from Westwater Canyon in T.20S., R.25E., sec. 12 (Salt Lake Meridian) to full pool elevation, upstream of North Wash and including the Dirty Devil arm of Lake Powell in T.33S., R.14E., sec. 29 (Salt Lake Meridian).

New Mexico: San Juan County; and Utah: San Juan County. The San Juan River and its 100-year flood plain from the Hogback Diversion in T.29N., R.16W., sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T.41S., R.11E., sec. 26 (Salt Lake Meridian).

Arizona: Coconino and Mohave Counties; and Nevada: Clark County. The Colorado River and its 100-year flood plain from the confluence with the Paria River in T.40N., R.7E., sec. 24 (Gila and Salt River Meridian) to Hoover Dam in T.30N., R.23W., sec. 3 (Gila and Salt River Meridian) including Lake Mead to the full pool elevation.

Arizona: Mohave County; and Nevada: Clark County. The Colorado River and its 100-year flood plain from Hoover Dam in T.30N., R.23W., sec. 1 (Gila and Salt River Meridian) to Davis Dam in T.21N., R.21W., sec. 18 (Gila and Salt River Meridian) including Lake Mohave to the full pool elevation.

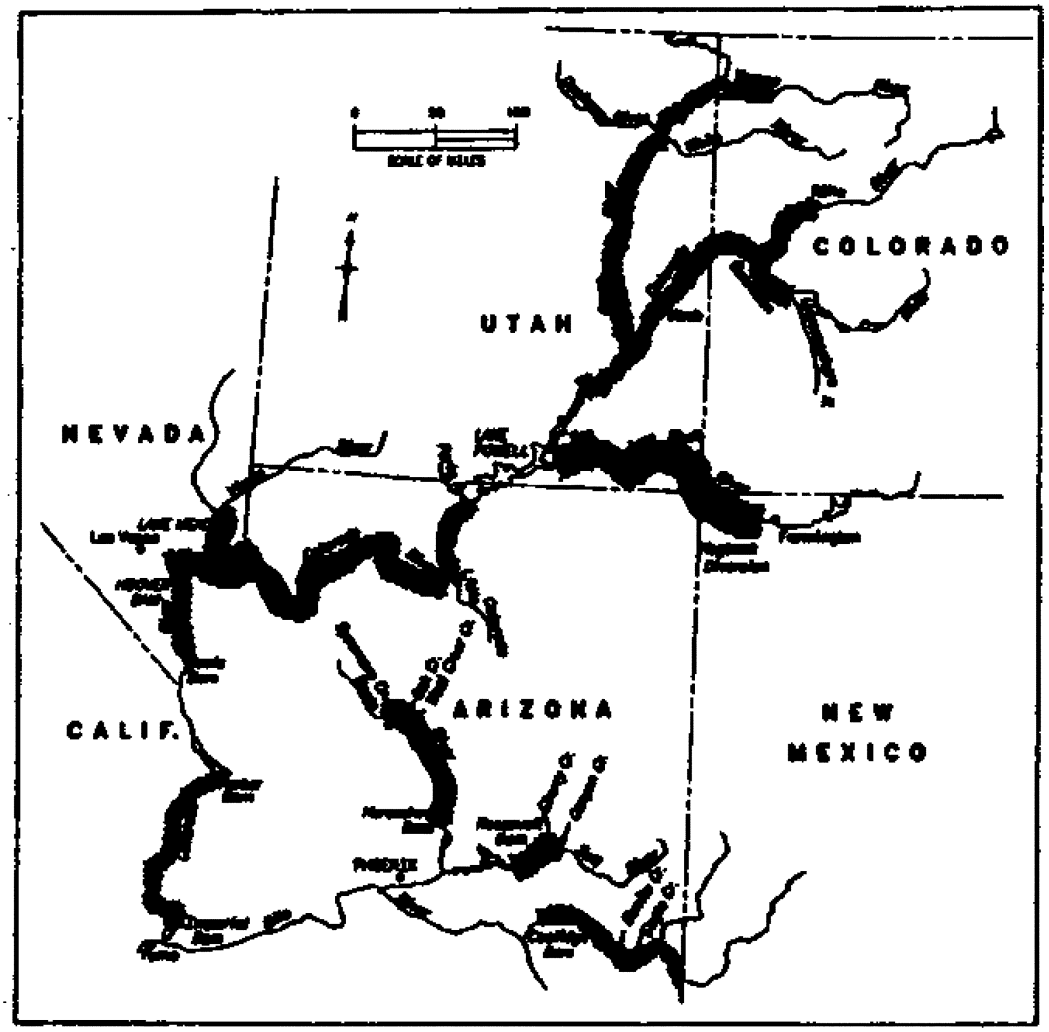
Arizona: La Paz and Yuma Counties; and California: San Bernardino, Riverside, and Imperial Counties. The Colorado River and its 100-year flood plain from Parker Dam in T.11N., R.18W., sec. 16 (Gila and Salt River Meridian) to Imperial Dam in T.6S., R.22W., sec. 25 (Gila and Salt River Meridian) including Imperial Reservoir to the full pool elevation or 100-year flood plain, whichever is greater.

Arizona: Graham, Greenlee, Gila, and Pinal Counties. The Gila River and its 100-year flood plain from the Arizona-New Mexico border in T.8S., R.32E., sec. 34 (Gila and Salt River Meridian) to Coolidge Dam in T.3S., R.18E., sec. 17 (Gila and Salt River Meridian), including San Carlos Reservoir to the full pool elevation.

Arizona: Gila County. The Salt River and its 100-year flood plain from the old U.S. Highway 60/State Route 77 bridge (unsurveyed) to Roosevelt Diversion Dam in T.3N., R.14E., sec. 4 (Gila and Salt River Meridian).

Arizona: Yavapai County. The Verde River and its 100-year flood plain from the U.S. Forest Service boundary (Prescott National Forest) in T.18N., R.2E., sec. 31 to Horseshoe Dam in T.7N., R.6E., sec. 2 (Gila and Salt River Meridian), including Horseshoe Lake to the full pool elevation.

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.



Santa Ana Sucker (*Catostomus santaanae*)

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, and San Bernardino Counties, California, on the maps below.

(2) Within these areas, the physical and biological features for the Santa Ana sucker are as follows:

(i) A functioning hydrological system within the historical geographic range of Santa Ana sucker that experiences peaks and ebbs in the water volume (either naturally or regulated) that encompasses areas that provide or contain sources of water and coarse sediment necessary to maintain all life stages of the species, including adults, juveniles, larva, and eggs, in the riverine environment;

(ii) Stream channel substrate consisting of a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins necessary to maintain various life stages of the species, including adults, juveniles, larva, and eggs, in the riverine environment;

(iii) Water depths greater than 1.2 in (3 cm) and bottom water velocities greater than 0.01 ft per second (0.03 m per second);

(iv) Clear or only occasionally turbid water;

(v) Water temperatures less than 86 °F (30 °C);

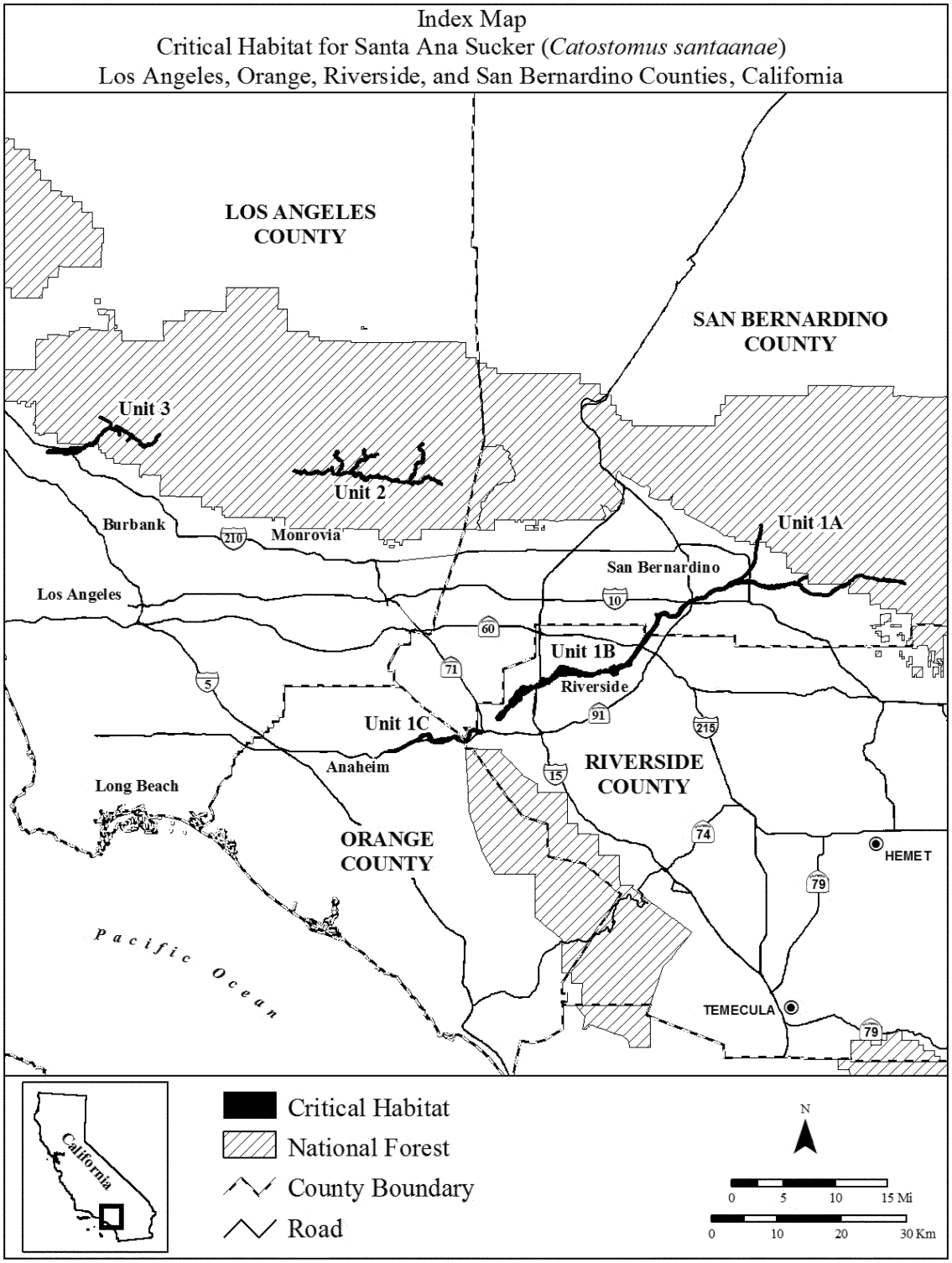
(vi) In-stream habitat that includes food sources (such as zooplankton, phytoplankton, and aquatic invertebrates), and associated vegetation such as aquatic emergent vegetation and adjacent riparian vegetation to provide: (a) Shading to reduce water temperature when ambient temperatures are high, (b) shelter during periods of high water velocity, and (c) protective cover from predators; and

(vii) Areas within perennial stream courses that may be periodically dewatered, but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of more of the physical and biological features, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) NOTE: Index map of critical habitat units for Santa Ana sucker (*Catostomus santaanae*) follows:



(6) Unit 1: Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1A: Upper Santa Ana River and Wash, San Bernardino County.

(i) From USGS 1:24,000 quadrangles Forest Falls, Yucaipa, Harrison Mountain, Redlands, and San Bernardino South. Land bounded by the following Universal Transverse Mercator (UTM) Zone 11, North American Datum of 1983 (NAD83) coordinates (E, N): 476057, 3771160; 476057, 3771361; 476067, 3771366; 476363, 3771455; 476483, 3771473; 477305, 3771538; 477407, 3771560; 477571, 3771632; 477860, 3771855; 478333, 3772242; 478402, 3772309; 478500, 3772377; 478520, 3772416; 478590, 3772455; 478940, 3772592; 479868, 3772941; 480001, 3773012; 480336, 3773247; 480371, 3773259; 480393, 3773293; 480485, 3773372; 480526, 3773394; 480690, 3773515; 480864, 3773680; 480972, 3773746; 481132, 3773944; 481165, 3774003; 481261, 3774091; 481297, 3774141; 481350, 3774237; 481644, 3774591; 481673, 3774640; 481719, 3774747; 481827, 3774915; 481925, 3775098;

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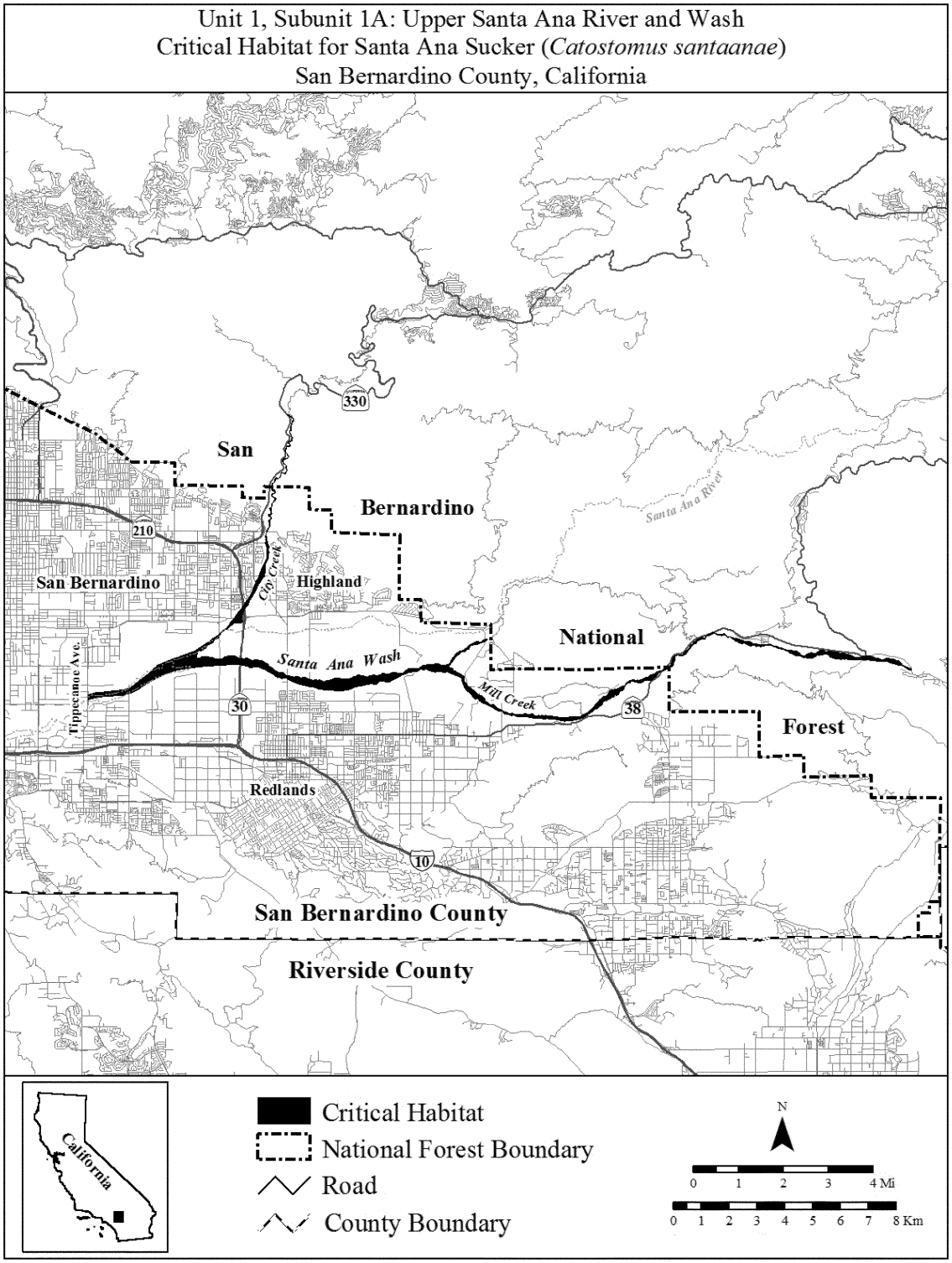
(ii) Map of Subunit 1A (Upper Santa Ana River and Wash) follows:



(7) *Unit 1:* Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1B: Santa Ana River, Riverside and San Bernardino Counties.

(i) From USGS 1:24,000 quadrangles San Bernardino South, Fontana, Riverside West and Corona North. Land bounded by the following UTM) NAD83 coordinates (E, N): 475287, 3770647; 475229, 3770631; 475159, 3770634; 475029, 3770505; 475080, 3770458; 475001, 3770373; 474886, 3770248; 474792, 3770167; 474561, 3770035; 474404, 3769989; 474266, 3769962; 474155, 3769951; 474074, 3769980; 474045, 3769929; 473999, 3769945; 473688, 3769905; 473458, 3769854; 473253, 3769789; 473090, 3769708; 472936, 3769643; 472759, 3769588; 472637, 3769564; 472418, 3769505; 472326, 3769464; 472166, 3769356; 472083, 3769264; 471951, 3769161; 471855, 3769099; 471802, 3769042; 471434, 3768721; 471194, 3768429; 471073, 3768237; 470973, 3768073; 470781, 3767667; 470656, 3767503; 470554, 3767389; 470432, 3767289; 470296, 3767200; 470161, 3767146; 470029, 3767110; 469902, 3767092; 469859, 3767106; 469823, 3767098;

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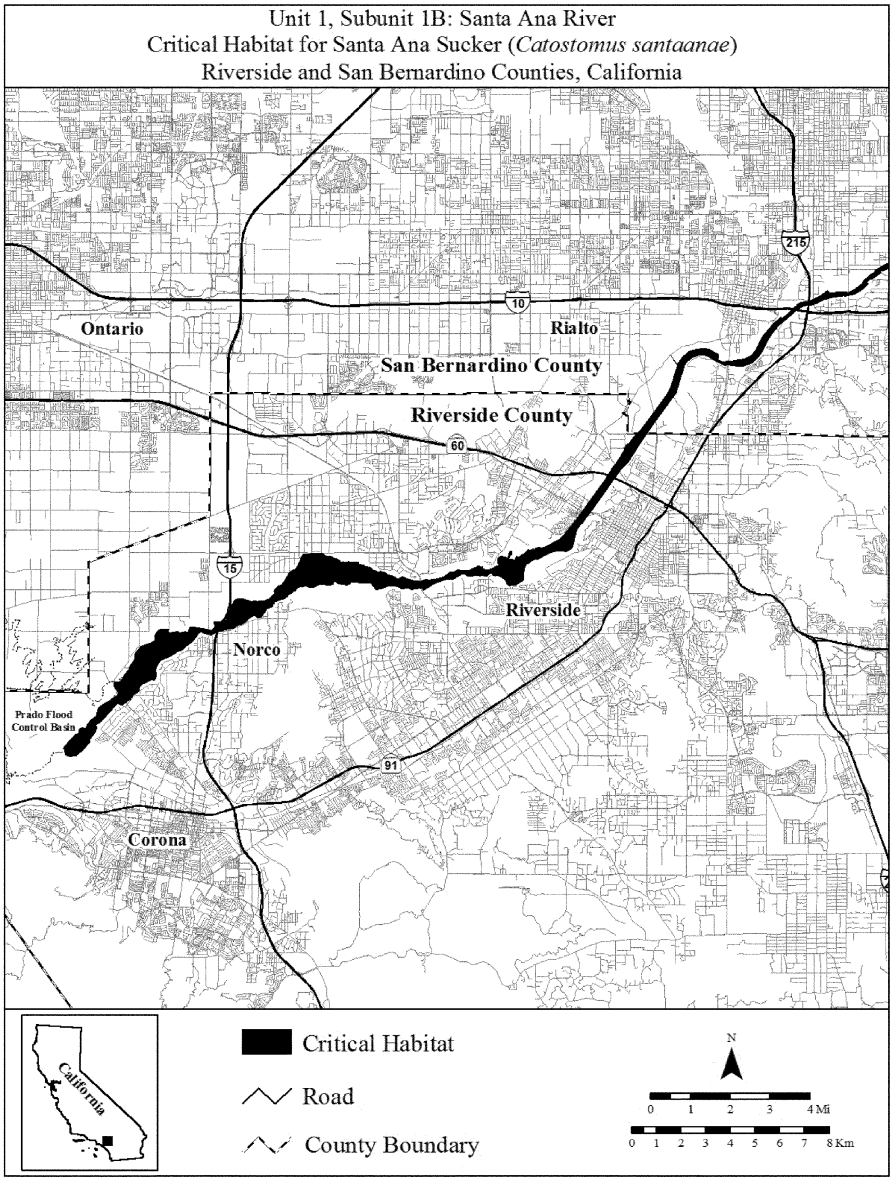
(ii) Map of Subunit 1B: (Santa Ana River) follows:



(8) Unit 1: Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1C: Lower Santa Ana River, Orange and Riverside Counties.

(i) From USGS 1:24,000 quadrangles Prado, Black Star Canyon and Orange. Land bounded by the following UTM) NAD83 coordinates (E, N): 439123, 3749777; 439223, 3749735; 439317, 3749737; 439475, 3749686; 439567, 3749560; 439645, 3749469; 439774, 3749500; 439943, 3749500; 440112, 3749446; 440161, 3749312; 439660, 3749201; 439520, 3749378; 439460, 3749399; 439399, 3749439; 439319, 3749542; 439301, 3749594; 439265, 3749606; 438894, 3749562; 438796, 3749584; 438742, 3749566; 438596, 3749491; 438516, 3749437; 438459, 3749364; 438448, 3749294; 438464, 3749237; 438366, 3748852; 438340, 3748760; 438283, 3748727; 438185, 3748276; 438122, 3748139; 438057, 3748079; 437949, 3748001; 437654, 3747892; 437464, 3747866; 437373, 3747865; 437292, 3747874; 437143, 3747915; 436895, 3748028; 436812, 3748073; 436669, 3748199; 436625, 3748312; 436585, 3748391; 436572, 3748468; 436552, 3748505; 436412, 3748579; 436342, 3748576; 436215, 3748550; 436049, 3748462; 435917, 3748476; 435808, 3748471; 435704, 3748457; 435613, 3748433; 435486, 3748378; 434802, 3748017; 434587, 3748012; 434512, 3748021; 434282, 3747955; 434121, 3747940; 434051, 3748000; 433979, 3747999; 433872, 3747880; 433731, 3747851; 433421, 3747832; 433139, 3747793; 433063, 3747795; 432963, 3747813; 432893, 3747763; 432803, 3747785; 432229, 3748058; 432204, 3748085; 432188, 3748119; 432177, 3748181; 432152, 3748235; 432154, 3748312; 432121, 3748473; 432121, 3748544; 432109, 3748577; 432073, 3748614; 431926, 3748722; 431859, 3748810; 431778, 3748866; 431712, 3748889; 431641, 3748901; 431491, 3748890; 431431, 3748872; 431353, 3748830; 431068, 3748646; 430666, 3748361; 430432, 3748227; 430080, 3748058; 429848, 3747970; 429591, 3747848; 429403, 3747735; 427822, 3746840; 427649, 3746756; 427447, 3746689; 426581, 3746504; 426126, 3746415; 425941, 3746399; 425853, 3746399; 425852, 3746506; 426009, 3746515; 426141, 3746535; 426882, 3746670; 427227, 3746745; 427560, 3746829; 427676, 3746876; 427804, 3746941; 429341, 3747823; 429709, 3748019; 430328, 3748290; 430502, 3748391; 430618, 3748476; 430744, 3748552; 430779,

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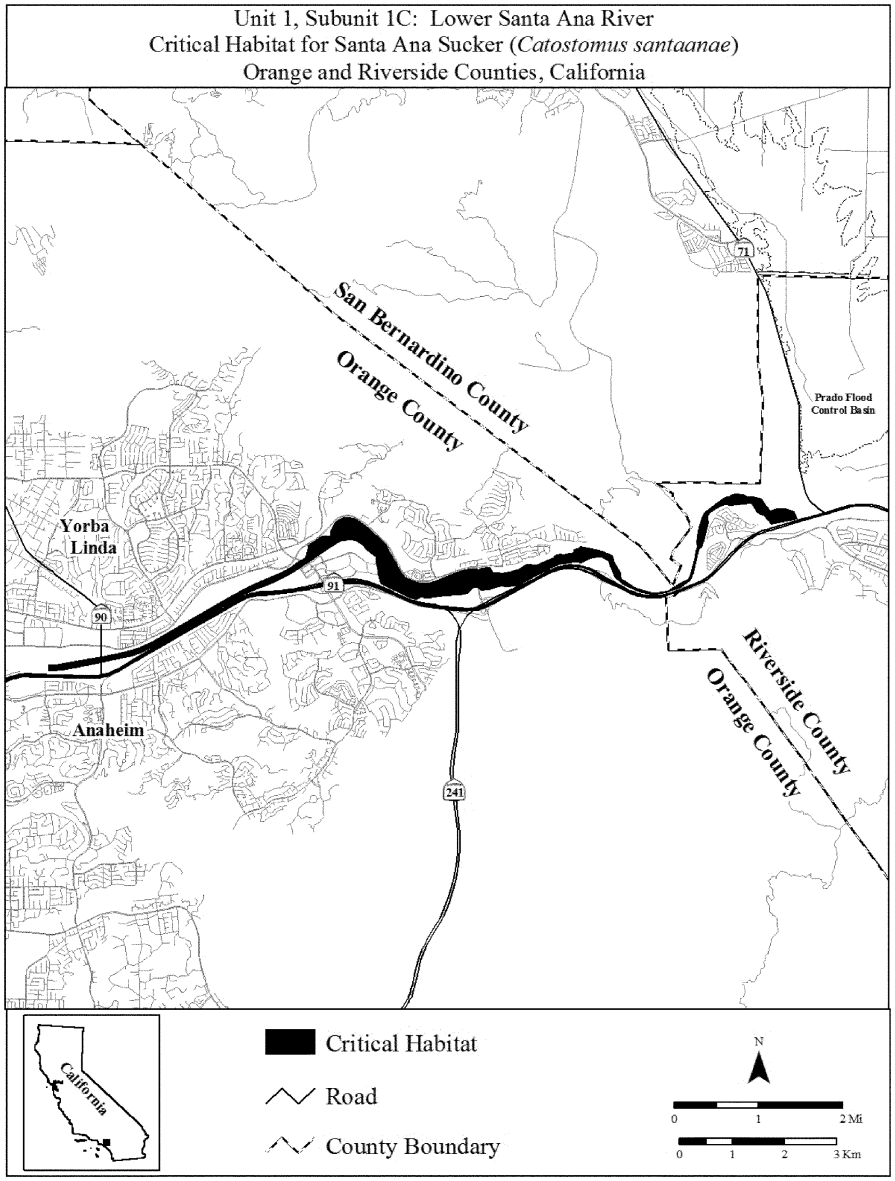
(i) Map of Subunit 1C (Lower Santa Ana River) follows:



(9) Unit 2: San Gabriel River, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangles Mount Baldy, Mount San Antonia, Crystal Lake, Waterman Mountain, Azusa and Glendora. Land bounded by the following UTM NAD83 coordinates (E, N): 412207, 3789649; 412240, 3789651; 412263, 3789642; 412291, 3789622; 412319, 3789588; 412362, 3789390; 412369, 3789285; 412385, 3789277; 412401, 3789280; 412418,

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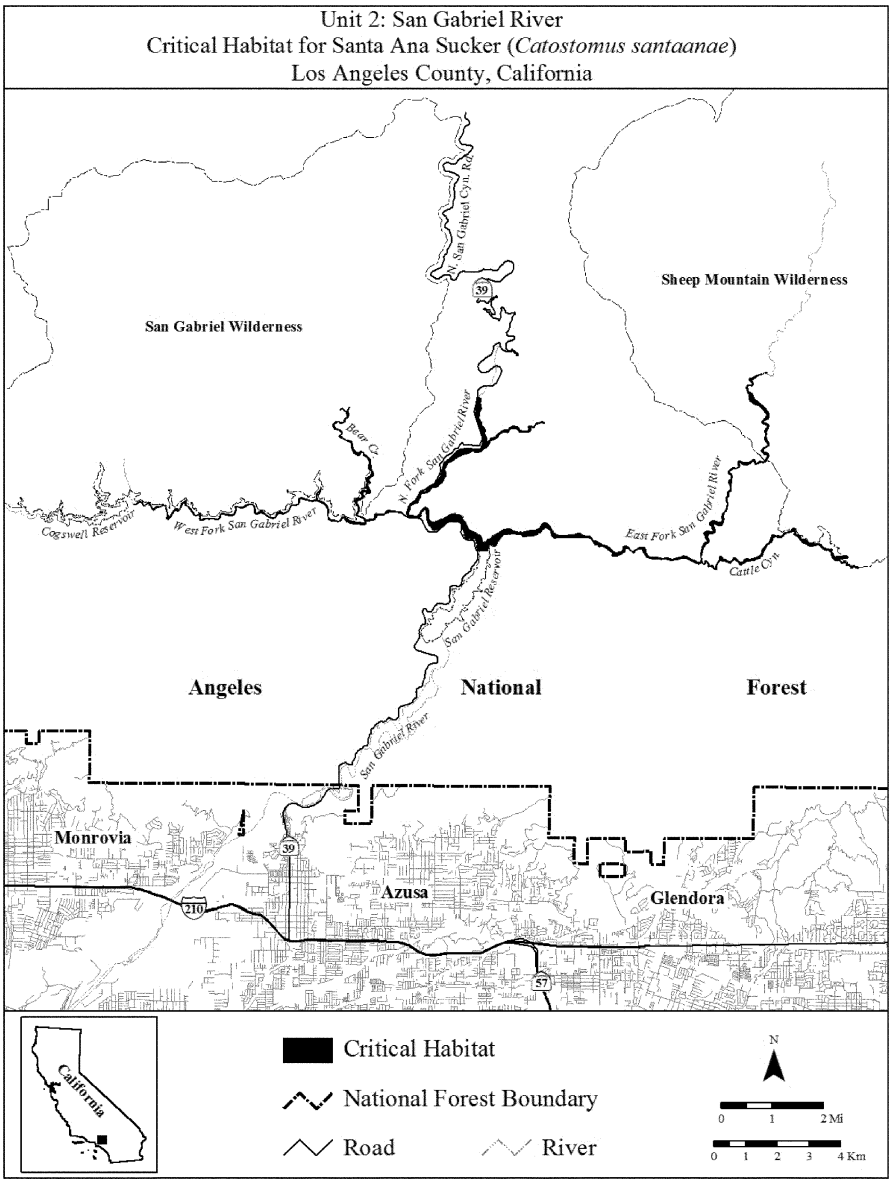
(ii) Map of Unit 2 (San Gabriel River) follows:



(10) Unit 3: Big Tujunga Wash, Los Angeles County, California. Subunit 3A: Big Tujunga Wash.

(i) From USGS 1:24,000 quadrangles Condor Peak and Sunland. Land bounded by the following UTM NAD83 coordinates (E, N): 382996, 3796285; 383017, 3796285; 383034, 3796298; 383087, 3796289; 383191, 3796254; 383559, 3796102; 383600, 3796082; 383635, 3796047; 383703, 3796082; 383734, 3796136; 383755, 3796384; 383781, 3796466; 383777, 3796540; 383809, 3796564; 383903, 3796576; 383967, 3796569; 384008, 3796534; 384109, 3796490; 384156, 3796427; 384231, 3796397; 384262, 3796405; 384403, 3796388; 384489, 3796352; 384606, 3796287; 384699, 3796218; 384868, 3796044; 385054, 3795886; 385104, 3795866; 385315, 3795816; 385436, 3795802; 385491, 3795772; 385531, 3795766; 385564, 3795742; 385609, 3795652; 385779, 3795429; 385841, 3795414; 385904, 3795420; 385979, 3795413; 386111, 3795381; 386172, 3795359; 386263, 3795368; 386319, 3795353; 386360, 3795315; 386382, 3795260; 386389, 3795213; 386382, 3795154; 386441, 3795088; 386507, 3794969; 386553, 3794916; 386608, 3794869; 386734, 3794787; 386813, 3794666; 386896, 3794603; 387031, 3794525; 387151, 3794475; 387441, 3794384; 387499, 3794354; 387541, 3794313; 387568, 3794232; 387573, 3794124; 387601, 3793982; 387598, 3793942; 387614, 3793799; 387625, 3793771; 387657, 3793760; 387696, 3793761; 387716, 3793773; 387795, 3793910; 387847, 3793922; 387871, 3793908; 387896, 3793847; 387907, 3793782; 387908, 3793722; 387932, 3793650; 387975, 3793582; 388012, 3793541; 388073, 3793494; 388129, 3793499; 388174, 3793520; 388209, 3793564; 388258, 3793688; 388288, 3793714; 388338, 3793715; 388402, 3793659; 388428, 3793606; 388494, 3793569; 388522, 3793565; 388552, 3793584; 388546, 3793683; 388570, 3793714; 388659, 3793761; 388705, 3793802; 388824, 3793836; 388903, 3793849; 388957, 3793845;

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(ii) Map of Subunit 3A (Big Tujunga Wash) appears in paragraph (11)(ii) of this entry.

(11) Subunit 3B: Gold Canyon, Delta Canyon, and Stone Canyon Creeks.

(i) From USGS 1:24,000 quadrangles Condor Peak and Sunland. Land bounded by the following UTM NAD83 coordinates (E, N): 382996, 3796285; 382995, 3796335; 382966, 3796453; 382967, 3796492; 382991, 3796511; 383044, 3796521; 383084, 3796551; 383116, 3796586; 383138, 3796625; 383140, 3796654; 383109, 3796684; 383094, 3796751; 383114, 3796789;

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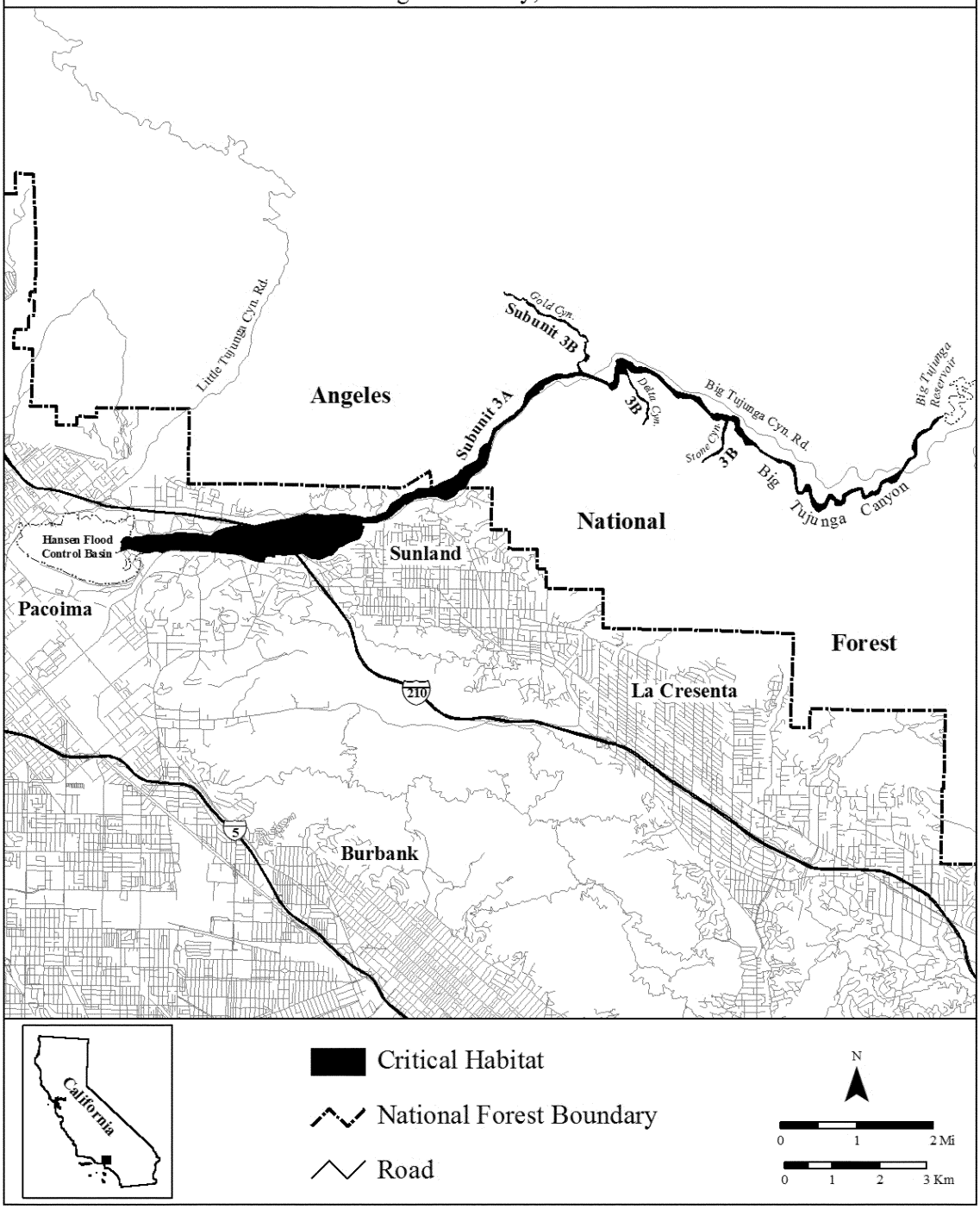
(ii) Map of Unit 3 (Big Tujunga Wash) follows:

Unit 3, Subunits 3A and 3B: Big Tujunga Wash
Critical Habitat for Santa Ana Sucker (*Catostomus santaanae*)
Los Angeles County, California



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[FR Doc. 2017–10673 Filed 5–23–17; 8:45 am]

BILLING CODE 1301–00–D

Proposed Rules

Federal Register
Vol. 82, No. 99
Wednesday, May 24, 2017

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

POSTAL REGULATORY COMMISSION

5 CFR Part 5601

[Docket No. RM2017–4; Order No. 3906]

Supplemental Standards of Ethical Conduct

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes rules that amend existing rules related to supplemental standards of ethical conduct for Postal Regulatory Commission employees. The proposed rules revise the existing rules in order to better conform to our regulations and accurately reflect the Commission's regulatory role under the Postal Accountability and Enhancement Act. The Commission invites public comment on the proposed rules.

DATES: *Comments are due:* June 23, 2017.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
III. Summary of Proposed Changes
IV. Section by Section Analysis of the Proposed Changes to 5 CFR Part 5601
V. Administrative Actions
VI. Ordering Paragraphs

I. Introduction

The Postal Regulatory Commission (Commission) establishes a rulemaking docket to consider amending the Commission's supplemental standards of ethical conduct, 5 CFR part 5601. The supplemental standards of ethical conduct apply to Commission employees and concern prohibited financial holdings, disqualification when seeking non-federal employment, and engaging in outside employment. The Commission proposes to update the existing supplemental standards to be consistent with 5 CFR part 2635 and the Commission's current regulatory role under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). This rulemaking also proposes linguistic and organizational revisions to clarify the supplemental standards.

The Office of Government Ethics (OGE) concurs with the Commission's proposed revisions to 5 CFR part 5601.

II. Background

In 1991, Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct.[1] On August 7, 1992, OGE published a final rule titled Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards).[2] The OGE Standards, codified at 5 CFR part 2635, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to all executive branch personnel. In 1993, the Postal Rate Commission collaborated with OGE to draft supplemental standards for inclusion in 5 CFR part 5601. The new 5 CFR part 5601 was published as an interim rule. 58 FR 42839 (Aug. 12, 1993).

In 2006, PAEA changed the name of the agency from the Postal Rate Commission to the Postal Regulatory Commission and made several changes to the Commission's regulatory role. Specifically, PAEA eliminated the former Postal Rate Commission's responsibility to adjudicate omnibus rate cases each year, which set rates for all United States Postal Service (Postal Service) products.[3] Instead, under PAEA the Commission, among other responsibilities, approves or denies discrete Postal Service requests to change rates of market-dominant products or competitive products.[4] Proposed rate changes include requests to change rates of general applicability, *e.g.,* retail rates available to the public, and rates not of general applicability, *e.g.,* negotiated service agreements (NSAs) with private parties. Post-PAEA, the Commission also must make an Annual Compliance Determination report concerning whether the rates or fees in effect for the year satisfied statutory and regulatory requirements and whether any service standards in effect during the year were not met. 39 U.S.C. 3653(b). These enhanced Commission responsibilities drive the need to modernize the Commission's supplemental standards of ethical conduct.

III. Summary of the Proposed Regulatory Changes

The Commission identified a need to revise the existing supplemental standards for several reasons. The supplemental standards of ethical conduct, 5 CFR part 5601, have never been amended or finalized since their 1993 adoption and remain attributed to the Postal Rate Commission.

Therefore, the Commission proposes amendments to accomplish the following goals: (1) Reflect the substantial changes to the Commission's regulatory role after the 2006 enactment of PAEA; (2) update its rules to be consistent with 5 CFR part 2635; (3) reflect lessons learned through the Commission's experiences with the existing ethics policies and practices; (4) enhance the clarity of the ethical guidance for its employees; (5) protect the integrity of the Commission's programs and processes; (6) maintain public confidence that Commission employees are fulfilling their duties impartially and objectively; (7) facilitate a well-administered ethics counseling program; and (8) finalize the interim supplemental standards of conduct.

IV. Section by Section Analysis of the Proposed Changes to 5 CFR Part 5601

The rules in 5 CFR part 5601 apply only to Commission personnel.

A. Title 5 CFR Part 5601

The Commission proposes correcting the title identified in 5 CFR part 5601 by replacing ''Postal Rate Commission''

[1] *See* Executive Order No. 12674, 54 FR 15159 (Apr. 12, 1989) (requiring OGE to establish executive-branch Standards of Ethical Conduct); Executive Order No. 12731, 55 FR 42547 (Oct. 17, 1990) (providing for supplementary agency regulations in 5 CFR to be promulgated jointly with OGE for inclusion in 5 CFR).

[2] *See* 57 FR 35006–35067, as corrected at 57 FR 48557 (Oct. 27, 1992), 57 FR 52583 (Nov. 4, 1992), and 60 FR 66857–66858 (Dec. 27, 1995).

[3] Public Law 109–435, 120 Stat. 3198 §§ 201–202 (2006) (amending 39 U.S.C. 3621–3622 (2005) and repealing sections 3623–3624).

[4] PAEA introduced the division of Postal Service products into market-dominant products (products delivered under the Postal Service monopoly) and competitive products (all other products). 39 U.S.C. 3621–3622 and 39 CFR part 3010 (regulation of rates for market-dominant products); 39 U.S.C. 3631–3634 and 39 CFR part 3015 (regulation of rates for competitive products).

with ''Postal Regulatory Commission'' to reflect the agency's post-PAEA name.

B. Authority Identified in 5 CFR Part 5601

The Commission proposes correcting the authority identified in 5 CFR part 5601 by replacing ''39 U.S.C. 3603'' with ''39 U.S.C. 503'' to reflect the renumbering of that provision by PAEA.

C. Section 5601.101 General

Section 5601.101(a) Purpose. The Commission proposes correcting § 5601.101(a) by replacing ''Postal Rate Commission'' with ''Postal Regulatory Commission'' to reflect the agency's post-PAEA name. The Commission also proposes adding cross-references to the executive branch financial disclosure regulations in 5 CFR part 2634, regulations on responsibilities and conduct in 5 CFR part 735, and Commission-specific provisions in 39 CFR part 3000.

Section 5601.101(b) Definitions. The Commission proposes deleting the text in existing § 5601.101(b), which defines ''affected persons'' as used in existing §§ 5601.102 and 5601.104. The Commission proposes retaining aspects of the ''affected persons'' definition as categories of prohibited sources referenced in the proposed § 5601.102(b), subject to modifications for clarity as well as updates to reflect the Commission's post-PAEA regulatory role. The Commission's proposal to move the categories of prohibited sources from § 5601.101 to § 5601.102 is consistent with other federal regulators' supplemental ethical standards.

The Commission proposes defining eight terms in the revised § 5601.101(b) as follows:

(1) ''securities''—based on a commonly accepted definition.

(2) ''parent''—based on a commonly accepted definition.

(3) ''person''—consistent with 5 CFR 2635.102(k).

(4) ''entity''—indicating its usage to be equivalent to ''person.''

(5) Designated Agency Ethics Official ''DAEO''—consistent with § 2638.601 of this title.

(6) ''employment''—moved from the existing § 5601.104(c) and correcting ''organizations'' from plural to singular form.

(7) ''publicly held corporation''—consistent with a definition used by the Internal Revenue Service. *See* 26 U.S.C. 162(m)(2).

(8) ''dependent child''—consistent with § 2364.105(d) of this title.

D. Section 5601.102 Prohibited Financial Interests

Section 2635.403(a) of title 5 authorizes agencies, by supplemental regulation, to prohibit or restrict acquiring or holding of a financial interest or a class of financial interests by agency employees based on a determination that acquiring or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which the agency programs are administered. The Commission proposes revising the supplemental regulations to maintain the integrity of the Commission's programs and processes.

The deletion of the existing language of § 5601.102. The existing § 5601.102 prohibits employees from direct or indirect financial interest in ''affected persons'' as defined by existing § 5601.101(b)'s non-exhaustive list of categories of prohibited financial interest. The Commission proposes restructuring the scope of financial prohibitions to be wholly contained within proposed § 5601.102, providing greater specificity as to the prohibited categories and the meaning of direct versus indirect holdings, and updating the language to reflect that business entities, rather than natural persons, would most likely pose potential conflicts of interest. The proposed changes improve the regulation's clarity and precision.

Section 5601.102(a) General prohibition. To ensure that employees do not engage in (or appear to engage in) actions that may interfere with the objective and impartial execution of their official duties, the Commission proposes prohibiting employees, their spouses, and dependent children from acquiring or holding particular categories of financial interests.

Section 5601.102(b) Prohibited Securities List. The Commission proposes to compile a Prohibited Securities List (PSL) cataloguing the financial interests that employees, their spouses, and dependent children may not own. The PSL is intended to serve as a reference source to assist employees in identifying prohibited interests, particularly before purchasing securities. The Commission shall update and disseminate the PSL to Commission employees at least once a year. The proposed PSL will list entities drawn from the six categories listed in proposed § 5601.102(b)(1). A discussion of those six categories follows.

1. Proposed § 5601.102(b)(1)

Proposed § 5601.102(b)(1) will list the six categories based on the Commission's experience under PAEA which may generally cause conflicts of interest for all employees. The proposed PSL will list entities from these six categories. The proposed PSL lists prohibited entities solely based on the Commission's authority to issue supplemental standards. Depending on the employee's role within the Commission, other restrictions on employee's financial holdings, such as 18 U.S.C. 208, 5 CFR part 2635, the Ethics in Government Act, or the Procurement Integrity Act may apply. Employees should consult with the DAEO to confirm that a particular financial interest is not restricted based on rules other than these supplemental standards such as 18 U.S.C. 208, 5 CFR part 2635, the Ethics in Government Act, or the Procurement Integrity Act. *See* 39 CFR 3000.10.

The Commission proposes to include the following six categories of entities on the PSL:

a. Entities That Participated in Commission Proceedings in the Last 4 Years

Existing §§ 5601.101(b)(1)(i) and 5601.102 prohibit employees from holding a financial interest in companies or persons who have been a party to a Commission proceeding in the past 4 years. The Commission proposes clarifying this prohibition to include any entity participating in a proceeding before the Commission in the last 4 years. This is because the Commission's rules allow entities that are not parties to the proceedings to formally participate in Commission proceedings by expressing their views on the record and seeking relief from the Commission. *See, e.g.,* 39 CFR 3001.20a. Based on the Commission's experiences in its proceedings after the enactment of PAEA, the Commission proposes that the prohibition include complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings. The prohibition does not include persons whose participation in Commission proceedings is limited to: (1) Serving as a witness; (2) serving as a Public Representative; (3) identification, through non-public materials provided to the Commission by the Postal Service according to 39 CFR part 3007, as a mailer entering into a negotiated service agreement (defined at § 3001.5(r) of title 39); or (4) persons merely submitting off-the-record statements or letters to the Commission's Office of Public Affairs and Government Relations. These four proposed exclusions are consistent with the current Commission ethics rules and practices. The particular exclusion of

persons submitting off-the-record statements or letters is warranted because the Commission's rules of practice clarify that such statements are not made or considered as part of the Commission's formal record. *See* 39 CFR 3001.20b. It is also based on the Commission's experience that such off-the-record statements are typically submitted by private citizens not intending to formally participate in the public proceeding, as opposed to business entities that may pose a financial conflict of interest for Commission employees.

b. Parties to Proceedings to Which the Commission Is Also a Party

The Commission proposes this additional prohibition to encompass entities seeking some form of relief from or action by the Commission that are involved in cases heard by a tribunal other than the Commission, such as an appeal of a final Commission order in the courts. This prohibition is consistent with the restrictions upon employees of other federal regulators.

c. Competitors of the Postal Service

Existing §§ 5601.101(b)(1)(v) and 5601.102 prohibit employees from holding a financial interest in companies or persons who are primarily engaged in the business of delivering merchandise or written communications. The Commission proposes clarifying the prohibition's language. The Commission does not intend to modify the purpose of the prohibition, which prohibits employees from having a financial interest in competitors of the Postal Service.

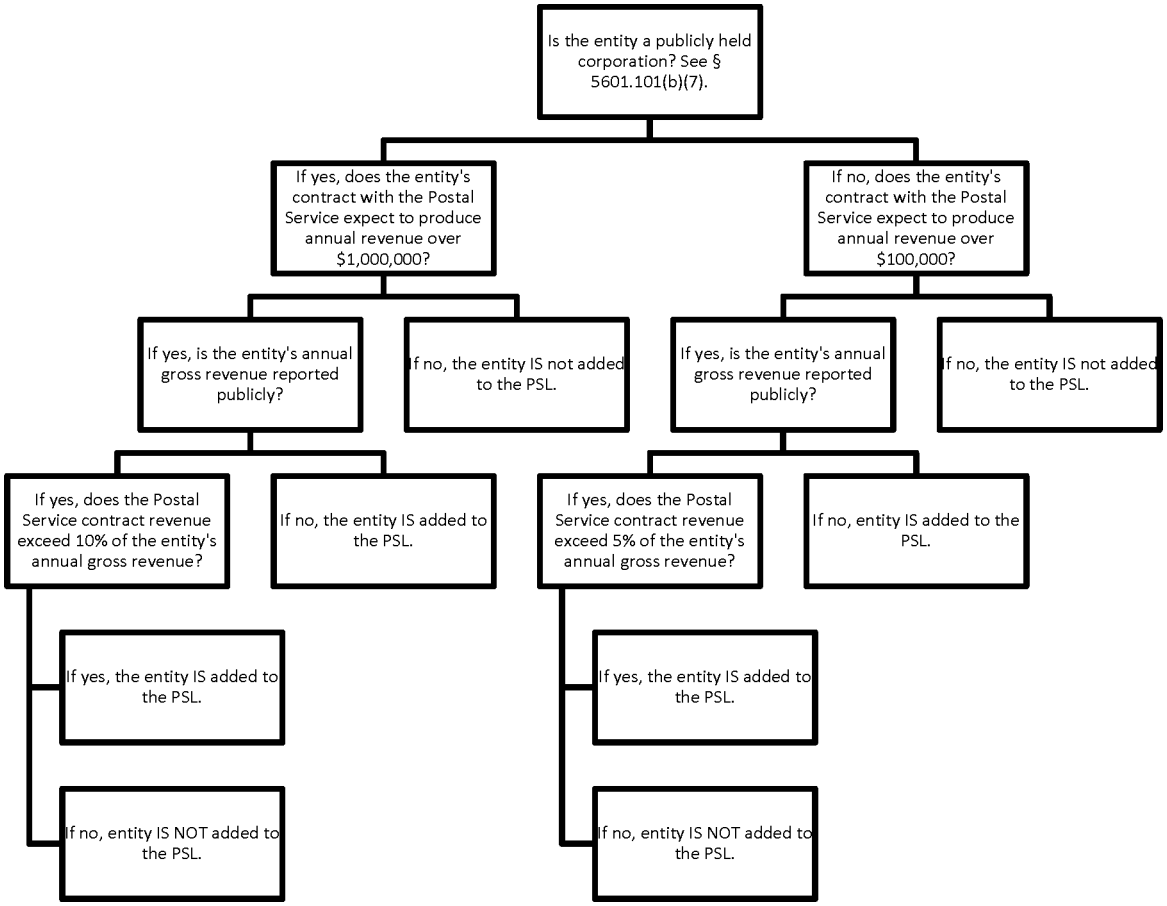
d. Certain Postal Service Contractors

In conjunction with OGE in 1993, the Commission adopted an interim regulation prohibiting employees from holding financial interests in certain Postal Service contractors. This existing prohibition applies to persons who provide ''services or products to the Postal Service that can be expected to produce income that exceeds $100,000 and equals or exceeds 5 percent of its gross income for the current fiscal year.'' 5 CFR 5601.101(b)(1)(vi). The Commission proposes moving the existing prohibition to § 5601.102(b)(1)(iv) and clarifying its terms. The Commission proposes to change the term ''gross income'' to ''gross revenue'' for two reasons. First, the proposed change reflects that the majority of prohibited sources are business entities rather than natural persons and, as such, are more likely to report either revenues alone or both revenues and income. Second, because companies report gross income as gross revenues minus operating expenses, gross revenue is the more appropriate measure to analyze conflicts of interest.

The Commission also proposes that different financial thresholds should apply to publicly held corporations versus other entities. This proposed change is based on the Commission's 23 years of experience with the existing rule and aims to better reflect conflicts of interest posed by modern securities after enactment of PAEA. The Commission proposes to retain the dollar amount and percentage thresholds adopted in 1993 for entities other than publicly held corporations that report their gross revenue publicly. Proposed § 5601.102(b)(1)(iv) will prohibit employees from holding interests in such entities with a Postal Service contract producing annual gross revenue that exceeds $100,000 and 5 percent of the entity's annual gross revenue.

However, recognizing based on experience that most entities that are not publicly held corporations do not report gross income, the Commission proposes to apply the percentage threshold only if information regarding the entity's gross revenue is available publicly. Therefore, the PSL shall include an entity that provides services or products to the Postal Service over $100,000 if the entity is not a publicly held corporation and does not report its gross revenue publicly. An employee with a financial interest in an entity other than a publicly held corporation that holds a Postal Service contract producing annual gross revenue over $100,000 may pose an actual or apparent conflict of interest due to multiple factors, including the limited number of owners and a limited public market for trading.

For these reasons, the Commission proposes raising the dollar amount and percentage thresholds adopted in 1993 applicable to publicly held corporations to $1,000,000 and 10 percent of annual gross revenue. An employee with a financial interest in a publicly held corporation that holds a Postal Service contract producing annual gross revenue over $1,000,000 and 10 percent is likely to pose a risk of an actual or apparent conflict of interest. The following decision tree summarizes the proposed § 5601.102(b)(1)(iv):



e. Other Entities That May Pose an Actual or Apparent Conflict of Interest Under 5 CFR Part 2635

The existing definition of ''affected persons'' in whom employees may not hold a financial interest provides a non-exhaustive list of categories. Recognizing that certain categories may be imprecise, the Commission proposes revisions to provide greater specificity regarding prohibited interests. Notwithstanding such revisions, the Commission proposes memorializing that the touchstone of all prohibitions on financial holdings stems from the requirements contained in 5 CFR part 2635, which require that employees avoid holding financial interests that may cause or appear to cause any appearance of loss of impartiality in the performance of their official duties. This proposed change will promote consistency between 5 CFR parts 5601 and 2635 and better safeguard the integrity of the Commission's programs and operations. The proposed change also reflects the Commission's 23 years of experience with the existing rule as well as the Commission's current responsibilities under the PAEA.

To exemplify entities that may cause an apparent or actual conflict of interest, the Commission references entities primarily engaged in the business of sending periodicals or standard mail, which correspond respectively to the aspects of the definition of ''affected persons'' contained in existing §§ 5601.101(b)(1)(ii) and (iv). Existing §§ 5601.101(b)(1) (ii) and (iv) lack objective criteria limiting the scope of the prohibited interests. The existing prohibitions burden employees and fail to address actual or apparent conflict of interests. Therefore, the Commission proposes incorporating the provisions of §§ 5601.101(b)(1)(ii) and (iv) as examples of the proposed § 5601.102(b)(1)(v) to emphasize that only those users of periodicals and standard mail that pose an apparent or actual conflict of interest should be prohibited interests.

The Commission proposes deleting existing § 5601.101(b)(1)(iii), which defines a company or other person ''[w]ho is in the business of selling merchandise, and a substantial portion of whose orders are solicited, received, or delivered through the mails'' as an ''affected person.'' Under the existing § 5601.102, employees are prohibited from indirect or direct financial interests in such persons.

The Commission does not propose to specifically incorporate the prohibition of existing § 5601.101(b)(1)(iii) into the revised supplemental regulations because the prohibition is imprecise and burdensome. Drafted before the advent of e-commerce, the existing § 5601.101(b)(1)(iii) contains no threshold or definition of which merchandise sellers would be considered to have a substantial portion of their orders solicited, received, or delivered through the mails. Given that the majority of retailers solicit, receive, or deliver merchandise through the mails with the expansion of e-commerce, the existing § 5601.101(b)(1)(iii) provides minimal guidance to employees and ethics officials as to which companies or persons may pose an apparent or actual conflict of interest. Ultimately, the Commission proposes deleting the existing § 5601.101(b)(1)(iii) because such financial holdings pose minimal risk of an apparent or actual conflict of interest.

Also, the enactment of PAEA has transformed the Commission's regulatory role. In 1993, the primary rationale given for adopting the existing § 5601.102 was to prevent disqualification of too many

Commission employees during omnibus rate proceedings, which the Commission no longer holds. Thus, the Commission proposes to revise the existing § 5601.102 to reflect the Commission's post-PAEA role. Further, the proposed revised categories of prohibited sources would likely encompass any potential mail order retailers that may exert (or appear to exert) considerable influence upon the mailing industry. For instance, such retailers would likely have participated in Commission proceedings in the last 4 years (as addressed by the proposed § 5601.102(b)(1)(i)).

f. Parent Corporations to Any of the Above Categories

The Commission proposes prohibiting its employees from holding financial interests in parent entities of any of the above-listed categories of prohibited holdings. This type of prohibition is consistent with the restrictions on other federal regulators' employees.

2. Proposed 5 CFR 5601.102(b)(2)

To improve structural clarity and consistency, the Commission proposes moving the exclusion in the existing § 5601.101(b)(2) to the proposed § 5601.102(b)(2). Also, the Commission proposes replacing ''company or other person'' with ''entity'' and instead referring to the PSL consistent with the other proposed linguistic changes to 5 CFR part 5601.

Section 5601.102(c) Exception. The Commission proposes adding § 5601.102(c) to clarify that proposed § 5601.102 does not prohibit employees from holding diversified mutual funds or sector mutual funds that do not concentrate their investments in entities identified in the proposed §§ 5601.102(b)(1)(i)–(vi). This proposed addition makes the Commission's proposed changes consistent with § 2640.201 of this title.

Section 5601.102(d) Newly prohibited securities or new employees. The Commission proposes adding § 5601.102(d) to provide guidance to employees that discover they hold an interest in an entity on the PSL, either when the employee receives the prohibited securities list for the first time (*e.g.,* employees receiving the first publication of the PSL or new employees) or receives an updated version of the PSL adding entities. The Commission proposes requiring such employees to notify the DAEO in writing of prohibited holdings within 30 days of dissemination of the PSL. The Commission proposes requiring such employees to divest the interest or obtain a waiver under proposed § 5601.102(g) within 90 days of dissemination of the PSL.

Section 5601.102(e) Securities acquired without specific intent. The Commission proposes adding § 5601.102(e) to guide employees that acquire an interest in a prohibited security without specific intent (*e.g.,* through marriage, inheritance, or gift). The Commission proposes requiring such employees to notify the DAEO in writing within 30 days of the acquisition. The Commission proposes requiring such employees to divest the interest or obtain a waiver within 90 days of acquisition.

Section 5601.102(f) Divestiture. 5 CFR part 2635 and the ethics policies of the Commission permit employees to divest themselves of prohibited financial interests under particular circumstances. The Commission proposes adding § 5601.102(f) to set forth a uniform standard and guide for employees regarding how to accomplish divestiture, obtain extensions of time to divest, and accomplish disqualification pending divestiture.

(1) Procedure for accomplishing divestiture. The Commission proposes requiring employees to submit written proof of divestiture to the DAEO. The Commission proposes that the employee shall continue to be recused until the date of the DAEO's written confirmation that divestiture has been accomplished.

(2) Extension of period to divest. Consistent with § 2635.403(d) of this title, the proposed regulation provides 90 days for divestiture, with extension available in cases of undue hardship.

(3) Disqualification pending divestiture. The Commission proposes requiring an employee to disqualify himself or herself (or obtain a waiver under proposed § 5601.102(g)) from participation in any particular matters that may pose a conflict of interest before the employee receives written confirmation of divestiture from the DAEO.

This proposed procedure will help to maintain public confidence and protect the Commission's integrity by ensuring that employees are not working on matters affecting their financial interests.

Section 5601.102(g) Waivers. 5 CFR part 2635 and the ethics policies of the Commission permit employees to obtain waivers of disqualification under particular circumstances. The Commission proposes adding § 5601.102(g) to provide greater specificity regarding the requirements to obtain a waiver and to acknowledge that a waiver may be conditional. The Commission proposes that the DAEO shall have authority to grant a written waiver of the application of proposed § 5601.102(a) based on a determination that the waiver is not prohibited by law or inconsistent with § 2635.402(d) of this title and that the particular circumstances do not require that the financial interest be prohibited or divested to avoid an apparent conflict of interest. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the undue burden that the prohibited financial interests section may impose on Commission employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

E. Section 5601.103 Notice of Disqualification When Seeking Employment

The existing § 5601.103 requires employees to notify their supervisors of the need to disqualify themselves from proceedings when seeking employment. The Commission proposes dividing § 5601.103 into sections (a) and (b). Proposed § 5601.103(a) requires notice of disqualification when seeking employment to be made in writing and directed to the DAEO within 3 business days. The Commission also proposes modifying § 5601.103(a) to reflect that supervisors seeking employment must notify the DAEO to ensure that the supervisor is disqualified from working on and supervising matters relating to the supervisor's prospective employer's financial interest. The Commission proposes requiring the DAEO to inform the employee's supervisor of the disqualification. This proposed amended procedure does not replace any notification requirements imposed upon employees required to file public financial disclosure reports (OGE form 278(e)) to comply with the Stop Trading on Congressional Knowledge Act of 2012. *See* Public Law 112–105, 126 Stat. 291, 303–04, § 17 (2012). Public filers must comply with additional notification requirements set forth in § 2635.607 of this title. Proposed § 5601.103(b) addresses withdrawal of notices of disqualification by employees.

Notification of disqualification to the DAEO facilitates the DAEO's ability to advise employees of potential ethical concerns. Where disqualification is necessary, the Commission proposes requiring a written record to protect both the disqualified employee and the Commission. A written statement

maintained by the DAEO avoids possible questions about the scope and terms of the disqualification and ensures that the Commission will be able to provide adequate staffing for the affected matter. To encourage employee candor concerning potential disqualifications and maintain the integrity of the Commission's programs and processes, the DAEO need not inform the employee's supervisor of the reason for the employee's disqualification. The Commission's proposal merely amends the notification procedure when disqualification is otherwise appropriate. The Commission's proposal makes no changes to the standard to determine when disqualification is necessary.

F. Section 5601.104 Prohibited Outside Employment

Existing § 5601.104 is titled ''Outside employment'' and includes discussion of both prohibited outside employment and outside employment that is permitted, subject to prior approval. To differentiate between these two concepts, the Commission proposes to divide the concepts into two separate rules. Proposed § 5601.104 discusses only prohibited outside employment, which is currently discussed in existing § 5601.104(a). Newly created proposed § 5601.105 discusses prior approval for outside employment, which is currently discussed in existing § 5601.104(b). The Commission proposes moving the existing §§ 5601.104(c) to 5601.101(b)(6) with the other defined terms of 5 CFR part 5601. *See supra* part VI.C.

Accordingly, the Commission proposes retitling § 5601.104 as ''Prohibited outside employment.'' Also, the Commission proposes replacing the phrase ''a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of the Postal Service'' with the phrase ''an entity on the prohibited securities list described in § 5601.102(b).'' This proposed change reflects the replacement of the § 5601.101(b) ''affected persons'' terminology with the ''prohibited securities list'' terminology used in the proposed § 5601.102(b).

G. Section 5601.105 Prior Approval for Outside Employment

The Commission proposes to create separate § 5601.105 to discuss prior approval for outside employment and subdivides the discussion into sections (a) and (b) as follows.

Section 5601.105(a) Prior approval for outside employment. The Commission proposes amendments to make this subsection consistent with the existing text of § 3000.20(b) of title 39 and to enhance clarity. Currently, the DAEO provides employees approved for outside employment (and their supervisor) with a written memorandum counseling the employee regarding potential ethical concerns. *See* 39 CFR 3000.10(a). Consistent with this current practice, the Commission proposes requiring the DAEO to provide the written notice of approval to the employee's supervisor. The Commission proposes this modification to ensure that employees do not work on matters that may pose an actual or apparent conflict of interest and thereby maintain the integrity of the Commission's programs and processes.

Section 5601.105(b) Scope of approval. Also, the Commission proposes addressing the scope of approval for outside employment. The Commission proposes requiring employees to submit a new request for approval upon a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities. This requirement will enable the DAEO to prevent actual or apparent conflicts of interest that may develop based on changes in circumstances after approval for outside employment has been granted.

V. Administrative Actions

The Commission establishes Docket No. RM2017–4 for consideration of matters raised by this Order. Additional information concerning this rulemaking may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on this Order no later than 30 days after the date of publication of this Order in the **Federal Register**. Pursuant to 39 U.S.C. 505, Samuel M. Poole is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

VI. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2017–4 for consideration of the matters raised by this Order.

2. Interested persons may submit comments no later than 30 days after the date of publication of this Order in the **Federal Register**.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel M. Poole to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

By the Office of Government Ethics.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

List of Subjects in 5 CFR Part 5601

Conflicts of interests.

For the reasons discussed in the preamble, the Commission proposes to amend chapter XLVI of title 5 of the Code of Federal Regulations as follows:

■ 1. Revise part 5601 to read as follows:

PART 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL REGULATORY COMMISSION

Sec.
5601.101 General.
5601.102 Prohibited financial Interests.
5601.103 Notice of disqualification when seeking employment.
5601.104 Prohibited outside employment.
5601.105 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 503; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

Source: 58 FR 42840, Aug. 12, 1993, unless otherwise noted.

§ 5601.101 General.

(a) *Purpose.* In accordance with § 2635.105 of this title, the regulations in this part apply to employees, including Commissioners, of the Postal Regulatory Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in part 2635 of this title. In addition, the executive branch financial disclosure regulations contained in part 2634 of this title, additional regulations on responsibilities and conduct at part 735 of this title, and Commission-specific provisions contained in 39 CFR part 3000 apply to Commission employees.

(b) *Definitions.* For the purposes of this part:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest

derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in §§ 5601.102 (b)(1)(i)–(b)(1)(v).

(3) The term *person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(4) The term *entity* means person.

(5) The term *DAEO* means the Designated Agency Ethics Official, or his delegate under § 2638.601 of this title.

(6) The term *employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization unless such activities involve the practice of a profession within the meaning of § 2636.305(b)(1) of this title, including the giving of professional advice, or are for compensation, other than reimbursement of expenses.

(7) The term *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(8) The term *dependent child* means when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(i) Is unmarried, under age 21, and living in the household of the reporting individual; or

(ii) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

§ 5601.102 Prohibited financial interests.

(a) *General prohibition.* No employee, and no spouse or dependent child of an employee, shall acquire or hold any securities issued by an entity on the prohibited securities list described in paragraph (b) of this section.

(b) *Prohibited securities list.* At least once a year, the Commission will publish and distribute to employees a list of entities whose securities an employee or the spouse or dependent child of an employee may not own.

(1) The list shall include:

(i) An entity participating in a proceeding before the Commission in the last 4 years, *e.g.,* complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings;

(ii) A party to a proceeding to which the Commission is a party, *e.g.,* appellate proceedings, administrative proceedings, or civil actions;

(iii) An entity primarily engaged in the business of delivering packages, merchandise, or written communications, *i.e.,* an entity whose primary business competes with the Postal Service;

(iv) An entity providing services or products to the Postal Service that can be expected to produce annual revenue:

(A) To a publicly held corporation exceeding $1,000,000, *and* if the entity reports its gross revenue publicly, exceeding 10 percent of its annual gross revenue; or

(B) to any other entity exceeding $100,000, *and* if the entity reports its gross revenue publicly, exceeding 5 percent of the entity's annual gross revenue;

(v) Any other entities not listed above for which a Commission employee holding a security may raise an actual or apparent loss of impartiality affecting the integrity of the Commission's programs and operations, *e.g.,* entities primarily engaged in the business of publishing or distributing publications such as periodicals or sending advertising, promotional, or other material on behalf of itself or another entity through the mails; and

(vi) The parent corporation of any subsidiary described in paragraphs (b)(1)(i)–(b)(1)(v) of this section.

(2) The list shall not include an entity whose use of the mail is merely an incidental or minor factor in the general conduct of its business.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or dependent child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (b)(1)(i)–(b)(1)(vi) of this section.

(d) *Newly prohibited securities or new employees.* Within 30 days after the Commission disseminates the prohibited securities list to an employee, an employee who owns, or whose spouse or dependent child owns, prohibited securities shall report that ownership to the DAEO. The employee's report must be in writing and include the name of the prohibited security and the date of acquisition. Except as provided in paragraph (g) of this section, the employee, or the spouse or dependent child of the employee, shall divest prohibited securities within 90 days after dissemination of the prohibited securities list.

(e) *Securities acquired without specific intent.* Within 30 days after an employee, or the spouse or dependent child of an employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire the securities, the employee shall report the acquisition to the DAEO. The employee's report must be in writing and include the name of the prohibited security, the date of acquisition, and the method of acquisition. Except as provided in paragraph (g) of this section, an employee, or the spouse or dependent child of an employee, shall divest prohibited securities within 90 days after the date of acquisition.

(f) *Divestiture.*

(1) *Procedure for accomplishing divestiture.* To alleviate an actual or apparent conflict of interest, an employee divesting prohibited securities shall obtain written confirmation from the DAEO that divesture has been accomplished. A request for such confirmation shall be submitted in writing with sufficient proof to enable the DAEO to confirm that the employee has divested the prohibited security. The employee shall continue to be recused until the date of the DAEO's written confirmation that divestiture has been accomplished.

(2) *Extension of period to divest.* Upon a showing of undue hardship, the DAEO may extend the 90 day period for

divestiture specified in paragraphs (e) through (f) of this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with § 2635.402 of this title, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or dependent child of the employee.

(g) *Waivers.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose conditions, such as requiring execution of a written disqualification.

§ 5601.103 Notice of disqualification when seeking employment.

(a) An employee who has been assigned to or is supervising work on a particular matter that affects the financial interests of a prospective employer and who is required, in accordance with § 2635.604(a) of this title, to disqualify himself or herself from participation in that matter shall provide written notice of disqualification to the DAEO within 3 business days. The DAEO shall inform the employee's supervisor that the employee is disqualified from the matter. Public filers must comply with the notification requirements set forth in § 2635.607 of this title even when not required to disqualify from participation in a particular matter. Employees who file a notification statement in compliance with § 2635.607 of this title are not required to file a separate notice under this section.

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the DAEO. The DAEO shall inform the employee's supervisor that the employee is no longer disqualified from the matter.

§ 5601.104 Prohibited outside employment.

An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for an entity on the prohibited securities list described in § 5601.102(b)(1)(i)–(b)(1)(vi).

§ 5601.105 Prior approval for outside employment.

(a) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to give approval based on an informed determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and part 2635 of this title. The DAEO shall provide a copy of any written approvals for outside employment to the employee's supervisor.

(b) *Scope of approval.* An employee must submit a new request for approval upon either a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities.

[FR Doc. 2017–10613 Filed 5–23–17; 8:45 am]

BILLING CODE 7710–FW–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AE55

Project KISS

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for Information; Correction.

SUMMARY: This is a correction to a Request for Information published by the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') in the **Federal Register** of May 9, 2017 regarding the submission by the public of suggestions about how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner. This correction changes the web address to which suggestions may be submitted. The incorrect web address appeared in two places in the original document. To avoid any confusion and to ensure the public has all necessary information in one place, the Request for Information is being republished in full with the corrected web address.

DATES: Suggestions must be received on or before September 30, 2017.

ADDRESSES: You may submit suggestions, identified by RIN number 3038–AE55, by any of the following methods:

- The agency's Web site, at *www.cftc.gov/projectkiss.* Follow the instructions for submitting a Project KISS suggestion through the Public Comment Form.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Please submit your suggestions using only one method.

FOR FURTHER INFORMATION CONTACT: Michael Gill, Regulatory Reform Officer, (202) 418–5713, *mgill@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581; or *KISS@cftc.gov.*

SUPPLEMENTARY INFORMATION: On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda (''EO 13777''). EO 13777 directs federal agencies, among other things, to designate a Regulatory Reform Officer and establish a Regulatory Reform Task Force. Although the CFTC, as an independent federal agency,[1] is not bound by EO 13777, the Commission is nevertheless commencing an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly. This initiative is called Project KISS, which stands for ''Keep It Simple Stupid.'' [2] In support of these efforts, the Commission has approved the solicitation of suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner. The public may submit Project KISS suggestions through the Public Comment Form on the

[1] Independent federal agencies exist outside of the federal executive departments headed by a Cabinet secretary and the Executive Office of the President. *See Humphrey's Executor* v. *United States,* 295 U.S. 602 (1935); 5 U.S.C. 104.

[2] *See* Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20.*

Commission's Web site, at *www.cftc.gov/projectkiss*.

The Commission is not asking the public to identify rules for revocation, suspension, annulment, withdrawal, limitation, amendment, modification, conditioning or repeal. The submission of a Project KISS suggestion will not constitute a petition for issuance, amendment, or repeal of a rule pursuant to § 13.2 of the Commission's regulations,[3] nor will it constitute a request for an exemptive, no-action, or interpretive letter pursuant to § 140.99 of the Commission's regulations.[4] The Commission will treat Project KISS suggestions like the Commission treats other correspondence that it receives. Submission of a Project KISS suggestion may not result in Commission action.

All suggestions must be submitted in English, or if not, accompanied by an English translation. Suggestions will be posted as received to *www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish to submit information that you believe is exempt from disclosure under the Freedom of Information Act in your suggestion(s), please submit your suggestion(s) via Mail or Hand Delivery/Courier and also submit a petition for confidential treatment of the exempt information according to the procedures established in § 145.9 of the Commission's regulations.[5]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your suggestion(s) from *www.cftc.gov* that it may deem to be inappropriate for publication, such as a suggestion containing obscene language. Any suggestions that contain comments on the merits of an outstanding proposed rulemaking will be retained in the public comment file for that rulemaking and considered as required under the Administrative Procedure Act and other applicable laws. All suggestions that have been redacted or removed that contain comments on the merits of an outstanding proposed rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

[3] 17 CFR 13.2.

[4] 17 CFR 140.99.

[5] 17 CFR 145.9.

Dated: May 19, 2017.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2017–10622 Filed 5–23–17; 8:45 am]

BILLING CODE 6351–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3000

[Docket No. RM2017–4; Order No. 3907]

Supplemental Standards of Ethical Conduct

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to delete its existing ethics rules to avoid duplication and those changes proposed to by the Commission with the concurrence of the Office of Government Ethics.

DATES: *Comments are due:* June 23, 2017.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Postal Regulatory Commission (Commission) establishes a rulemaking docket to consider amending the Commission's ethics rules, 39 CFR subpart A of part 3000. The Commission proposes to delete its existing ethics rules to avoid duplication of 5 CFR part 2635 and those changes proposed to 5 CFR part 5601 by the Commission with the concurrence of the Office of Government Ethics (OGE).[1] This rulemaking also proposes to replace the deleted ethics rules with new rules that reflect the Commission's current regulatory role under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). The proposed rules aim to treat employees' and former employees' interactions with the Postal Service substantially the same as if those interactions were with entities that are not part of the federal government.

[1] *See* Order No. 3906, Notice of Proposed Rulemaking on Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, May 19, 2017.

II. Background

A. The Existing 39 CFR Subpart A of Part 3000

The ethics rules contained in 39 CFR subpart A of part 3000 were adopted in a 1971 rulemaking, in which the Civil Service Commission promulgated employee conduct regulations on the Commission's behalf.[2] In 1993, the Commission collaborated with OGE to revise the Commission's ethics rules in 39 CFR subpart A of part 3000. The ethics rules in 39 CFR subpart A of part 3000 retained ''those portions of the current standards of conduct not superseded by [OGE's] amendments to title 5 of the Code of Federal Regulations and incorporate[d] provisions of the Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission issued in 5 CFR part 5601 with the concurrence of [OGE].'' [3] The Commission amended the ethics rules in 2001 to eliminate a redundant provision.[4]

In 2006, the PAEA made several changes to the Commission's regulatory role. Specifically, the PAEA eliminated the responsibility to adjudicate omnibus rate cases each year, which set rates for all Postal Service products.[5] Instead, under the PAEA the Commission, among other responsibilities, approves or denies discrete Postal Service requests to change rates of market dominant products or competitive products.[6] Proposed rate changes include requests to change rates of general applicability, *e.g.,* retail rates available to the public, and rates not of general applicability, *e.g.,* negotiated service agreements (NSAs) with private parties. *See id.* Post-PAEA, the Commission must make an Annual Compliance Determination report concerning whether the rates or fees in effect for the year satisfied statutory and regulatory requirements and whether any service standards in effect during

[2] *See* 36 FR 5412 (Mar. 23, 1971).

[3] 58 FR 42873 (Aug. 12, 1993).

[4] 66 FR 32544 (Jun. 15, 2001).

[5] Public Law 109–435, 120 Stat. 3198, sections 201–202 (2006) (amending 39 U.S.C. 3621–3622 (2005) and repealing sections 3623–3624).

[6] The PAEA introduced the division of Postal Service products into market dominant products (products delivered under the Postal Service monopoly) and competitive products (all other products). 39 U.S.C. 3621–3622 and 39 CFR part 3010 (regulation of rates for market dominant products); 39 U.S.C. 3631–3634 and 39 CFR part 3015 (regulation of rates for competitive products).

the year were not met. *See* 39 U.S.C. 3653(b).

In 2007, the Commission amended its ethics rules to reflect the renumbering of its statutory authority and revised the agency's name due to the enactment of the PAEA. In 2016, the Commission amended its ethics rules to redesignate the numbering to be consistent with the **Federal Register** Document Drafting Handbook and to correct the listed authority.[7] Neither amendment modernized the Commission's ethics rules to reflect the PAEA's enhancements to the Commission responsibilities.

B. Other Existing Ethics Laws and Rules

There are several government wide ethics rules and laws that do not apply in certain instances involving intra-federal government interactions because of the acknowledgment of a low probability of ethical problems arising in those settings. However, while the Postal Service is also a federal government entity, it regularly appears in dockets before the Commission requesting relief on certain matters (either of its own volition or because the law mandates the Postal Service seek relief or permission from the Commission depending on the issue). This situation presents the appearance of, if not actual, conflicts that would occur in any other scenario if the Postal Service were a non-federal government entity, and for which these types of rules were intended to apply. But for the Postal Service's status as a federal government entity, the same ethics restrictions would apply. These changes are aimed at fixing this unintended consequence.

Existing 5 CFR part 2641 and 18 U.S.C. 207 are post-employment restrictions applicable to former federal employees, including Commission employees. There are certain exceptions to these post-employment restrictions, such as former Commission employees working for a different agency in the executive branch. *See* 39 U.S.C. 207(j)(1); 39 CFR 2641.301(a). Therefore, 5 CFR part 2641 or 18 U.S.C. 207 does not appear to apply to former Commission employees working for the Postal Service.

Existing § 2635.604 and proposed § 5601.103 of title 5 [8] require Commission employees seeking non-federal employment to provide notice of disqualification from particular Commission matters. Therefore, § 2635.604 and proposed § 5601.103 of title 5 do not appear to apply to a Commission employee seeking employment with the Postal Service.

Subpart B of 5 CFR part 2635 restricts Commission employees from accepting gifts from sources outside the federal government. Subpart C of 5 CFR part 2635 restricts Commission employees from accepting gifts from a lower-paid employee or giving gifts to an official superior. Therefore, in most cases, neither subpart would prohibit a Commission employee from accepting a gift from the Postal Service or a Postal Service employee since the Postal Service is part of the federal government.

III. Summary of the Proposed Regulatory Changes

The Commission proposes to revise its existing ethics rules for several reasons. To avoid duplication of 5 CFR part 2635 and the proposed 5 CFR part 5601,[9] the Commission proposes to delete the text and titles of existing §§ 3000.5, 3000.10, 3000.15, and 3000.20.

To reflect the substantial changes to the Commission's regulatory role after the 2006 enactment of the PAEA, which placed the Commission in the unique position of directly regulating the Postal Service, a federal agency, the Commission proposes new ethics rules that will treat employees' interactions with the Postal Service substantially the same as if those interactions were with private entities. The proposed ethics rules are intended to protect the integrity of the Commission's programs and processes and maintain public confidence that Commission employees are fulfilling their duties impartially and objectively. The proposed ethics rules reflect lessons learned through the Commission's experiences with the existing ethics rules.

IV. Section-by-Section Analysis of the Proposed Changes to 39 CFR Subpart A of Part 3000

The rules in 39 CFR subpart A of part 3000 apply only to Commission personnel and former Commission personnel.

A. Section 3000.5

The deletion of the existing language of § 3000.5. Because the text of the existing § 3000.5 is redundant to proposed § 5601.101(a) of title 5,[10] the Commission proposes deleting the existing text and title of § 3000.5.

Proposed § 3000.5 Post-employment restrictions. Federal employees, including Commission employees, may not contact an employee of any federal agency or court on behalf of another person or entity concerning an official matter with which the former employee was involved as a government employee. *See* 18 U.S.C. 207(a)(1). Federal employees, including Commission employees, may not contact an employee of any federal agency or court on behalf of another person or entity concerning an official matter that was pending under the former employee's official responsibility during the last year of his or her federal government employment. *See* 18 U.S.C. 207(a)(2). Neither restriction applies to former Commission employees that subsequently work for the Postal Service.

Because Commission employees obtain specific technical knowledge and skills in the course of their employment that may advantage a subsequent employer, including the Postal Service, and may disadvantage the Commission and the public, the Commission proposes to add post-employment restrictions that are applicable to all employers, including the Postal Service. The Commission proposes retitling § 3000.5 of title 39 as post-employment restrictions.

Paragraph (a) of proposed § 3000.5 would prohibit any former employee of the Commission from practicing or acting as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee handled, advised, or participated in the consideration of while working at the Commission. Paragraph (b) of proposed § 3000.5 would prohibit any former employee of the Commission, for one year after leaving the Commission, from practicing or acting as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the former employee's official responsibility as defined in 18 U.S.C. 202(b).

Paragraph (a) of § 3000.5's permanent ban on such participation in particular matters and Paragraph (b) of § 3000.5's one year ban on participation in matters under official responsibility applies to the former employee's practice or action before the Commission on behalf of any participant, including the Postal Service. The proposed § 3000.5 does not reduce any responsibilities imposed upon former government employees under any other applicable law including executive orders, such as Executive Order No. 13490, 74 FR 4673 (Jan. 26, 2009); statute, such as 18 U.S.C.

[7] 81 FR 42534, 42540 (Jun. 30, 2016).

[8] The Commission, with the concurrence of OGE, proposes to amend 5 CFR part 5601. *See supra* n.1.

[9] *See supra* n.1.

[10] *See supra* n.1.

207; or other regulations, such as 5 CFR part 2641.

B. Section 3000.10

The deletion of the existing language of § 3000.10. Because the text of the existing § 3000.10 is redundant to 5 CFR part 2638, the Commission proposes deleting the existing text and title of § 3000.10.

Proposed § 3000.10 Additional required notification of disqualification when seeking employment. Existing § 2635.604 of title 5 requires federal employees, including Commission employees, to recuse themselves from participating in matters that may directly and predictably affect the financial interest of a prospective employer. Proposed § 5601.103 of title 5 specifies the procedure for Commission employees to provide notice.[11] Federal employees, including Commission employees, required to file public financial disclosure reports (OGE form 278(e)), must comply with additional notification requirements set forth in § 2635.607 of title 5 and the Stop Trading on Congressional Knowledge Act of 2012.[12] None of these requirements apply to former Commission employees that seek employment with the Postal Service. However, a Commission employee seeking employment with the Postal Service may experience an actual or an appearance of a conflict of interest between his or her subsequent employment prospects and current work.

Therefore, the Commission proposes to require its employees who seek employment with the Postal Service to provide notice of disqualification consistent with the rules applicable to seeking non-federal employment. The Commission proposes retitling § 3000.10 as ''additional required notification of disqualification when seeking employment.'' Proposed paragraph (a) of § 3000.10 would require a Commission employee seeking employment with the Postal Service to provide notice consistent with proposed § 5601.103(a) of title 5. Proposed paragraph (b) of § 3000.10 permits the employee to withdraw notice of disqualification consistent with proposed § 5601.103(b) of title 5.

C. Section 3000.15

The deletion of the existing language of § 3000.15. Because the text of the existing § 3000.15 is redundant to the proposed § 5601.102 of title 5,[13] the Commission proposes deleting the existing text and title of § 3000.15.

Proposed § 3000.15 Additional restriction on gifts. Executive Order No. 11570, as amended by Executive Order No. 12107, requires Commission regulations to prohibit the receipt of anything of value by a Commission employee ''from an individual or organization having, or likely to have, business with the Commission.'' [14]

Unless an exception applies, federal employees, including Commission employees, generally may not accept gifts that are given because of their official positions or that come from certain prohibited sources. 5 CFR 2635.202(a). The definition of ''gift'' excludes ''[a]nything which is paid for by the Government.'' 5 CFR 2635.203(b)(7). Therefore, even though the Postal Service regularly appears before and seeks relief from the Commission, things of value given by the Postal Service to Commission employees are not considered gifts under the existing regulations. By contrast, § 2635.202(a) of title 5 generally prohibits acceptance of gifts that come from non-federal government entities that regularly appear before or seek relief from the Commission.

The Commission proposes revising § 3000.15 to similarly prohibit a Commission employee from accepting a gift from the Postal Service unless first permitted by an exception or exclusion contained in § 2635 other than § 2635.203(b)(7) of title 5. The Commission proposes to retitle § 3000.15 as ''additional limitation on acceptance of anything of value.'' The Commission believes that proposed § 3000.15 is consistent with Executive Order No. 11570, as amended by Executive Order No. 12107.

D. Section 3000.20

The deletion of the existing language of § 3000.20. Because the text of the existing section 3000.20 is redundant to the proposed §§ 5601.104(a) and (b) and 5601.103(a) of title 5,[15] the Commission proposes deleting the existing text and title of § 3000.20.

Proposed § 3000.20 Reserved. The Commission proposes to reserve § 3000.20.

V. Section-by-Section Analysis of the Proposed Changes to the Title Identified in Subchapter A of Chapter III of Title 39

Title identified in subchapter A of chapter III of title 39. The Commission proposes removing the existing heading ''Subchapter A—Personnel'' from chapter III of title 39. The existing heading is incorrect because several parts of subchapter A of chapter III of title 39 do not relate to personnel. Further, the existing heading is unnecessary because there are no additional subchapters within chapter III of title 39.

VI. Administrative Actions

The Commission establishes Docket No. RM2017–4 for consideration of matters raised by this Order. Additional information concerning this rulemaking may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**. Pursuant to 39 U.S.C. 505, Samuel M. Poole is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

VII. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2017–4 for consideration of the matters raised by this Order.
2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel M. Poole to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects in 39 CFR Part 3000

Conflict of interests.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

CHAPTER III—POSTAL REGULATORY COMMISSION

■ 1. Under the authority of 39 U.S.C. 503 remove the heading of subchapter A.

[11] *See supra* n.1.

[12] *See* Public Law 112–105, 126 Stat. 291, 303–04, section 17 (2012).

[13] *See supra* n.1.

[14] *See* Executive Order No. 11570, 35 FR 18183 (Nov. 24, 1970); Executive Order No. 12107, 44 FR 1055 (Dec. 28, 1978).

[15] *See supra* n.1.

PART 3000—STANDARDS OF CONDUCT

■ 2. The authority citation for part 3000 continues to read as follows:

Authority: 39 U.S.C. 503; 504, 3603; E.O. 12674; 54 FR 15159; 3 CFR,1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396, 5 CFR parts 2634 and 2635.

■ 3. Revise subpart A of part 3000 to read as follows:

Subpart A—General Provisions

Sec.
3000.5 Post-employment restriction.
3000.10 Additional required notification of disqualification when seeking employment.
3000.15 Additional restriction on gifts.
3000.20 [Reserved]

§ 3000.5 Post-employment restrictions.

All former employees of the Postal Regulatory Commission (Commission) are subject to the following restrictions on appearance and practice before the Commission on behalf of any participant, including the United States Postal Service (Postal Service):

(a) No former employee of the Commission may practice or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee has handled, advised, or participated in the consideration of while in the service of the Commission.

(b) No former employee of the Commission may within 1 year after his or her employment has ceased, practice before or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

§ 3000.10 Additional required notification of disqualification when seeking employment.

(a) An employee that seeks employment with the Postal Service must provide written notice to the Designated Agency Ethics Official (DAEO) consistent with § 5601.103(a) of title 5.

(b) An employee may withdraw written notice under paragraph (a) of this section consistent with § 5601.103(b) of title 5.

§ 3000.15 Additional limitation on acceptance of anything of value.

Regardless of § 2635.203(b)(7) of title 5, a Commission employee may not accept a gift from the Postal Service, unless another exception or exclusion to § 2635.203 of title 5 applies or a waiver is granted by the DAEO.

§ 3000.20 [Reserved]

[FR Doc. 2017–10636 Filed 5–23–17; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2017–0244; FRL–9962–85]

RIN 2070–AK35

Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend a final rule that published in the **Federal Register** on December 12, 2016, concerning formaldehyde emission standards for composite wood products. EPA is publishing this proposed amendment to extend the Toxic Substances Control Act (TSCA) Title VI final rule compliance dates including: extending the December 12, 2017 date for emission standards, recordkeeping, and labeling provisions until March 22, 2018; extending the December 12, 2018 date for import certification provisions until March 22, 2019; and extending the December 12, 2023 date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this proposed amendment would extend the transitional period during which the California Air Resources Board (CARB) Third Party Certifiers (TPC) may certify composite wood products under TSCA Title VI without an accreditation issued by an EPA TSCA Title VI Accreditation Body so long as the TPC remains approved by CARB, is recognized by EPA, and complies with all aspects of the December 12, 2016 final rule. Extension of these compliance dates and the transitional period for CARB TPCs adds regulatory flexibility for regulated entities, reduces compliance burdens, and helps to prevent disruptions to supply chains. EPA believes that the proposed amendment is non-controversial and does not expect to receive any adverse comments. Therefore, in addition to this Notice of Proposed Rulemaking, elsewhere in this issue of the **Federal Register**, EPA is promulgating the amendment as a direct final rule.

DATES: Written comments must be received on or before June 8, 2017. Comments postmarked after the close of the comment period will be stamped ''late'' and may or may not be considered by the Agency.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0244, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6450; email address: *winchester.erik@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information about the proposed changes to the compliance dates, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: May 17, 2017.

Louise P. Wise,

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

[FR Doc. 2017–10547 Filed 5–23–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170113076–7463–01]

RIN 0648–BG60

Fisheries of the Northeastern United States; Regulatory Omnibus Framework Adjustment To Modify Reporting Requirements for Electronic Vessel Trip Reports by Federally Permitted Party and Charter Vessel Operators in the Mid-Atlantic Region

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

ACTION: Proposed rule, request for comments.

SUMMARY: The Omnibus Electronic Vessel Trip Report Framework proposes management measures to increase the timeliness, accuracy, and quality of fisheries data submitted to NMFS while also reducing the burden on the charter and party fishing fleets. The electronic vessel trip report Framework would implement a requirement for charter and party vessels that hold a permit to fish for Atlantic bluefish, black sea bass, scup, summer flounder, tilefish, squid, Atlantic mackerel, and/or butterfish, while on a trip carrying passengers for hire, to submit required VTRs by electronic means. These proposed measures are intended to improve the timeliness and accuracy of charter and party vessel trip reporting.

DATES: Public comments must be received by June 23, 2017.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Proposed Framework Adjustment with Regulatory Impact Review (RIR) is available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The Proposed Framework/RIR is also accessible via the Internet at *http://www.greateratlantic.fisheries.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2017–0043, by either of the following methods:

—*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0043,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

—*Mail:* Submit written comments to NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Omnibus eVTR Framework.''

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, Fishery Management Specialist, (978) 282–8457, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

For the past 25 years, NMFS has mandated reporting of catch, landings, and trip information through vessel trip reports (VTRs). Between 1992 and 1996, NMFS implemented this requirement for most vessels holding Federal fishing permits in Northeast Atlantic fisheries. In 2004, mandatory electronic reporting by federally permitted dealers was implemented for almost all federally-managed species. Requirements for weekly submissions of VTRs were implemented in 2010 for fisheries under catch shares, with weekly reporting later expanded to herring, mackerel, and surf clam/ocean quahog IFQ fisheries. In July 2011, the NMFS Greater Atlantic Regional Fisheries Office approved the use of electronic reporting of VTRs on a limited and voluntary basis for a segment of the groundfish fleet, and, in 2013, NMFS made electronic vessel trip reports (eVTRs) available as an alternative to submitting handwritten hardcopies for all Mid-Atlantic and New England Fishery Management Council fishery management plans (FMPs).

Owners and operators of vessels possessing permits for fisheries managed by Mid-Atlantic Fishery Management Council (MAFMC) FMPs are required to submit a VTR for every commercial, party, or charter trip taken, regardless of where they fish (state or Federal waters) or what they catch. MAFMC-managed species that include a for-hire VTR requirement include black sea bass, bluefish, scup, summer flounder, tilefish, Atlantic mackerel, squid, and butterfish.

Current regulations require vessel owners or operators with permits for MAFMC-managed species to submit VTRs monthly to NMFS's Greater Atlantic Regional Fisheries Office (GARFO) by the 15th day of the month following the month in which the trip occurred. The Atlantic Mackerel, Squid, and Butterfish FMP requires weekly VTR reporting. If a trip encompasses multiple NMFS statistical areas, a separate VTR must be submitted for each statistical area where fishing activity takes place. A separate VTR is also required for each reporting period. If a vessel does not land any fish on a trip, all trip information must be completed and ''No Catch'' entered in as the species code name. A VTR is required regardless of where fishing occurs, meaning that a vessel subject to these requirements in the Greater Atlantic must report even if they fish in the Southeast or any other region (does not apply to vessels holding only an American lobster permit). Since VTRs are in addition to any other reports which may be required by other Regions or plans, multiple reports may be required. VTRs, and any records upon which the reports were based, must be kept on board the vessel for at least one year and retained by the owner/operator for a total of three years after the date of the last entry on the report.

Proposed Measure

The Omnibus eVTR Framework would require charter and party vessels that hold a permit for species managed by MAFMC FMPs, while on a trip carrying passengers for hire, to submit VTRs by electronic means. These vessels would also be required to submit the eVTRs within 48 hours following the completion of a fishing trip. Federally permitted vessel owners and operators on commercial fishing trips

will maintain the option to submit VTRs through hardcopy by mail or through electronic means.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP; the Bluefish FMP; the Summer Flounder, Scup, and Black Sea Bass FMP; the Tilefish FMP; other provisions of the Magnuson-Stevens Act; and other applicable law, subject to further consideration after public comment.

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

The proposed action contains collection-of-information requirements subject to review and approval by the Office of management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under Control Number 0648–0212. Public reporting burden for the new eVTR requirement is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provisions of the law, no person is required to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Vessels that hold charter or party (for-hire) Federal permits for species managed under Mid-Atlantic Council FMPs were identified as business entities affected by this action. Any entity with combined annual fishery landing receipts less than $7.5 million for for-hire entities and $11 million for commercial entities is considered a small business. In 2015, 869 for-hire permits were owned by 785 entities. Of these entities, 171 were categorized as commercial fishing entities, 394 were categorized as for-hire entities, and 220 had no revenue in 2015. All of the 785 entities with Mid-Atlantic charter or party permits are classified as small businesses based on their revenue.

Complying with the proposed eVTR requirements can be accomplished for no cost with only a personal computer (or tablet) and internet connection. The ubiquitous nature of computers and internet availability in private homes and businesses, as well as free access to both in most public libraries and other locations, provides a free or minimal cost means for permit holders to submit eVTRs. Therefore, there is little to no direct negative economic impact to permit holders. Although this low-cost option is available, for-hire captains may voluntarily choose a different reporting mechanism, additional services, or upgraded hardware options that would increase their costs to varying degrees, but those would be voluntary and not a direct result of the proposed eVTR submission requirements. Because the proposed action is not expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 18, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.7, paragraphs (b)(1)(iii) and (f)(2)(iii) are added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) *Charter/Party vessel permit owners and operators.* The owner or operator of any fishing vessel that holds a Federal charter/party (for-hire) permit to fish for Atlantic bluefish, black sea bass, scup, summer flounder, tilefish, Atlantic mackerel, squid, and/or butterfish, when on a trip carrying passengers for hire, must submit the required Vessel Trip Report by electronic means. The report must contain all applicable information outlined in paragraph (b)(1)(i) of this section.

* * * * *

(f) * * *

(2) * * *

(iii) Charter/Party vessel electronic log reports, required by paragraph (b)(1)(iii) of this section, must be submitted within 48 hours after entering port at the conclusion of a trip.

* * * * *

[FR Doc. 2017–10591 Filed 5–23–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 82, No. 99

Wednesday, May 24, 2017

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 19, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden 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 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.

Comments regarding this information collection received by June 23, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

OMB Control Number: 0579–0165.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Section 10401–18 of Public Law 107–171, May 13, 2002, of the Farm Security and Rural Investment Act of 2002. The regulations under which the Animal and Plant Health Inspection Service (APHIS) conduct disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, parts 91 through 99 of the Code of Federal Regulations. These regulations govern the importation of animals, birds and poultry, certain animal and poultry products, and animal germplasm. Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian Peninsula. It causes extensive damage to livestock and other warm-blooded animals. APHIS regulations require that horses, ruminants, swine, and dogs imported into the United States from regions of the world where screwworm is known to exist be inspected and, if necessary, treated for screwworm infestation.

Need and Use of the Information: APHIS requires the following documents to import horses, ruminants, swine, and dogs from regions where screwworm is known to exist: (1) An application for import or in-transit permit (VS Form 17–129); (2) a health certificate signed by a Federal veterinarian of the exporting country; (3) a declaration of importation with the importer, broker, and final destination information (VS Form 17–29); and (4) a quarantine reservation. If the information is not collected, APHIS would not be able to ensure horses, ruminants, swine, and dogs imported into the United States are not infested with screwworm.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 92.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 827.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–10608 Filed 5–23–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/6/2017 through 5/16/2017]

Firm name	Firm address	Date accepted for investigation	Product(s)
Advanced Graphic Engraving, LLC.	3105 Melancon Road, Broussard, LA 70518.	5/11/2017	The firm performs industrial engraving, etching, and imprinting.
Morpac Industries, Inc	117 Frontage Road, North Suite A, Pacific, WA 98047.	5/11/2017	The firm manufactures valve actuators; electric transmission line pullers, tensioners, reel stands, swivels, sheaves and blocks; and high voltage disconnect switches.
Electro-Space Fabricators, Inc	300 West High Street, Topton, PA 19562.	5/16/2017	The firm manufactures metal fabricated structures or parts of structures, such as panels, brackets, chassis, cages, and drawers.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2017–10577 Filed 5–23–17; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF393

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, June 15, 2017 at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; phone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee plans to discuss Amendment 23/Groundfish Monitoring, receive reports from the Groundfish Plan Development Team (PDT) and Groundfish Advisory Panel (GAP). They will discuss public scoping comments and make recommendations to the Council on the scope, purpose and need, and range of alternatives for Amendment 23. They also plan to review the 2017 Council Priorities with a discussion of Atlantic halibut management, receive reports from the PDT and GAP and make recommendations to the Council. They will also discuss a possible reclassification of windowpane flounder stocks with a report from the PDT and GAP and make recommendations to the Council. The committee will also review Recreational management measures process with reports from the PDT and Recreational Advisory Panel (RAP) and make recommendations to the Council. The committee will also review a draft Council letter (inclusive of Council staff and RAP input) regarding feedback on the Marine Recreational Information Program (MRIP) Strategic Plan. The committee will consider comments on the Interim Final Rule for 2017 and 2018 Sector Operations Plans, including whether additional measures or restrictions should be recommended for Sector IX as a result of misreporting by sector vessels. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 19, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–10610 Filed 5–23–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF420

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its

Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 12, 2017 at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 4 Home Depot Drive, Plymouth, MA 02360; phone: (508) 830–0200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Recreational Advisory Panel plans to discuss the 2017 Council Priority—Recreational management measures process, with a report from the Groundfish Plan Development and make recommendations to the Groundfish Committee. The Advisory Panel will also discuss Marine Recreational Information Program (MRIP) Strategic Plan and review a draft Council letter (inclusive of Council staff input) regarding feedback on the plan. They will provide additional feedback for review by the Groundfish Committee. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 19, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–10609 Filed 5–23–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF380

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would exempt a commercial fishing vessel from Atlantic sea scallop regulations in support of research conducted by the Coonamessett Farm Foundation. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 8, 2017.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''DA17–042 CFF Resource Enhancement Study EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on DA17–042 CFF Resource Enhancement Study EFP.''

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: CFF submitted an application for an EFP on April 17, 2017, to complete work on a 2016 scallop RSA seeding and enhancement project on Georges Bank titled ''Drivers of Dispersal and Retention in Recently Seeded Sea Scallops.'' The project has been delayed due to personnel changes and changes in the original approach of the project from using an autonomous underwater vehicle (AUV) to instead deploying underwater cameras on stands. Previously, the project focused on transporting, seeding, and monitoring aspects of a seeding program with longer-term monitoring, along with investigating short-term retention of seeded scallops, with an emphasis on the drivers of dispersal and their effects on the different size classes of scallops. The goal of the project is to demonstrate the feasibility of a seeding program to enhance and stabilize scallop recruitment on Georges Bank while documenting the factors that affect seed survival.

To conduct this experiment, vessels would require exemptions from the following regulations: Atlantic sea scallop crew size restrictions at 50 CFR 648.51(c); Atlantic sea scallop observer program requirements at § 648.11(g); and closed area exemptions for Closed Area I at § 648.60(c) and Nantucket Lightship at § 648.60(f). It would also exempt participating vessels from the access area program requirements at § 648.59(a)(4), which would allow them to transit in and out of the access areas from the open area, as well as from the 50 bushel (17.6 hl) in-shell scallop possession limit outside of an access area found at § 648.52(f). Finally, the EFP would exempt vessels from possession limits and minimum fish size requirements specified in 50 CFR part 648, subsections B and D through O, for biological sampling purposes and to retain any yellowtail flounder showing signs of disease for further shore side analysis.

The project would transplant scallops from areas of high concentration to areas of lower concentration that were historically known to have high scallop densities, to demonstrate the feasibility of a reseeding program to enhance and stabilize scallop recruitment on Georges Bank. One dredging trip would collect and transplant roughly 1,000 scallops utilizing a single vessel, June through July 2017. The juvenile scallops would be harvested from the southeast portion of Nantucket Lightship Access Area (NLAA) to suitable sites in an alternate area of NLAA. The projects define a suitable site as having currents less than 3 knots (~1 m/s) and large areas of coarse substrate preferred by scallops. An alternate site in Closed Area I Access Area may be chosen if needed.

The vessel would tow two standard 15-foot (4.57-m) wide dredges with a 4-inch (10.16-cm) ring bag for up to 10 minutes at 4.5 knots (2.3 m/s). To harvest all of the scallops for transplant, the applicant estimates they would need to complete no more than 10 tows. Once the catch is on deck, the scallops would be sorted by size class, marked with reflective tape to enhance images in the

photographs, and stored in fish totes with a chilled seawater flow through system. When the vessel arrives at the transplant site the scallops would then be placed into a box that would be attached to a large steel camera stand with an image coverage of approximately 3 square meters. The camera stand would then be deployed overboard, lowered to the ocean floor, and the scallops released. The cameras are equipped with batteries that would allow for 48 hours of continuous coverage. After 48 hours, the camera stands would be collected, refilled with scallops, and redeployed. Researchers will deploy two camera stands in this manner as many times as needed to release 1,000 scallops. If researchers are unable to release all 1,000 scallops according to the project protocols, any remaining scallops will be released adjacent to the camera sites. Researchers conclude that tag returns over time from the fishery could potentially provide information for the project.

One bushel from each tow would be measured for size frequency and 15 individual scallops would be sampled for meat weights to determine shell height/meat weight ratios prior to transplanting. Any finfish caught in the dredge that show signs of abnormalities would be retained and brought back to shore for analysis. Researchers would like to continue gathering information on the prevalence of the disease *Ichthyophonus* seen locally in yellowtail flounder. Anticipated catch for the project is listed in the Table 1 below.

TABLE 1—ANTICIPATED CATCH FOR THE PROJECT

Species	Min (lb)	Min (kg)	Max (lb)	Max (kg)
Scallop	1,000	453.6	5,000	2,268.0
Yellowtail Flounder	5	2.2	40	18.1
Winter Flounder	5	2.2	50	22.7
Windowpane Flounder	30	13.6	150	68.0
Monkfish	150	68.0	800	362.9
Other Fish	220	99.8	500	226.8
Barndoor Skate	10	4.5	100	45.4
Northeast Skate Complex	1,400	635.0	5,000	2,268.0

Exemptions are needed to deploy dredge gear in closed access areas and retain yellowtail flounder for scientific purposes. Participating vessels need crew size waivers to accommodate science personnel and possession waivers would enable them to conduct data collection activities. We would waive the observer program notification requirements because the research activity is not representative of standard fishing activity.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: May 19, 2017.

Margo B. Schulze-Haugen,

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

[FR Doc. 2017–10658 Filed 5–23–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (CFPB or Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Thursday, June 8, 2017, 10:00 a.m. to 4:30 p.m. eastern standard time.

ADDRESSES: The meeting location is the Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Consumer Advisory Board and Councils Office, External Affairs, 1275 First Street NE., Washington, DC 20002.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Consumer Advisory Board states that:

> The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.'' To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The Consumer Advisory Board will discuss credit visibility, credit products, trends and themes, and small business lending.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee

that accommodation will be provided for late requests.

Individuals who wish to attend the Consumer Advisory Board meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, June 7, 2017. Members of the public must RSVP by the due date and must include ''CAB'' in the subject line of the RSVP.

III. Availability

The Board's agenda will be made available to the public on May 24, 2017, via *www.consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site *www.consumerfinance.gov.*

Dated: May 18, 2017.

Leandra English,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2017–10623 Filed 5–23–17; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

In re Zen Magnets, LLC Oral Argument Before the Commission

AGENCY: Consumer Product Safety Commission.

ACTION: Commission Meeting: Oral Argument—Open to the Public; Remainder of the Meeting to be Closed.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') will meet on Wednesday, June 7, 2017, in Hearing Room 420 of the Headquarters Building of the CPSC for an Oral Argument in *In the Matter of Zen Magnets, LLC,* CPSC Docket No. 12–2. The public is invited to attend and observe the open portion of the meeting, which is scheduled to begin at 10:00 a.m. The remainder of the meeting will be closed to the public.

DATES: Oral argument is scheduled for June 7, 2017 at 10:00 a.m.

ADDRESSES: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

SUPPLEMENTARY INFORMATION:

Open Meeting

(1) Oral Argument in In the Matter of Zen Magnets, LLC, Docket No. 12–2.

Closed Meeting

(2) Executive Session to follow Oral Argument in In the Matter of Zen Magnets, LLC, Docket No. 12–2.

Record of Commission's Vote

On May 17, 2017, Acting Chairman Ann Marie Buerkle and Commissioners Elliot F. Kaye, Robert S. Adler, Marietta S. Robinson, and Joseph P. Mohorovic, voted unanimously to close Matter Number (2).

Commission's Explanation of Closing

The Commission has determined that Matter Number (2) may be closed under 16 CFR 1013.4(b)(10) because the meeting will ''[s]pecifically concern . . . disposition by the Agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554,'' and that the public interest does not require the matter to be open.

General Counsel Certification

Pursuant to a May 20, 2016, Delegation of Authority, the Office of the General Counsel has certified that Matter Number (2) may properly be closed, citing the following relevant provision: 16 CFR 1013.4(b)(10).

Expected Attendees

Expected to attend the closed meeting are the Commissioners and their immediate staff, such other Commission staff as may be appropriate, and a court reporter from Diversified Reporting Services, Inc.

Dated: May 18, 2017.

Todd A. Stevenson,

Secretary.

[FR Doc. 2017–10572 Filed 5–23–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Educational Materials in Accessible Formats for Children and Students With Visual Impairments and Print Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2017 for Educational Technology, Media, and Materials for Individuals with Disabilities—Educational Materials in Accessible Formats for Children and Students with Visual Impairments and Print Disabilities, Catalog of Federal Domestic Assistance (CFDA) number 84.327D.

DATES:

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: July 10, 2017.

Deadline for Intergovernmental Review: September 6, 2017.

FOR FURTHER INFORMATION CONTACT: Gregory Knollman, U.S. Department of Education, 400 Maryland Avenue SW., Room 5076, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–6425.

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 purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials (AEM) to students with disabilities in a timely manner.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1474(c)(1)(D) and 1481(D)).

Absolute Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Educational Materials in Accessible Formats for Children and Students with Visual Impairments and Print Disabilities.

Background:

The purpose of this priority is to fund a cooperative agreement to establish and operate a center that will provide free

educational materials,[1] including textbooks, in accessible formats to eligible children and students—individuals who are: (1) Blind, have a visual impairment, have a physical disability, or have a print disability; (2) certified by a competent authority as unable to read typical printed material as a result of physical limitations (*e.g.,* dyslexia, specific reading disability, and disabilities in which students are unable to manipulate standard books and materials); and (3) enrolled in elementary or secondary schools (as defined by the State) or postsecondary or graduate schools.[2] AEM include, but are not limited to: Electronic text, braille, audio files, description, closed captioning, and tactile graphics.

IDEA requires the provision of free educational materials, including textbooks and instructional materials, in accessible formats to eligible children and students. State educational agencies (SEAs) and local educational agencies (LEAs) must provide materials in accessible formats in a timely manner (IDEA Part B, section 612(a)(23)(B) and section 613(a)(6)(B)).

Further, under section 504 of the Rehabilitation Act of 1973, as amended, institutions of higher education (IHEs), SEAs, and LEAs must provide educational materials in accessible formats as a means to accommodate students who are blind, have a visual impairment, have a physical disability, or have a print disability. The accessible formats are needed to provide these students with an equal educational opportunity. 34 CFR 104.4.

Title II of the ADA is also applicable and requires, among other things, that public entities, including public IHEs, ensure that students with disabilities have an equal opportunity to participate in school activities and ensure that communication with students with disabilities is as effective as communication with students without disabilities, through the provision, in a timely manner, of auxiliary aids and services. 28 CFR 35.160.

As a condition of this grant, the materials and textbooks must be provided in formats that are of high quality and meet industry standards for accessibility (*e.g.,* Web Content Accessibility Guidelines (WCAG) 2.0 Level AA Standard, EPUB Accessibility 1.0).[3]

To help ensure the free distribution of educational materials in accessible formats, Congress has granted exceptions to copyright holders' exclusive rights to replication and distribution through the Chafee Amendment, which authorizes entities to reproduce or distribute copies of previously published works in specialized, accessible formats exclusively for use by eligible children and students.

In the 2015–2016 school year, States reported that there were 29,186 enrolled students, ages 3 through 21, who were deaf-blind or had a visual impairment, and 2,357,143 had a specific learning disability, some of whom would typically qualify as having a print disability (U.S. Department of Education, 2016). Over the past 10 years, work under this program has provided more than 400,000 students with access to AEM, which have been downloaded more than 3,350,000 times. These numbers continue to grow daily (*www.bookshare.org*).

This center will increase the production, availability, distribution, and use of AEM across grade levels and across ability levels. In order to do so, the center will upgrade available software to reflect new and emerging technology, increase the number of educational titles, reduce the time it takes to make accessible digital materials available, and improve the quality of these materials.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a center that will provide free educational materials,[4] including textbooks and instructional materials, in accessible formats for eligible children and students—those who are: (1) Blind, have a visual impairment, have a physical disability or have a print disability; (2) certified by a competent authority as unable to read normal printed material as a result of physical limitations (*e.g.,* dyslexia, specific reading disability, and disabilities in which students are unable to manipulate standard books and materials); and (3) enrolled in elementary or secondary (as defined by the State) or postsecondary, or graduate schools.[5] Prior investments established a center to acquire educational materials, convert those materials into AEM, and distribute AEM to eligible children and students. These, and new AEM produced by the center funded under this priority, must remain available to eligible children and students after the end date of the project. In addition, it is critical to expand the availability, quality, and use of AEM, and apply new and emerging technology solutions to support efficient and effective production and distribution. The center must achieve, at a minimum, the following expected outcomes:

(a) The provision of AEM for use by eligible children and students. Materials must be provided in a timely manner and directly to eligible children and students or to SEAs, LEAs, postsecondary institutions, graduate schools, and vocational rehabilitation agencies requesting materials.

(b) The provision of free, high-quality, up-to-date software needed by eligible children and students, families, schools, LEAs, SEAs, postsecondary schools, and vocational rehabilitation agencies to use the AEM.

(c) The incorporation of the most efficient, cost-effective technology available to provide timely access to AEM that can be used across multiple accessible formats, including, at a minimum, braille-ready files, audio, standard text, standard text with audio, and large print.

(d) The production and distribution of high-quality, user-friendly AEM, including digital text, braille-ready files, and audio formats, using files that are consistent with the current industry standards and guidelines (*e.g.,* Web Content Accessibility Guidelines (WCAG) 2.0, Level AA Standard, EPUB Accessibility 1.0).

(e) The production of tools and software that can be used by developers, producers, publishers, and others to embed accessibility features into textbooks and educational materials during their initial development and production.

(f) The distribution of AEM to traditionally underserved eligible children and students (*e.g.,* students living in poverty, homeless students, and culturally and linguistically diverse students including English learners).

[1] For the purposes of this priority, we are using the term ''educational materials'' as it is used in section 674(c)(1)(D) of IDEA.

[2] For the purposes of this priority, eligible elementary and secondary children and students may be receiving services or modifications under IDEA, section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act of 1990 (ADA); eligible postsecondary students may be receiving modifications, academic adjustments or auxiliary aids and services under section 504 or Title II.

[3] For additional information on WCAG 2.0, please refer to *www.w3.org/WAI/intro/wcag;* for additional information on EPUB Accessibility 1.0, please refer to *www.idpf.org/epub/a11y/techniques/techniques.html.*

[4] For the purposes of this priority, we are using the term ''educational materials'' as it is used in section 674(c)(1)(D) of IDEA.

[5] For the purposes of this priority, eligible elementary and secondary children and students may be receiving services under IDEA, section 504, or Title II of the ADA; eligible postsecondary students may be receiving modifications, academic adjustments, or auxiliary aids and services under section 504 or Title II.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Quality of the Project Design,'' how the proposed project will—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes;

(ii) The logic model by which the proposed project will achieve its intended outcomes. A logic model used in connection with this priority communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: Rather than use the definition of ''logic model'' in 34 CFR 77.1(c), OSEP uses the definition in paragraph (a)(1)(ii) of these application requirements. This definition, unlike the definition in 34 CFR 77.1(c), differentiates between logic models and conceptual frameworks. The following Web sites provide more information on logic models: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(iii) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring quality of products and services;

(iv) A plan to implement the services and provide the products that are described in the *Products and Services* section of this priority;

(v) A plan that focuses on improving the quality, timeliness, ease of use, and access to AEM for eligible children and students;

(vi) A plan to ensure that eligible children and students will continue to be able to access at no cost the educational materials, including textbooks, in accessible formats, when the center is no longer federally funded, including a plan to:

(A) Provide software that is compatible for use with currently available devices. Examples include e-readers, smart phones, tablets, and data pads; and

(B) Anticipate future needs and technologies across the five years of the project;

(vii) A plan to ensure that materials and technologies are, to the maximum extent allowable under the law, openly licensed educational resources [6] through an open licensing authority;

(viii) Cost and efficiency measures, or a plan for cost and efficiency measures, for the production of AEM;

(ix) A detailed digital rights management plan that will be implemented during the project and will protect the interests of rights holders while maintaining ease of access to AEM for eligible children and students;

(x) A plan to consult with publishers, software developers, other manufacturers of AEM for eligible children and students, and the National Instructional Materials Access Center (NIMAC) [7] to ensure that the project uses the most efficient, cost-effective technology available to provide timely access to AEM. This plan should also address strategies to work towards universal applicability across all interfaces and media formats;

(xi) A plan for how the project will coordinate across multiple partners to include IHEs, SEAs, and LEAs to reduce costs of production and duplication of materials, and to improve the timeliness of distribution;

(xii) Information on how the project will develop and implement a plan for increasing IHE, SEA, and LEA use of the project's resources and AEM as part of their systems for providing educational material in accessible formats to eligible students;

(xiii) A plan for a data system that collects information on the free educational materials produced, provided, distributed to, and downloaded by, eligible children and students; and

(xiv) A description of how the project will ensure that project activities are conducted in compliance with section 121 of the copyright law, as amended (*www.copyright.gov/title17/92chap1.html#121*).

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Products and Services,'' how the proposed project will—

(1) Provide AEM, including textbooks, to SEAs and LEAs for use by eligible children and students. The AEM must be provided at no cost to the children, students, families, schools, SEAs and LEAs;

(2) Provide AEM to eligible students. Materials may be provided directly to eligible students or to postsecondary and graduate schools and vocational rehabilitation agencies requesting AEM on behalf of eligible students. The AEM and any specialized software needed to use the materials must be provided at no cost to eligible students, postsecondary and graduate schools, and vocational rehabilitation agencies. The project may not assess fees to individual eligible students or to institutions, including postsecondary schools, graduate schools, and vocational rehabilitation agencies;

(3) Provide free high-quality, up-to-date software needed to use and access the AEM by eligible children, students, families, schools, LEAs and SEAs, postsecondary and graduate schools, and vocational rehabilitation agencies. The project must also keep up to date on emerging technologies and implement changes and updates to technology, software, and other material to ensure that they continue to meet industry standards;

(4) Incorporate the most efficient, cost-effective technology available to provide timely access to AEM that can be used across alternative media formats;

(5) Produce high-quality, user-friendly AEM, including digital text, Braille-ready files, and audio formats. Materials produced as part of this cooperative agreement must include accessible digital images, charts, formulas, and graphics;

(6) Produce AEM using files that are consistent with the current industry standards for the production of AEM;

(7) Encourage and support the inclusion of accessibility features that are embedded during the development and production of the AEM by publishers and producers, where possible; and

(8) Provide AEM for historically underserved eligible children and students (*e.g.,* students living in poverty, homeless students, and culturally and linguistically diverse students).

(c) In the narrative section of the application under ''Quality of the Evaluation Plan,'' include an evaluation plan for the project. The evaluation plan must describe: measures of progress in implementation, including the criteria for determining the extent to which the project's products and services have

[6] Openly licensed educational resources are teaching, learning, and research resources that reside in the public domain or have been released under a license that permits their use, modification, and sharing with others. Open resources may be full online courses or digital textbooks or more granular resources such as images, videos, and assessment items.

[7] For more information regarding the NIMAC, please see: *www.nimac.us/.*

reached its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) The proposed project will allocate key project personnel and any consultants and subcontractors and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients;

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation;

(5) The proposed project will establish and maintain an advisory committee consisting of representatives from an SEA and an LEA; representatives from community colleges and four-year IHEs; representatives from vocational rehabilitation agencies; eligible children and students, parents or family members of individuals with blindness, visual impairments, physical disabilities, and print disabilities; and representatives of schools or other institutions where AEM are used. The purpose of this advisory committee is to provide the project with input and ongoing advice on the project's goals, objectives, products, and services. The project must submit the proposed membership of the advisory committee to OSEP for approval within eight weeks after receipt of the award;

(6) The project will communicate and collaborate on an ongoing basis with OSEP-funded projects (see *www.osepideasthatwork.org/find-center-or-grant/find-a-center*), including NIMAS-related projects. Activities could include jointly developing products, training sessions, and materials; and improving the AEM delivery system to ensure timely and easy access; and

(7) The project will maintain ongoing communication with the OSEP project officer through bi-monthly phone conferences, email communication, and face-to-face meetings, as appropriate.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(2) Include, in Appendix A, a conceptual framework for the project;

(3) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative. The primary purpose of this meeting will be to review the Department's grantee requirements, discuss the project's planned activities and budget, and confirm the expectations for the project's performance measures and evaluation.

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP, and to meet with the OSEP project officer and other funded projects for the purposes of cross-project collaboration and information exchange; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with and approved by the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a high-quality Web site, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(7) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a 3+2 review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

References:

Chafee Amendment to the Copyright Law. (1996). 17 U.S.C. 121 [1]. Retrieved from *www.copyright.gov/title17/92chap1.html#121.*

U.S. Department of Education. (2016). IDEA section 618 data products: Static tables (2014–2015). Retrieved from *http://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html#partb-cc.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

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.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $30,047,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2017, of which we intend to use an estimated $8,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2018 from the list of unfunded applications from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $8,500,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Eligible Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants to entities it has identified in an approved application.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the internet or from the Education Publications Center (ED Pubs). To obtain a copy via the internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a TDD or a TTY, call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition. 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 Part III to no more than 70 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, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- 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 abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

3. *Submission Dates and Times:*

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: July 10, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application

process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 6, 2017.

4. *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.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Educational Materials in Accessible Formats for Children and Students with Visual Impairments and Print Disabilities competition, CFDA number 84.327D, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Educational Materials in Accessible Formats for Children and Students with Visual Impairments and Print Disabilities competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327D).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic

submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Gregory Knollman, U.S. Department of Education, 400 Maryland Avenue SW., Room 5158, Potomac Center Plaza, Washington, DC 20202–5076. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327D), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are as follows:

a. *Quality of project design (20 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes intended to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework;

(iii) The extent to which the services are of sufficient quality, intensity, and duration to lead to outcomes to be achieved by the proposed project;

(iv) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field including, as appropriate, a substantial addition to an ongoing line of inquiry;

(v) The extent to which the proposed project includes a thorough, high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(vi) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products; and

(vii) The extent to which the services provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

b. *Quality of project products and services (20 points).*

(1) The Secretary considers the quality of the products and services to be provided by the proposed project.

(2) In determining the quality of the products and/or services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the products and services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the products and services are of sufficient quality, intensity and duration to lead to the outcomes intended to be achieved by the proposed project;

(iii) The extent to which the products and services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project products and services; and

(iv) The likely utility of the products and services that will result from the proposed project including their potential for being used effectively in a variety of other settings.

c. *Quality of the evaluation plan (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and intended outcomes of the proposed project;

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes;

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(iv) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

d. *Adequacy of project resources (20 points).*

(1) The Secretary considers the adequacy of resources, including the personnel who will carry out the proposed project.

(2) In determining the adequacy of resources, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel (*i.e.,* project director and project staff);

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization and key partners;

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits;

(v) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(vi) 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 management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) 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;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(iv) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project; and

(v) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

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 of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities Program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, contribute to improving outcomes for children with disabilities, and generate evidence of validity and availability to appropriate populations. Projects funded under this competition are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance

reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. 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) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5113, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 19, 2017.

Ruth E. Ryder,

Deputy Director, Office of Special Education Programs, Delegated the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2017–10664 Filed 5–23–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2017 for the Native Hawaiian Education Program, Catalog of Federal Domestic Assistance (CFDA) Number 84.362A.

DATES:

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: June 23, 2017.

FOR FURTHER INFORMATION CONTACT: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E306, Washington, DC 20202–6200. Telephone: (202) 401–1265 or by email: *Joanne.Osborne@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 primary purpose of the Native Hawaiian Education (NHE) program is to support innovative projects that enhance the educational services provided to *Native Hawaiian* (as defined in this notice) children and adults. These projects may include one or more of the activities authorized under section 6205(a)(3) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (20 U.S.C. 7515(a)(3)).[1]

Note: The construction of facilities that support the operation of Native Hawaiian education programs will be a permissible activity only if Congress specifically authorizes the use of FY 2017 funds for that purpose.

[1] In December 2015, Congress enacted the ESSA, which reauthorized the ESEA, including the NHE program. Therefore, for purposes of this notice, all references to the ''ESEA'' are to the ''ESEA, as amended by the ESSA.''

Priorities: This notice includes four competitive preference priorities. The competitive preference priorities are from section 6205(a)(2) of the ESEA.

Competitive Preference Priorities: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applicants, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to applicants that propose projects that are designed to address one or more of the following priorities, depending on how well the application addresses the priority or priorities. The maximum possible score for each competitive preference priority is five points.

These priorities are:

Priority 1—Beginning Reading and Literacy (up to 5 points).

To receive points under this priority, the application must propose to address beginning reading and literacy among students in kindergarten through third grade.

Priority 2—The Needs of At-Risk Children and Youth (up to 5 points).

To receive points under this priority, the application must propose to address the needs of at-risk children and youth.

Priority 3—Native Hawaiian Underemployment (up to 5 points).

To receive points under this priority, the application must propose to address the needs in fields or disciplines in which *Native Hawaiians* are underemployed.

Priority 4—Use of Native Hawaiian Language (up to 5 points).

To receive points under this priority, the application must propose to address the use of *Native Hawaiian language* (also referred to as ''Hawaiian language'') in instruction.

Application Requirement: The following application requirement is from section 6206(b) of the ESEA and applies to the FY 2017 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition:

Each applicant for a grant under this program must submit the application for comment to the local educational agency serving students who will participate in the program to be carried out under the grant, and include those comments, if any, with the application to the Secretary.

Definitions: The definitions below are from 34 CFR 77.1(c) and 200.34(c)(2), and sections 6207 and 4310(2) of the ESEA. These definitions apply to the FY 2017 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Charter School means a public school that—

(a) In accordance with a specific State statute

authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act;

(h) Is a school to which parents choose to send their children, and that (1) admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or (2) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (1);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school and;

(m) May serve students in early childhood education programs or postsecondary students.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Native Hawaiian means any individual who is—

(a) A citizen of the United States; and

(b) A descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—

(1) Genealogical records;

(2) Kupuna (elders) or Kamaaina (long-term community residents) verification; or

(3) Certified birth records.

Native Hawaiian community-based organization means any organization that is composed primarily of *Native Hawaiians* from a specific community and that assists in the social, cultural, and educational development of *Native Hawaiians* in that community.

Native Hawaiian educational organization means a private nonprofit organization that—

(a) Serves the interests of *Native Hawaiians;*

(b) Has *Native Hawaiians* in substantive and policymaking positions within the organization;

(c) Incorporates *Native Hawaiian* perspective, values, language, culture, and traditions into the core function of the organization;

(d) Has demonstrated expertise in the education of *Native Hawaiian* youth; and

(e) Has demonstrated expertise in research and program development.

Native Hawaiian language means the single Native American language indigenous to the original inhabitants of the State of Hawaii.

Native Hawaiian organization means a private nonprofit organization that—

(a) Serves the interests of *Native Hawaiians;*

(b) Has *Native Hawaiians* in substantive and policymaking positions within the organization; and

(c) Is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portions of programs) for the benefit of *Native Hawaiians.*

Regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma. A regular high school diploma does not include—

(a) A diploma aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA; or

(b) A general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a *logic model* (as defined in this notice).

Program Authority: Title VI, Part B of the ESEA (20 U.S.C. 7511–7517).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

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: $21,498,999.

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 Range of Awards: $250,000 to $950,000.

Estimated Average Size of Awards: $693,516.

Estimated Number of Awards: 31.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) *Native Hawaiian educational organizations* (as defined in this notice); (b) *Native Hawaiian community-based organizations* (as defined in this notice); (c) public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the *Native Hawaiian language* (as defined in this notice); (d) *charter schools* (as defined in this notice); (e) consortia of the eligible applicants listed in (a) through (c).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* Performance reports. If you receive an award under this program, you are required to provide copies of the performance reports (see section VI of this document below) to the Native Hawaiian Education Council (authorized under section 6204 of the ESEA (20 U.S.C. 7514)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a TDD or a TTY, call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program as follows: CFDA number 84.362A.

To obtain a copy from the program office, contact: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E306, Washington, DC 20202–6200. Telephone: (202) 401–1265 or by email: *Hawaiian.Native@ed.gov.* If you use a TDD or TTY, call Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative 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 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.
- 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 the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract, resumes, bibliography, or letters of support. However, the recommended page limit does apply to all of the application narrative section.

3. *Submission Dates and Times:*

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: June 23, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in CFR part 79.

5. *Funding Restrictions:* No more than five percent of funds awarded for a grant under this program may be used for program administration (20 U.S.C. 7515(b)). We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any

changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Native Hawaiian Education Program, CFDA number 84.362A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NHE program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.362, not 84.362A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, flattened Portable Document Format (PDF), meaning any fillable PDF documents must be saved as flattened non-fillable files. Therefore, do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, flattened PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. There is no need to password protect a file in order to meet the requirement to submit a read-only flattened PDF. And, as noted above, the Department will not review password protected files.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, flattened PDF; failure to submit a

required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E306, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.362A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.362A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum possible score for all criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses. The selection criteria for this competition are as follows:

(a) *Need for project* (up to 10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *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 extent to which the

proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(c) *Quality of the project design* (up to 30 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 proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (up to 10 points);

(2) The extent to which the proposed project encourages parental involvement. (up to 10 points); and

(3) The extent to which the proposed project is supported by *strong theory* (as defined in this notice). (up to 10 points).

(d) *Quality of project services* (up to 10 points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(e) *Quality of project personnel* (up to 10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of the project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources* (up to 10 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources, the Secretary considers the extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(g) *Quality of the management plan* (up to 10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers the adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(h) *Strategy to Scale* (up to 10 points)

The Secretary considers the quality of the applicant's strategy to scale the proposed project. In determining the quality of the applicant's capacity to scale the proposed project, the Secretary considers 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. *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 of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must

submit an annual performance report (APR) 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/aapforms.html.*

4. *Performance Measures:* The Department has established the following four Government Performance and Results Act of 1993 performance measures for this program: (1) The percentage of *Native Hawaiian* students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the State assessments; (2) The percentage of *Native Hawaiian* children participating in early education programs who consistently demonstrate school readiness in literacy as measured by the Hawaii School Readiness Assessment; (3) The percentage of *Native Hawaiian* students in schools served by the program who graduate from high school with a *regular high school diploma* (as defined in this notice) in four years; and (4) The percentage of students participating in a *Native Hawaiian language* program conducted under the Native Hawaiian Education program who meet or exceed proficiency standards in reading on a test of the *Native Hawaiian language.*

All grantees will be expected to submit an APR that includes data addressing these performance measures, to the extent that they apply to the grantee's project.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. 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 disk) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in the text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 19, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–10662 Filed 5–23–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Research and Development Center on Developing Software To Adapt and Customize Instruction in Digital Learning Environments To Improve Results for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2017 for Educational Technology, Media, and Materials for Individuals with Disabilities—Research and Development Center on Developing Software to Adapt and Customize Instruction in Digital Learning Environments to Improve Results for Children with Disabilities, Catalog of Federal Domestic Assistance (CFDA) number 84.327A.

DATES:

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: July 10, 2017.

Deadline for Intergovernmental Review: September 6, 2017.

FOR FURTHER INFORMATION CONTACT: Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue SW., Room 5143, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–6462.

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 purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to students with disabilities in a timely manner.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(b)(2)and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1474(b)(2) and 1481(d)).

Absolute Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Research and Development Center on Developing Software To Adapt and Customize Instruction in Digital Learning Environments To Improve Results for Children with Disabilities.

Background:

The purpose of this priority is to fund a cooperative agreement to establish and operate a research and development center that will develop software designed to adapt and customize digital materials for children with disabilities, whether or not delivered online (Center). The software should enable teachers to differentiate instruction to meet the diverse needs of children with disabilities. In this way, the software

will: (a) Enable educators, children with disabilities, and their parents to select settings and preferences that provide access and customize instructional materials to meet their individual needs in digital or online instruction; and (b) self-adjust so that material is presented at appropriate instructional levels based upon an individual child's input.[1] When possible, the software should be embedded during production of the digital materials.

The IDEA requires the provision of specially designed instruction to children with disabilities, regardless of the manner in which the instruction is delivered (traditional classroom setting, online, hybrid setting) (34 CFR 300.39(a)(1)). Under Department regulations, this means adapting, as appropriate to meet the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum (34 CFR 300.39(b)(3)). However, environments that use digital or online instruction or resources may not be specially designed for students with disabilities (Westat, 2016).

The population of students needing specially designed instruction is significant. Recent estimates suggest that, in the 2013–14 school year, more than 2.7 million K–12 students, with and without disabilities, were participating in some type of online learning (Westat, 2016), and approximately 315,000 K–12 students were enrolled in statewide, fully online schools (Evergreen Education Group, 2014). Estimates indicate that more than 75 percent of districts offered at least some instruction online in the 2013–2014 school year (whether fully online or blended) (Evergreen Education Group, 2013). Due to the way data are reported, it is difficult to determine the number of students with disabilities participating in online environments. However, it is possible that the percentage is similar to that of students with disabilities physically in schools (nearly 13 percent), although estimates vary widely (National Center for Education Statistics, 2016; Westat 2016).

In spite of the wide use of digital and online materials in instruction nationwide, there are still challenges to ensuring that (a) digital instructional material is fully accessible to children with disabilities, and (b) educators have the ability to effectively differentiate instruction to meet the individual needs of those children. Educators often incorrectly assume that if instructional material is digital, it is accessible, adaptable, and customizable to meet those children's individual needs; however, that is not necessarily the case. Even though digital materials may provide some access to instructional content, they may not adapt or allow for the customization necessary to ensure that unique needs of children with disabilities are met.

A number of existing technologies can make instructional materials accessible (*e.g.,* text to speech, captioning and highlighting features, embedded videos, digital storybooks, image description, font and size choices), and some of these digital resources provide access to content and help to differentiate instruction for children who are engaged through digital or online platforms; however many obstacles still remain. These include challenges with implementing the supports and services specified in their individualized education programs (IEPs). For example, while font and color options may be readily available in most applications, there are few options to reduce the complexity of language. In addition, accessibility features may not be compatible across all operating systems and platforms.

As a result of these barriers, educators, caregivers, parents, and children may struggle to find the appropriate features in a timely manner and could spend extended periods of time attempting to modify digital materials at the expense of instructional time. In addition, the inclusion of digital materials in instruction is a relatively new practice, and inconsistencies exist in the selection of accessibility features included in the production process. Finally, some of the technology necessary for successful differentiated instruction is in its infancy. Software that has the capability to adjust in complexity based on the child's input is not yet widely available.

If digital learning materials could be more fully and individually customized and adapted across all learning environments, then children with disabilities would have more and better access to the general education curriculum. As such, the Office of Special Education Programs (OSEP) proposes a research center to develop the necessary software to improve results for children with disabilities.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a Research and Development Center on Developing Software to Adapt and Customize Instruction in Digital Learning Environments to Improve Results for Children with Disabilities. Under this priority, the Center must:

(1) Determine the most effective digital products that are currently available to support differentiated instruction for children with disabilities in digital and online learning environments;

(2) Determine, for each of these products, the key design components that maximize the ability of educators, caregivers, parents, and children to adapt and customize digital content and to differentiate instruction;

(3) Develop and deliver software that meets current industry standards and guidelines for accessibility (*e.g.,* WCAG 2.0, EPUB Accessibility 1.0)[2] and includes accessible options that can be embedded into existing learning materials and into new digital learning materials during their development. Options must allow educators, caregivers, parents, and children to customize the instructional material and the software must automatically adjust complexity and delivery based on the child's input;

(4) Ensure that the product is both an Open Educational Resource (OER)[3] and licensed through an open access licensing authority;

(5) Identify legal issues surrounding accessible education materials that may impede the use of the product with digital products or platforms and determine ways to ensure access for all children with disabilities;

(6) Develop measures to evaluate the potential usefulness and fit of the selected accessibility components to be included in the development and production of the software; and

[1] For example, the software could provide user preferences and controls that automatically adapt instructional material to use an equivalent or alternative resource, such as text passages at different Lexile levels or mathematical equations with whole numbers between 1–10 instead of fractions or decimals. These adaptations would maintain the same learning objectives but present material in a mode that is both accessible to the student and personalized to his or her needs. In addition, the applicant may work with a publisher or distributor of existing online programs (curricula) with learning progression management by which the order of presentation to the student changes based upon the student's responses, such as advancing when a certain level of mastery is achieved or moving to additional instruction or practice if the response is inaccurate, etc. This combination of adaptations would maximize the level of customization and personalization for the student.

[2] For additional information on WCAG 2.0, please refer to *https://www.w3.org/WAI/intro/wcag;* for additional information on EPUB Accessibility 1.0, please refer to *www.idpf.org/epub/a11y/techniques/techniques.html.*

[3] Open Educational Resources (OER) are teaching and learning materials that you may freely use and reuse at no cost. Unlike fixed, copyrighted resources, OER have been authored or created by an individual or organization that chooses to retain few, if any, ownership rights. Retrieved from *www.oercommons.org/about.*

(7) Maximize the efficiency of the product, by reducing the cost of including it in the production of materials (including added costs and time to re-design workflow to create the accessible materials) and ensuring optimal ease of use by end users.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address the need for adaptive software that includes a range of accessible options that allow the end user to customize the instructional material and self-adjust based on the child's input. To meet this requirement, the applicant must present information on what digital materials are currently available to educators, caregivers, parents, and children that offer specially designed instruction to meet the unique needs of children with disabilities; and

(2) Improve outcomes for children with disabilities by enhancing their ability to access instruction that meets their State's college- and career-ready standards through differentiated and customized digital materials.

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Design,'' how the proposed project will—

(1) Ensure that the software developed meets the needs of publishers, distributors, developers, and end users;

(2) Achieve measurable outcomes. To meet this requirement, the applicant must develop a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed projects. A logic model used in connection with this priority communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: Rather than use the definition of ''logic model'' in section 77.1(c) of EDGAR, OSEP uses the definition in paragraph (b)(2) of these application requirements. This definition, unlike the definition in 34 CFR 77.1(c), differentiates between logic models and conceptual frameworks. The following Web sites provide more information on logic models: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(3) Use an iterative process of field testing in the development of the software;

(4) Improve the capabilities of the software by describing the key components of the software that maximize the ability to adapt and customize content and to differentiate or individualize instruction in digital or online environments for children with disabilities and the specifications necessary for the software to be embedded during design;

(5) Be based on current research and technologies used to develop accessible education materials and support differentiation of instruction. To meet this requirement, the applicant must describe—

(i) How the proposed project will align to current industry standards and technical specifications in the development of the software; and

(ii) How the proposed project will work with publishers to ensure that the software can be embedded into the digital materials during initial development or retrofitting of existing materials;

(6) Meet current accessibility standards to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on designing fully accessible and customizable digital and online instructional materials; and

(ii) How it proposes to ensure that the software will appropriately tagged metadata. This metadata should allow for the evaluation of accessibility and adaptation within online and digital learning environments;

(7) Develop a computer adaptable software product that is readily available to teachers, instructors, students, and parents; can be embedded during production; meets accessibility standards; and facilitates instruction that meets the unique needs of children with disabilities. To address this requirement, the applicant must describe—

(i) How the proposed project will develop software that makes instructional material accessible based on the setting selected by the educator, caregiver, parent, or child;

(ii) How the proposed project will develop and adaptable software product that facilitates differentiated instruction by adjusting in complexity based on the child's input; and

(iii) How the proposed project will include plans for continued improvement and scale up its work to ensure the software is available to the widest range of children with disabilities;

(8) Ensure effective communication and collaboration between project staff, stakeholders, and OSEP, including other OSEP-funded projects. To address this requirement, the applicant must—

(i) Describe how the project will communicate and collaborate on an ongoing basis with other OSEP-funded projects;

(ii) Describe how the project will collaborate with publishers, Accessible Media Producers, technology developers, vendors, distributors, and others with expertise in accessible education materials production;

(iii) Describe how the project will communicate using a wide variety of media methods (presentations, publication, conference attendance, demonstrations) to reach a broad range of technology developers, publishers and end users, including educators, children with disabilities, and parents of children with disabilities; and

(c) In the narrative section of the application under ''Quality of the Evaluation Plan,'' include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe: Measures of progress in implementation, including the criteria for determining the extent to which the project's research and product development have reached its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the OSEP project officer, a project liaison staff person with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIP3),[4] the project director, and the OSEP project officer on the following tasks:

(i) Revise, as needed, the logic model submitted in the grant application to

[4] The major tasks of CIP3 are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIP3 are expected to enhance individual project evaluation plans by providing expert and unbiased technical assistance in designing the evaluations with due consideration of the project's budget. CIP3 does not function as a third-party evaluator.

provide a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting and throughout the project period;

(ii) Refine the evaluation design and instrumentation proposed in the grant application consistent with the logic model (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the usefulness of the software, designing instruments or identifying data sources, and identifying analytic strategies); and

(iii) Revise, as needed, the evaluation plan submitted in the grant application such that it clearly—

(A) Specifies the measures and associated instruments or sources for data appropriate to the evaluation questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completion of the plan; and

(B) Can be used to assist the project director and the OSEP project officer, with the assistance of CIP3, as needed, to specify the performance measures to be addressed in the project's Annual Performance Report;

(2) Cooperate with CIP3 staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section and implementing the evaluation plan.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications [5] and experience to carry out the proposed development of the software and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must clearly describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks, including an iterative process of field testing and redesigning the software throughout the five-year grant cycle to include adding more accessible features and functions to increase the capability of the software;

(2) Allocation of key project personnel and any consultants and subcontractors and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the research and software development are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives in the software's development and design, including those of developers; technical designers; publishers; distributors; vendors; standards consortia members; families, including those who have children with disabilities; educators, including those who serve children with disabilities; researchers; and policy makers;

(5) The proposed project will establish and maintain a technical review board. The technical review board must—

(i) Consist of no fewer than five members representing the full range of diverse stakeholders, including at least one representative from each of the following five specific groups: Technology developers; publishers; end users, including educators of children with disabilities; persons with disabilities; and parents of children with disabilities. Board members should be identified and approved by OSEP no later than six weeks from the award date;

(ii) Meet at least twice per year during the project period with the project director, relevant project staff, and the OSEP project officer;

(iii) Evaluate current technologies, standards, and guidelines that are used and applied in the production and use of educational materials to ensure that the material is accessible to children with disabilities; and

(iv) Evaluate current applications, materials, and programs that support and ensure access to educational materials.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project.

(2) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative.

(3) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period;

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(4) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with and approved by the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(5) Maintain a high-quality Web site, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility.

References

Evergreen Education Group. (2014). Keeping pace with K–12 digital learning 2014: An annual review of policy and practice. Retrieved from *http://www.kpk12.com/wp-content/uploads/EEG_KP2014-fnl-*

[5] This software may require extensive engineering expertise, such as computer-aided software engineering, which includes the domain of software tools used to design and implement applications, especially when embedding automated tools (*e.g.,* accessibility tools, content adaptation tools) within information systems (*e.g.,* online curriculum products).

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Evergreen Education Group. (2013). Keeping pace with K–12 digital learning 2013: An annual review of policy and practice. Retrieved from *http://www.kpk12.com/wp-content/uploads/EEG_KP2013-lr.pdf.*
National Center for Education Statistics. (2016). Students with disabilities. Retrieved from *https://nces.ed.gov/fastfacts/display.asp?id=64.*
Westat. 2016. Online learning and IDEA educational environments: Determining educational environments for students with disabilities. Retrieved from *https://ideadata.org/files/resources/581e7a0a140ba0f0248b4585/5852ca01150ba09f4e8b4576/online-learning-idea-educational-environ/2016/12/15/online-learning-idea-educational-environ.pdf.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

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 (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Further Continuing and Security Assistance Appropriations Act, 2017, would provide, on an annualized basis, $30,047,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program, of which we would use an estimated $1,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2018 from the list of unfunded applications from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs), including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Eligible Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants to entities it has identified in an approved application.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the internet or from the Education Publications Center (ED Pubs). To obtain a copy via the internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a TDD or a TTY, call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

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 Part III to no more than 70 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, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- 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 abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

3. *Submission Dates and Times:*

Applications Available: May 24, 2017.

Deadline for Transmittal of Applications: July 10, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 6, 2017.

4. *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.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research and Development Center on Developing Software to Adapt and Customize Instruction in Digital Learning Environments to Improve Results for Children with Disabilities competition, CFDA number 84.327A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Research and Development Center on Developing Software to Adapt and Customize Instruction in Digital Learning Environments to Improve Results for Children with Disabilities competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and

the speed of your internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*

• You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue SW., Room 5143, Potomac Center Plaza, Washington, DC 20202–TBD. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You

must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are as follows:

(a) *Significance (20 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increasing the knowledge or understanding of problems issues or effective strategies.

(ii) The likely utility of the product (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for it being used effectively in a variety of settings.

(iii) The extent to which the results of the proposed project are disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of project design (20 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there are (1) a logic model that depicts, at a minimum, the project's proposed goals, activities, outputs, and outcomes; and (2) a conceptual framework underlying the proposed activities and the quality of that model and framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge and understanding of current research and development in the field; are highly relevant and useful to educators, children, and parents; and are delivered in a timely, cost-efficient manner.

(iv) The extent to which the proposed project includes a thorough, high-quality plan for project implementation, and the use of appropriate tools to ensure successful achievement of project objectives.

(v) The extent to which the proposed development efforts include adequate quality controls, and as appropriate, repeated testing of products.

(vi) The extent to which the services provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(c) *Quality of the evaluation plan (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide data and performance feedback for examining the effectiveness of project implementation strategies and the progress toward achieving intended outcomes.

(iii) The extent to which the methods of evaluation will produce quantitative and qualitative data that provide continuous performance feedback and demonstrate that the project has met intended outcomes.

(iv) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(d) *Adequacy of project resources (25 points).*

(1) The Secretary considers the adequacy of resources, including the personnel who will carry out the proposed project.

(2) In determining the adequacy of resources, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel (*i.e.,* project director, project and staff).

(ii) The qualifications, including relevant training and experience of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization and key partners.

(iv) The extent to which the costs are reasonable in relation to the anticipated results and benefits.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) 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.

(ii) The extent to which the time commitments of the project director, project staff, and project consultants or subcontractors are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

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 of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities Program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, contribute to improving outcomes for children with disabilities, and generate evidence of validity and availability to appropriate populations. Projects funded under this competition are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data

to the Department (34 CFR 75.590 and 75.591).

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. 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) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5113, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 19, 2017.

Ruth E. Ryder,

Deputy Director, Office of Special Education Programs, delegated the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2017–10663 Filed 5–23–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The EIA has submitted an information collection request to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Coal Markets Reporting System, OMB Control Number 1905–0167. The surveys encompassed by this request are a fundamental source of data on the Nation's coal production and disposition.

DATES: Comments regarding this proposed information collection must be received on or before June 23, 2017.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, *Chad_S_Whiteman@omb.eop.gov.*

And to:

Coal2017@eia.gov, or U.S. Energy Information Administration, Mail Stop EI–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. (Email is preferred.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to *Coal2017@eia.gov.* The proposed forms and instructions are available on the Internet at: *http://www.eia.gov/survey/changes/coal/2016/.* If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *Chad_S_Whiteman@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No. 1905–0167;

(2) Information Collection Request Title: Coal Markets Reporting System. The surveys included in this information request are:

EIA–3 ''Quarterly Survey of Industrial, Commercial, & Institutional Coal Users''

EIA–7A ''Annual Survey of Coal Production and Preparation''

EIA–8A ''Annual Survey of Coal Stocks and Coal Exports''

EIA–6 ''Emergency Coal Supply Survey (Standby)''

EIA–20 ''Emergency Weekly Coal Monitoring Survey for Coal Burning Power Producers (Standby)''

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by, or in conjunction with, the EIA.

These EIA surveys are conducted to collect coal market data. The data elements collected include production, consumption, receipts, stocks, sales, and prices. Information pertaining to the quality of the coal is also collected. The information collected is used to support public policy analyses of the coal industry, economic modeling, forecasting, coal supply and demand studies, and support research and development programs. EIA publications, including the *Monthly Energy Review, Quarterly Coal Report, Quarterly Coal Distribution Report, Annual Coal Report,* and *Annual Coal*

Distribution Report, publish data collected on the coal production and consumption survey forms listed above.

In addition, the EIA uses the data collected in short-term and long-term models such as the Short-Term Integrated Forecasting System (STIFS) and the National Energy Modeling System (NEMS) Coal Market Module. The forecast data also appear in the *Short-Term Energy Outlook* and the *Annual Energy Outlook* publications.

Please refer to the forms and instructions for more information about the purpose, who must report, when to report, where to submit, elements to be reported, detailed instructions, provisions for confidentiality, and uses of the information.

EIA–3, Quarterly Survey of Industrial, Commercial, & Institutional Coal Users

Changes to Form EIA–3:

• Change the title of the survey from the ''Quarterly Survey of Non-Electric Sector Coal Data'' to ''Quarterly Survey of Industrial, Commercial, & Institutional Coal Users.''

• In Part 2, Question 6 (Question 5 in the current form), revise reporting for co-fired sites to allow reporting more than one additional fuel source.

• In Part 2, Question 7 (Question 6 in the current form), remove the instruction that refers to ''scrubbers'' as a carbon dioxide emissions capture system. (A ''scrubber'' is used to control emissions of sulfur dioxide.)

• In Part 3, Question 2, remove Adjustments to Total Cost of Coal (received during the reporting quarter). Cognitive testing indicated that this data element was unnecessary.

• In Part 5, Questions 2 and 3, revise coking plant disposition categories and include distinction between domestic and export sales of coke and breeze to gather more accurate data on each type of sale.

• In Part 8, Question 2, revise coal refining plant disposition categories to allow for more accurate accounting of refined coal stocks.

• In Part 2, Question 2, add the question: ''Does this site operate a coke oven?'' This question will be used to identify active U.S. coking plants within manufacturing sites.

• In Part 3, Question 3A, add the question ''Please provide the contact information for your broker.'' Broker contact information will be used to help maintain the EIA–8A frame and eliminate duplicative reporting on Form EIA–7A.

EIA–7A, Annual Survey of Coal Production and Preparation

Changes to Form EIA–7A:

• In Part 3, Question 5A, add the question ''What is the average depth of the mine below the surface?'' This question will assist with data discrepancies of coalbed data reported by comparing coalbeds mined with U.S. Geological Survey data.

• In Part 5, revise Question 2, which currently reads ''With the existing equipment in place, what is the maximum amount of coal that this mining operation can produce during the reporting year?'' to read ''With the existing equipment in place, what is the annual operating capacity of this mine?'' By comparing actual production to operating capacity, EIA can better assess if mines are producing at maximum capacity and can use this information as an indicator of market conditions affecting coal supply.

• In Part 5, revise Question 5, which currently reads ''As of December 31st of the reporting year, what is the estimated tonnage representing the amount of coal identified in the reserve that is technologically and economically feasible to extract?'' to read ''As of December 31st of the reporting year, what is the estimated amount of coal in the reserve that is feasible (economically/technologically) to extract?'' Rewording the current recoverable coal reserves question helps clarify to respondents to report the amount of coal that can be recovered from the coal reserve.

• In Part 5, remove Question 6, which asks ''What is the recovery rate used to estimate recoverable coal reserves at this mine?'' Cognitive testing indicates that the term ''recovery rate'' does not have a common understanding by respondents in the coal industry and respondents cannot provide consistent answers to this question.

• In Part 5, Question 7, revise reporting categories of coal mine sales to simplify question wording while adding export categories to include Open Market Export Sales, Captive Market Export Sales, and Broker Export Sales. The new categories will provide more accurate information on coal exports by type of sale and seller by eliminating potential double-counting of export coal sales on Form EIA–8A. This information will improve EIA's assessments of production trends and coal supply and exports by basin.

EIA–8A, Annual Survey of Coal Stocks and Coal Exports

Changes to Form EIA–8A:

• In Part 2, Question 2, revise the list of locations where U.S. produced coal stocks are located to include ''IT—In Transit.'' This change will provide more accurate information on the quantity and disposition of coal stocks.

• In Part 3, Question 2, add new data field requesting port of export and destination country for export sales to gather more detailed export data. This data field will assist EIA in cross-survey comparisons with the EIA–7A and coal trade data collected by the U.S. Census Bureau to quantify and eliminate double-counting of export coal sales.

EIA is requesting a three-year extension *with no changes* for the following mandatory emergency standby forms:

Form EIA–6, ''Emergency Coal Supply Survey (Standby)''

Form EIA–20, ''Emergency Weekly Coal Monitoring Survey for Coal Burning Power Producers (Standby)''

(5) *Estimated Number of Survey Respondents:* 1,347.

• EIA–3 will consist of 432 respondents

• EIA–7A will consist of 848 respondents

• EIA–8A will consist of 48 respondents

• EIA–6 (standby) will consist of 11 respondents

• EIA–20 (standby) will consist of 8 respondents

(6) *Annual Estimated Number of Responses:* 2,814.

(7) *Annual Estimated Number of Burden Hours:* 5,059.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of the burden hours is estimated to be $372,646 (5,059 burden hours times $73.66 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b), and the DOE Organization Act of 1977, P.L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on April 27, 2017.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2017–10632 Filed 5–23–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ17–10–001]

City of Dover, Delaware; Notice of Filing

Take notice that on May 16, 2017, the City of Dover, Delaware submitted its tariff filing: Response to Deficiency Letter dated April 3, 2017, to be effective N/A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 6, 2017.

Dated: May 18, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–10601 Filed 5–23–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

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

Docket Numbers: ER11–1858–006.
Applicants: NorthWestern Corporation.
Description: Supplement to June 29, 2016 Triennial Market Power Analysis for the Northwest Region of NorthWestern Corporation.
Filed Date: 5/18/17.
Accession Number: 20170518–5125.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER16–2569–004.
Applicants: The Dayton Power and Light Company.
Description: Compliance filing: DP&L Settlement Compliance Filing (correction) to be effective 11/8/2016.
Filed Date: 5/18/17.
Accession Number: 20170518–5092.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1099–002.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Compliance Filing—Attachment H Tariff with Approved Revised Protocols to be effective 6/1/2017.
Filed Date: 5/12/17.
Accession Number: 20170512–5193.
Comments Due: 5 p.m. ET 6/2/17.

Docket Numbers: ER17–1507–001.
Applicants: Tucson Electric Power Company.
Description: Tariff Amendment: Amendment to Rate Schedule No. 321 Filing to be effective 6/28/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5080.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1568–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Amended Order No. 831 Compliance Filing to be effective 4/1/2019.
Filed Date: 5/18/17.
Accession Number: 20170518–5132.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1621–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 revisions to OATT 37 Coordination Agreement NYISO–ISONE to be effective 8/1/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5045.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1622–000.
Applicants: J. Aron & Company LLC.
Description: § 205(d) Rate Filing: Notice of Sucession to be effective 5/18/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5046.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1623–000.
Applicants: Southwestern Public Service Company.
Description: Tariff Cancellation: RS 140_142_144 NOC Filing to be effective 6/1/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5055.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1624–000.
Applicants: New York Independent System Operator, Inc.
Description: Notice of cancellation of of a Small Generator Interconnection Service Agreement No. 1483 of New York Independent System Operator, Inc.
Filed Date: 5/18/17.
Accession Number: 20170518–5062.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1625–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Pricing Provisions for Sales of Emergency Energy to Neighboring Control Areas to be effective 8/1/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5063.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1626–000.
Applicants: Castleton Commodities Merchant Trading L.P., Roseton Generating LLC.
Description: Request for Waiver of Castleton Commodities Merchant Trading L.P. and Roseton Generating LLC.
Filed Date: 5/18/17.
Accession Number: 20170518–5091.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1627–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2017–05–18 Amendment 1 Approved Project Sponsor Agreement Sycamore Penasquitos to be effective 7/18/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5093.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1628–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2017–05–18 Amendment 1 Approved Project Sponsor Agreement Gates-Gregg to be effective 7/18/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5103.

Comments Due: 5 p.m. ET 6/8/17.

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

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

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

Dated: May 18, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–10599 Filed 5–23–17; 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 rate filings:

Docket Numbers: ER16–2569–003.
Applicants: The Dayton Power and Light Company.
Description: Compliance filing: DP&L Settlement Compliance Filing to be effective 11/8/2016.
Filed Date: 5/18/17.
Accession Number: 20170518–5023.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER16–2570–003.
Applicants: AES Ohio Generation, LLC.
Description: Compliance filing: AES Ohio Settlement Compliance Filing to be effective 4/8/2017.
Filed Date: 5/18/17.
Accession Number: 20170518–5026.
Comments Due: 5 p.m. ET 6/8/17.

Docket Numbers: ER17–1617–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–DEP As-Available Capacity Agreement RS No. 345 to be effective 7/19/2017.
Filed Date: 5/17/17.
Accession Number: 20170517–5103.
Comments Due: 5 p.m. ET 6/7/17.

Docket Numbers: ER17–1618–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: As-Available Capacity Agreement Concurrence Filing to be effective 7/19/2017.
Filed Date: 5/17/17.
Accession Number: 20170517–5104.
Comments Due: 5 p.m. ET 6/7/17.

Docket Numbers: ER17–1619–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA Sch 6, section 1.5—Substation Equipment Exemption to be effective 7/18/2017.
Filed Date: 5/17/17.
Accession Number: 20170517–5133.
Comments Due: 5 p.m. ET 6/7/17.

Docket Numbers: ER17–1620–000.
Applicants: Liberty Utilities (CalPeco Electric) LLC.
Description: § 205(d) Rate Filing: Amended Service Agreement to be effective 6/1/2017.
Filed Date: 5/17/17.
Accession Number: 20170517–5136.
Comments Due: 5 p.m. ET 6/7/17.

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

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

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

Dated: May 18, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–10598 Filed 5–23–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–442–000]

Equitrans, LP; Notice of Request Under Blanket Authorization

Take notice that on May 15, 2017, Equitrans, LP (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222–3111, filed in Docket No. CP17–442–000 a prior notice request pursuant to sections 157.205, 157.213 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Equitrans' blanket certificate issued in Docket No. CP96–532–000, to (i) modify and abandon in part an injection and withdrawal well in Equitrans' Rhodes Storage Field Complex (Rhodes Complex) and Skin Creek Storage Field located in Lewis County, West Virginia, and (ii) abandon in-place approximately 2,553 feet of associated natural gas storage pipeline.

Equitrans states that the 2⅞-inch tubing currently in place in the Rhodes Complex/Skin Creek Storage Field Well 8217 prevents the use of casing evaluation tools necessary to perform corrosion monitoring required to comply with new regulations adopted by the Pipeline and Hazardous Materials Safety Administration (PHMSA). In order to facilitate compliance with PHMSA's new regulations, Equitrans is proposing to perform certain modifications to Storage Well 8217 and as a result, access to the Rhodes Complex via this well will be abandoned, but access to the Skin Creek Storage Field will not be affected. The proposed modification will result in Storage Well 8217 serving as a single completion well, which will allow the use of-high resolution casing logging tools and will have no impact on the well's overall deliverability. Equitrans affirms that there will be no impact on the certificated parameters of either the Rhodes Complex or the Skin Creek Storage Field, and that there will be no elimination or decrease in service to customers as a result of the proposed abandonment of facilities. Equitrans estimates the cost of the project to be $166,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Paul W. Diehl, Counsel, Midstream, Equitrans, LP, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222, by telephone at (412) 395–5540, by facsimile at (412) 553–7781, or by email at *PDiehl@eqt.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 18, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–10600 Filed 5–23–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0137; FRL–9961–70]

Pyridate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington State Department of Agriculture to use the herbicide pyridate (CAS No. 55512–33–9) to treat up to 13,850 acres of double-cut mint to control terbacil-resistant redroot pigweed biotypes, common lambquarters, Powell amaranth, cinquefoil, Russian thistle, marestail and field violet in Washington. The applicant proposes a use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 8, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0137, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair

treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the FIFRA (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Washington State Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of pyridate on double-cut mint (peppermint and spearmint) to control terbacil-resistant redroot pigweed biotypes, common lambquarters, Powell amaranth, cinquefoil, Russian thistle, marestail and field violet. Information in accordance with 40 CFR part 166 was submitted as part of this request.

In this specific exemption, the Applicant asserts that there are currently no available registered herbicides that can be applied at the proper timing to provide effective control of various broadleaf weeds without causing unacceptable injury in double-cut mint. In addition, there are no economically or environmentally feasible alternative practices, and that mint producers expect to experience yield loss greater than 20% in double-cut spearmint and peppermint.

The Applicant proposes to apply no more than a total of 2,597 gallons of the unregistered product, Tough EC, (approximately 12,985 pounds active ingredient of pyridate) per acre per year. Up to 13,850 acres of double-cut mint (8,800 acres spearmint; 5,050 acres peppermint) in Washington may be treated. Additional information from the Applicant's submission that details the need for the exemption and the proposed use pattern can be found at *http://www.regulations.gov* in the specific exemption application request from the Washington Department of Agriculture for emergency use of pyridate in double-cut peppermint and spearmint to control terbacil-resistant redroot pigweed species.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the FIFRA Act. Accordingly, this notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Washington State Department of Agriculture. Further, numerous states that have previously requested a specific exemption for use of pyridate on mint to control various broadleaf weeds species may submit similar specific exemption requests.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 28, 2017.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2017–10748 Filed 5–22–17; 4:15 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 16–306, GN Docket No. 12–268; DA 17–442]

Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) provides guidance for low power television (LPTV), television translator (TV translator) and analog-to-digital replacement translator (DRT) stations (referred to collectively as ''LPTV/translator stations'') regarding the post-auction transition period with the completion of the broadcast television spectrum incentive auction (Auction 1000). The purpose of this notice is to summarize and clarify the rules and procedures governing the post-auction transition for LPTV/translator stations.

DATES: May 24, 2017.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, *barbara.kreisman@fcc.gov,* (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 17–442; MB Docket No. 16–306, GN Docket No. 12–268, released May 12, 2017. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0515/DA–17–442A1.pdf.*

Displacement Public Notice

The Media Bureau will announce a limited window (Special Displacement Window) for LPTV/translator stations subject to displacement as a result of the incentive auction and repacking process to submit displacement applications. The Special Displacement Window will be announced after full power and Class A television stations reassigned to new channels in the repacking process have had an opportunity to apply for their preferred facilities. The exact dates for the Special Displacement Window will be announced by public notice (Displacement Public Notice) approximately seven to eight months after release of the Closing and Channel Reassignment Public Notice on April 13, 2017. The Displacement Public Notice will be released not less than 60 days prior to the opening of the Special Displacement Window. The Special Displacement Window will remain open for 30 days.

Channel Study. The Displacement Public Notice will provide channel availability data to assist eligible LPTV/TV translator stations in identifying potential new channels in the repacked TV bands, consistent with the Commission's direction in the LPTV DTV Third R&O. Specifically, the data will identify locations and channels where LPTV/translator stations cannot propose displacement facilities because of the presence of other non-displaced LPTV/translator stations, full power and Class A television stations or land mobile operations. The data will be based on use of the incentive auction software nationwide and the full power and Class A television station technical parameters in the Closing and Channel Reassignment Public Notice, as well as any full power and Class A television modifications proposed in the two alternate channel/expanded facilities filing windows. The data will be provided on the same 2x2 kilometer basis as utilized in ''TVStudy,'' the

repacking software used in connection with the incentive auction. While LPTV/translator stations applying for displacement channels will still be required to show that their proposals would not cause impermissible interference to other full power, Class A and LPTV/translator stations, identification of the locations and channels where eligible LPTV/translator stations cannot propose to operate will facilitate the LPTV/translator displacement application process by providing critical information on where applicants can do so. Stations are encouraged to use this information to help identify available channels and to use TVStudy to verify that the displacement facilities they propose will satisfy station needs while not creating harmful interference. Once a channel is identified, stations are encouraged to file for it during the Special Displacement Window.

Eligibility to File in Special Displacement Window. To be eligible to file in the Special Displacement Window, an LPTV/translator station must be both ''operating'' and ''displaced.'' ''Operating'' LPTV/translator stations are those that had licensed their authorized construction permit facilities or had an application for a license to cover on file with the Commission on April 13, 2017—the release date of the Closing and Channel Reassignment Public Notice. In order to be ''displaced'' for purposes of filing in the Special Displacement Window, an LPTV/translator station must: (1) Be subject to displacement by a full power or Class A television station on the repacked television band (channels 2–36) as a result of the incentive auction and repacking process, (2) be licensed on frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) be licensed on frequencies that will serve as part of the 600 MHz Band guard bands (which includes the duplex gap).

Application Filing Procedures. Eligible stations may file a displacement application on FCC Form 2100—Schedule C. Displacement applications will be treated as a ''minor change.'' There is no fee for filing a displacement application.

Limits on Modification. During the Special Displacement Window, all of the requirements of the current displacement rules will continue to apply (*e.g.,* required interference showing and limits on transmitter moves) except for the requirement that displacement applications be submitted only after the primary station obtains a construction permit or license. Eligible digital stations may propose a change in transmitter site of not more than 48 kilometers from the reference coordinates of the existing station's community of license. Eligible analog stations may propose a change in antenna location of not more than 16.1 kilometers.

In addition, eligible stations may apply only for a channel that remains allocated to broadcast television service (*i.e.,* channels 2–36), and not for channels that have been repurposed for the new, flexible 600 MHz Band wireless services or reserved for the 600 MHz guard band and duplex gap (*i.e.,* former television channels 38–51). In their displacement applications, stations will be required to demonstrate that they would not cause interference to the predicted service of: (1) All other primary users in the repacked TV Band or in adjacent bands including land mobile operations, (2) licenses and valid construction permits for LPTV/translator stations; (3) licenses and valid construction permits for full power and Class A stations that were not reassigned; (4) the post-auction channels of reassigned full power and Class A stations as reflected in the Closing and Reassignment Public Notice, and (5) the alternative channels and expanded facilities proposed during the two filing windows by reassigned full power and Class A stations.

So that as many potential channels as possible are available for operating LPTV/translator stations that are subject to displacement, stations are permitted to file displacement applications proposing pre-auction channels in the repacked television band (channels 2–36) that full power and Class A stations will relinquish as a result of the incentive auction and repacking process. This includes channels being voluntarily relinquished by relinquishment stations, channel sharee stations, and band changing stations as well as the pre-auction channels of stations assigned to a new channel as a result of the incentive auction and repacking process. Ordinarily, such applications would be prohibited by the contingent application rule until such channels are actually vacated. The Media Bureau will look favorably, however, upon requests to waive the contingent application rule filed by operating LPTV/translator stations that are subject to displacement if the station can demonstrate that the requested channel is necessary to allow the station to continue to serve its current viewers. In addition, in order to comply with Section 73.3700(g)(2), the station must agree to a condition that it will not begin transmitting on the requested channel prior to discontinuation of operation by the full power or Class A station that is licensed to use that channel. If the conditional grant requires an LPTV/translator station to be silent for a consecutive 12-month period prior to discontinuation of operation by the full power or Class A station, the Media Bureau will consider a request for extension or reinstatement pursuant to Section 312(g) of the Act and a request for waiver of the applicable Commission rule.

Some LPTV/translator stations on channels in the repacked television band (channels 2–36) that would otherwise qualify as displaced stations may be able to avoid displacement by making minor changes to their existing facilities that bring those facilities into compliance with the interference rules. For example, an LPTV/translator station that will cause interference to a full power or Class A television station post-repack may make a minor change in power, antenna height or location that would eliminate such interference and allow the LPTV/translator station to continue broadcasting on its channel. LPTV/translator stations are encouraged to file such minor change applications as soon as possible. To create a stable database for stations filing in the Special Displacement Window, approximately 30 days before the release of the Displacement Public Notice (which itself will be released no later than 60 days before the Special Displacement Window opens), the Media Bureau will issue a public notice freezing the filing of minor change applications by LPTV/translator stations. The freeze will be lifted upon the issuance of a later public notice after completion of the Special Displacement Window.

Mutual Exclusivity and Priority for Displaced DRTs and DTDRT Applications. All displacement applications submitted during the window will be considered filed on the last day of the window and will be processed in accordance with the existing rules. Consistent with the Commission having found that doing so would serve the public interest, applicants will be given an opportunity to resolve their mutual exclusivity through settlement or engineering amendment that may be submitted during a settlement window to be announced by the Media Bureau by separate public notice.

Should submitted applications remain mutually exclusive after the close of the settlement window, any application filed by a displaced analog-to-digital replacement translator (DRT) and any application for a new digital-to-digital replacement translator (DTDRT) will have priority over any application by a

displaced LPTV and TV translator station. DRT displacement applications and DTDRT applications have co-equal processing priority. Unless mutually exclusive with a co-equal application, a DRT displacement application or DTDRT application will be processed and, if granted, any pending LPTV and TV translator displacement application that is mutually exclusive with the granted application will be dismissed.

If two or more DRT and DTDRT applications remain mutually exclusive with one another after the close of the settlement window, the applications will be subject to the Commission's competitive bidding rules. Likewise, if two or more LPTV or TV translator applications are not subject to a priority application by a displaced DRT or for a new DTDRT and remain mutually exclusive after the close of the settlement window, the applications will be subject to the Commission's competitive bidding rules.

Construction Period, Extension of Time, and Tolling. Displaced LPTV/translator stations may be analog or digital and different construction periods apply to each type. A displaced LPTV/translator station operating in digital will have three years to construct its displacement facility. A displaced LPTV/translator station operating in analog is not subject to the three-year construction period. Rather, displaced analog stations are subject to the digital transition deadline of July 13, 2021 adopted in the LPTV DTV Third Report and Order. No later than this date, the displaced analog station must begin operating a digital facility or go silent. Upon completion of construction and initiation of service on their new channel, stations are required to submit an application for license by electronically filing FCC Form 2100—Schedule F on LMS within 10 days.

Until March 13, 2021, any displaced LPTV/translator station (either analog or digital) that is unable to complete construction of its displacement facility by its deadline may seek an extension of time to construct of up to 180 days. Stations anticipating the need for an extension must submit an extension application electronically via LMS on FCC Form 2100—Schedule 337. An application for extension of time to construct must include an exhibit demonstrating that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously. Such circumstances include, but are not limited to: (1) Delays in obtaining zoning or other approvals, or similar constraints; (2) inability to obtain equipment; or (3) financial hardship. The grant of an extension of time to complete construction on a new channel will in no way extend the deadline by which a station must terminate operations on its displaced channel.

After March 13, 2021, additional time to construct may be sought only pursuant to the Commission's ''tolling'' rule. The tolling rule provides that a construction permit deadline may be tolled only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review. Stations must electronically file tolling requests via LMS. Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where ''rare or exceptional circumstances'' prevent construction. With respect to tolling waivers, the Media Bureau will look favorably upon requests where a displaced station can demonstrate that it is unable to construct due to circumstances resulting directly from the post-auction transition, such as the inability to procure necessary resources because resources are unavailable due to the full-power and Class A post-auction transition.

Silent Authority. If a station must go silent on its licensed channel prior to completing construction on its displacement channel, it may file a request for silent authority. We remind stations that a station may suspend operations for a period of not more than 30 days absent specific authority from the Commission. Stations that remain silent for more than 10 days must notify the Commission not later than the tenth day of their suspended operations by filing a Suspension of Operations Notification via LMS. Stations that need to remain silent for more than 30 days must file a Silent STA via LMS. There is no fee for this filing.

The license of any station that remains silent for any consecutive 12-month period expires automatically at the end of that period, by operation of law, except that the Commission may extend or reinstate such station license if the holder of the license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.

Displacement Procedures

Following the initiation of service by a repacked full power or Class A television station or receipt of notice of likely interference to a new 600 MHz Band wireless licensee, LPTV/translator stations must immediately eliminate the likelihood of interference or discontinue operations. In addition, LPTV and TV translator stations must cease operations on the 600 MHz guard band and duplex gap no later than the end of the transition period (July 13, 2020).

Stations on Channels 38–51. The repurposed spectrum associated with the 600 MHz Band Plan affects LPTV/TV translator stations operating on television channels 38–51 (614–698 MHz). The 600 MHz Band Plan is comprised of an uplink band (663–698 MHz) and a downlink band (617–652 MHz) for the 600 MHz Band wireless service (the 600 MHz Band), a duplex gap (652–663 MHz) between these bands (the 600 MHz duplex gap), and a guard band (614–617 MHz) between the downlink band and channel 37 (the 600 MHz guard band).

In the Incentive Auction R&O, the Commission established a process under which LPTV/translator stations may continue operating on channels that were reallocated for use by 600 MHz Band wireless licensees unless the stations are notified in advance by a 600 MHz Band wireless licensee of likely interference with its operations in areas where it intends to commence operations. In addition, the Commission required that LPTV/TV translator stations must cease operations on the 600 MHz guard band and the duplex gap no later than the end of the transition period.

Continued Operation Permitted in the 600 MHz Band for Wireless Services Until Wireless Licensees Commence Operations or Conduct FFA Testing. Subject to the advance notification requirements below, LPTV/translator stations on channels that overlap with the 600 MHz Band (617–652 MHz/663–698 MHz) may continue operating until a 600 MHz Band wireless licensee commences operations (as defined below) or conducts FFA testing in an area where a station operates. The obligation to cease operations or eliminate the likelihood of harmful interference will apply even if the LPTV/translator station has yet to receive a displacement construction permit. To the extent that a 600 MHz wireless licensee commences operations or conducts FFA testing in an area of its geographic license where harmful interference from LPTV/translator stations would not be likely, these stations may continue to operate.

''Commencing operations'' is defined as the time when a 600 MHz Band wireless licensee conducts site commissioning tests. In this context, ''site commissioning tests'' include site activation and commissioning tests using permanent base station

equipment, antennas and/or tower locations as part of wireless licensee's site and system optimization in the area of its planned commercial service infrastructure deployment. The Commission provided for a limited exception to permit 600 MHz Band wireless licensees to undertake FFA testing (which occurs prior to site commissioning tests) on their licensed 600 MHz Band frequencies in limited areas, free from potential interference from secondary and unlicensed users, because such testing will speed deployment of the 600 MHz Band.

The 600 MHz wireless licensee must provide notice to the LPTV/translator station of its intent to commence operations and the likelihood of receiving harmful interference from the station in the form of a letter, by certified mail, return receipt requested. The notice must indicate the date that the 600 MHz Band licensee intends to commence operations or conduct FFA testing, and must be delivered to the LPTV/translator station not less than 120 days in advance of that date.

Operations in the 600 MHz Guard Band and Duplex Gap. LPTV/TV translator stations must cease operations on the 600 MHz guard band (614–617 MHz) and the 600 MHz duplex gap (652–663 MHz) no later the end of the transition period (July 13, 2020). The 600 MHz guard band at 614–617 MHz band overlaps with a portion of television channel 38, and the 600 MHz duplex gap at 652–663 MHz overlaps with all of television channel 45 and portions of channels 44 and 46. LPTV/TV translator stations may need to cease operations on these channels earlier than the end of the transition period to the extent that the station operations on specific frequencies associated with these channels are likely to cause harmful interference to 600 MHz Band wireless licensees that commence operations or conduct FFA testing, subject to the advance notification requirements summarized above.

Stations on Channels 2–36. LPTV/translator stations on channels 2–36 displaced by full power and Class A television stations as a result of the incentive auction and repacking process must eliminate the actual or predicted harmful interference or discontinue operations upon initiation of service by the displacing full power or Class A television station on its new channel.

Channel Sharing

In the LPTV DTV Third R&O, the Commission adopted rules to permit channel sharing between LPTV and TV translator stations. In the event that the incentive auction and repacking process causes either (1) the sharer station to be subject to displacement or (2) both the sharer and the sharee stations to be subject to displacement, the applicable station(s) must file FCC Form 2100 Schedule C—application for a construction permit—specifying the identical technical facilities during the Special Displacement Window proposing to share the channel, including a copy of the channel sharing agreement as an exhibit. If only a potential sharee's station is subject to displacement as a result of the incentive auction and repacking process, the potential sharee station may file an application to propose sharing the sharer's non-displaced facilities at any time after April 13, 2017 and is not limited to filing during the Special Displacement Window. Channel sharing stations will have three years to implement their shared facilities and may avail themselves of the extension and tolling provisions.

New Digital-to-Digital Replacement Translators

In the LPTV DTV Third R&O, the Commission established a new digital-to-digital replacement translator (DTDRT) service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process. The Commission concluded that full power stations may begin to file for DTDRTs beginning with the opening of the Special Displacement Window outlined in Section III and ending one year after completion of the incentive auction transition period. Accordingly, DTDRT applications must be filed by July 13, 2021.

Eligibility. Eligibility for DTDRTs is limited to full power television stations reassigned in the repacking process that can demonstrate: (1) A loss of a portion of their pre-auction digital service area; and (2) that the proposed DTDRT will be used solely to fill in such loss areas, subject to an allowance for a *de minimis* expansion of the station's pre-auction digital service area. Applicants for DTDRTs must demonstrate a digital loss area through an engineering study that depicts the station's pre- and post-incentive auction digital service areas. In addition, applicants must demonstrate that the loss resulted from the station being repacked.

The Media Bureau may grant *de minimis* expansions of pre-auction digital service areas. Stations are required to show the need to site their proposed DTDRT facility with a *de minimis* expansion of the station's pre-auction digital service area. The Bureau will determine whether an expansion is *de minimis* on a case-by-case basis.

DTDRT Application Filing Procedures. Eligible stations may file an application for a DTDRT electronically through LMS on FCC Form 2100—Schedule C. DTDRT applications will be minor change applications, and will be exempt from filing fees. Full power television stations shall have a three-year construction period to build their authorized DTDRT facilities. The provisions for extension of time and tolling, including the tolling waiver policy will apply.

Processing Priority. DTDRT applications will be afforded co-equal processing priority with displacement applications filed by full power television stations for their displaced analog-to-digital replacement translator stations (DRTs). Therefore, applications for new DTDRTs and displacement applications for existing DRTs will have processing priority over all other LPTV and TV translator applications including new, minor change, and displacement applications. Applications for DTDRTs may be filed commencing with the opening of the Special Displacement Window. All applications for new DTDRTs and displacement applications for existing DRTs filed during the Special Displacement Window will be considered filed on the last day of the window, will have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and will be considered co-equal if mutually exclusive. Following the close of the Special Displacement Window, applications for new DTDRTs will be accepted on a first-come, first-served basis, will continue to have priority over all LPTV and TV translator new, minor change or displacement applications, even if those applications were first-filed, and co-equal priority with displacement applications for existing DRTs filed on the same day.

Date for LPTV and TV Translator DTV Transition—July 13, 2021

In the LPTV DTV Third R&O, the Commission extended the September 1, 2015 digital transition date until July 13, 2021. All construction permits related to the LPTV and TV translator digital transition and construction permits for new digital LPTV and TV translator stations are hereby extended to July 13, 2021, and stations' records in LMS will be updated to reflect this date. All LPTV and TV translator stations must terminate all analog operations by 11:59 p.m. local time on July 13, 2021 regardless of whether their digital facilities are operational.

As the Commission stated in the LPTV DTV Third R&O, although the digital deadline has been extended, stations that are not affected by the incentive auction ''are encouraged to complete their transition to digital as soon as feasible after the completion of the auction.''

Transitioning LPTV and TV translator stations, including permittees of new digital LPTV/TV translator stations, that experience delays in completing their digital facilities may seek one last extension of time, of not more than six months, to be filed not later than March 13, 2021, which is four months prior to the new transition date of July 13, 2021. After March 13, 2021, LPTV and TV translator stations seeking additional time to construct digital facilities will be able to obtain additional time to construct only through the tolling provisions in the rules. Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where ''rare or exceptional circumstances'' prevent construction. The Media Bureau will look favorably upon waiver requests where a station can demonstrate that it is unable to construct due to circumstances resulting directly from the post-auction transition, such as the inability to procure necessary resources because such resources are unavailable due to the full power and Class A post-auction transition.

To ensure that viewers are aware of the impending termination of analog service, stations must provide notification to viewers of their planned transition to digital. Stations have the flexibility to determine the frequency, length, and content of their notifications. For those stations with the technical ability to locally originate programming, viewer notification must be done on the air at a time when the highest number of viewers are watching. For those stations that lack the technical ability to locally originate programming, or conclude that airing of viewer notifications would pose a hardship, they may notify viewers by some other reasonable means, *e.g.,* publication of a notification in a local newspaper or by contacting the originating station to relay a crawl or service advisory to the communities that would be affected.

Lifting of Freeze on Filing of Displacement and Digital Companion Channel Applications To Be Announced in Future Public Notice

The Media Bureau, on January 19, 2017, froze the filing of digital companion channel (DCC) applications and on June 11, 2014, froze the filing of displacement applications. The DCC and displacement application freeze will be lifted after the closing of the Special Displacement Window. The Media Bureau will announce the date the freezes are lifted in a future public notice, whereupon the Commission will once again accept DCC applications and displacement applications by LPTV/translator stations that are displaced pursuant to the rules.

Displaced LPTV/translator stations that do not qualify for the Special Displacement Window (*e.g.,* permittees that were not operating as of the Closing and Channel Reassignment Public Notice) and stations that were eligible but do not file during the Special Displacement Window must wait until the freeze is lifted to submit a displacement application. In addition, the provisions concerning construction periods, extensions of time, tolling and tolling waivers apply to these displaced permittees/stations.

With respect to tolling waivers submitted by these displaced stations, the Media Bureau will look favorably upon requests where a displaced station can demonstrate that it is unable to construct due to circumstances resulting directly from the post-auction transition, such as the inability to procure necessary resources because such resources are unavailable due to the full power and Class A post-auction transition.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2017–10628 Filed 5–23–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 17–468]

Disability Advisory Committee; Announcement of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the next meeting of the Commission's Disability Advisory Committee (Committee or DAC). The meeting is open to the public. During this meeting, members of the Committee will receive and discuss summaries of activities and recommendations from its subcommittees.

DATES: The Committee's next meeting will take place on Friday, June 16, 2017, from 9:00 a.m. to approximately 3:30 p.m. (EST).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Elaine Gardner, Consumer and Governmental Affairs Bureau: 202–418–0581 (voice); email: *DAC@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established in December 2014 to make recommendations to the Commission on a wide array of disability matters within the jurisdiction of the Commission, and to facilitate the participation of people with disabilities in proceedings before the Commission. The Committee is organized under, and operated in accordance with, the provisions of the Federal Advisory Committee Act (FACA). The Committee held its first meeting on March 17, 2015. At its June 16, 2017 meeting, the Committee is expected to receive and consider reports on the activities of its subcommittees. The Committee is also expected to receive presentations from Commission staff on matters of interest to the Committee. A limited amount of time may be available on the agenda for comments and inquiries from the public. The public may comment or ask questions of presenters via the email address *livequestions@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. If making a request for an accommodation, please include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible by sending an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Last minute requests will be accepted, but may be impossible to fill. The meeting will be webcast with open captioning, at: *www.fcc.gov/live.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2017–10626 Filed 5–23–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2017.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Michael S. McCracken,* Spencer, Indiana; to acquire voting shares of Owen Financial Corporation, and thereby indirectly acquire shares of Owen County State Bank, both of Spencer, Indiana.

B. *Federal Reserve Bank of Minneapolis* (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Mark Edward Davis, Saint Peter, Minnesota, Stanley Martin Davis, Plymouth, Minnesota, Martin Edward Davis, Excelsior, Minnesota, Mark Mitchell, Davis, Excelsior, Minnesota;* as a group acting in concert, to acquire voting shares of Bancommunity Service Corporation, Saint Peter, Minnesota, and thereby indirectly acquire voting shares of First National Bank Minnesota, Saint Peter, Minnesota.

Board of Governors of the Federal Reserve System, May 19, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–10651 Filed 5–23–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 2017.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Merchants Bancorp,* Carmel, Indiana; to acquire 100 percent of the voting shares of Joy State Bank, Joy, Illinois.

Board of Governors of the Federal Reserve System, May 19, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–10650 Filed 5–23–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Funeral Industry Practice Rule (''Funeral Rule'' or ''Rule''). That clearance expires on July 31, 2017.

DATES: Comments must be filed by June 23, 2017.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Comment: FTC File No. P084401'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/funeralrulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Paperwork Comment: FTC File No. P084401'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Rule should be directed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Room 8607, Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION: On March 6, 2017, the FTC sought public comment on the information collection requirements in the Funeral Rule (''March 6, 2017 Notice''),[1] 16 CFR part 453 (OMB Control Number 3084–0025). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

Burden statement: The estimated burden associated with the collection of information required by the Rule is 19,322 hours for recordkeeping, 103,345 hours for disclosure, and 38,644 hours for compliance training for a cumulative total of 161,311 hours. This estimate is based on the number of funeral providers (approximately 19,322),[2] the number of funerals per year (an

[1] 82 FR 12602 (March 6, 2017).

[2] The estimated number of funeral providers is from 2017 data provided on the National Funeral Directors Association (''NFDA'') Web site (see *http://www.nfda.org/news/statistics*) (within ''General Funeral Service Facts'').

estimated 2,626,418),[3] and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain for one year copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 19,322 providers is 19,322 hours.

Disclosure: As noted above, the Rule requires that funeral providers: (1) Maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining accurate price lists may require that funeral providers revise their price lists occasionally (most do so once a year, some less frequently) to reflect price changes. Staff conservatively estimates that this task may require a maximum average burden of two and one-half hours per provider per year. Thus, the total burden for 19,322 providers is 48,305 hours.

2. Staff retains its prior estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[4]

According to the rulemaking record, the 13% of funeral providers who did not provide written documentation prior to enactment of the Rule are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form, an example of which the FTC has provided to all funeral providers in its compliance guide.[5] Based on FTC staff's continuing estimate that these smaller funeral homes arrange, on average, approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider, for a total of 2,512 hours [(19,322 funeral providers × 13%) × (20 statements per year × 3 minutes per statement)].

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Information received in 2002 from the NFDA indicates that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes.[6] Thus, assuming that the average purchaser within that subset makes one call per funeral to determine pricing,[7] the estimated burden is 52,528 hours (2,626,418 funerals per year × 12% × 10 minutes per inquiry). This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 103,345 hours (48,305 + 2,512 + 52,528).

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. Staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for state licensing and voluntary certification programs. Staff estimates that, industry-wide, funeral homes would incur no more than 39,360 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an ''average'' funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees per firm would each require one-half hour, at most, per year, for such training.[8] Thus, total estimated time for training is 38,644 hours (4 employees per firm × ½ hour × 19,322 providers).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.[9]

Clerical personnel, at an hourly rate of $11.33,[10] can perform the recordkeeping tasks required under the Rule. Based on the estimated hours burden of 19,322 hours, estimated labor cost for recordkeeping is $218,918.

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at $42.82 per hour,[11] and one hour of clerical time, at $11.33 per hour, for a total of $75.56 per provider [($42.82 per hour × 1.5 hours) + ($11.33 per hour × 1 hour)]. Thus, the estimated total labor cost burden for maintaining price lists is $1,459,970 ($75.56 per provider × 19,322 providers).

The incremental cost to the 13% of small funeral providers who would not otherwise supply written documentation of the goods and services selected by the consumer, as previously noted, is 2,512 hours. Assuming managerial or professional time for these tasks at approximately $42.82 per hour, the associated labor cost would be $107,564.

[3] The estimated number of funerals conducted annually is derived from the National Center for Health Statistics (''NCHS''), *http://www.cdc.gov/nchs/*. According to NCHS, 2,626,418 deaths occurred in the United States in 2014, the most recent year for which final data is available. See, *e.g.,* Table 1 (''Number of deaths, death rates, and age-adjusted death rates, by race and sex: United States, 1940, 1950, 1960, 1970, and 1980–2014'') (*https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf*) (June 30, 2016). Staff believes this is a conservative estimate because not all remains go to a funeral provider covered by the Rule (*e.g.,* remains sent directly to a crematory that does not sell urns; remains donated to a medical school, etc.).

[4] In a 2002 public comment, the National Funeral Directors Association asserted that nearly every funeral home had been providing consumers with some kind of final statement in writing even before the Rule took effect. Nonetheless, in an abundance of caution, staff continues to retain its prior estimate based on the original rulemaking record.

[5] The compliance guide is available at *http://business.ftc.gov/documents/bus05-complying-funeral-rule.*

[6] No more recent information thus far has been available. The Commission invites submission of more recent data or studies on this subject.

[7] Although consumers who pre-plan their own arrangements may comparison shop and call more than one funeral home for pricing and other information, consumers making ''at need'' arrangements after a death are less likely to take the time to seek pricing information from more than one home. Many fail to seek any pricing information by telephone. Staff therefore believes that, as to the estimated 12% of funeral purchasers who call to price shop, an average of one call per funeral is a conservative assumption.

[8] Funeral homes, depending on size and/or other factors, may be run by as few as one owner, manager, or other funeral director to multiple directors at various compensation levels. Extrapolating from past NFDA survey input, staff has theorized an ''average'' funeral home of approximately four employees (a funeral services manager, funeral director, embalmer, and a clerical receptionist) having tasks and training associated with Funeral Rule compliance. Compliance training for other employees (*e.g.,* drivers, maintenance personnel, attendants) would not be necessary.

[9] The mean hourly wages used for labor cost estimates in this Notice incorporate Bureau of Labor Statistics updates (last modified March 31, 2017) to the figures the FTC used for the March 6, 2017 Notice: Bureau of Labor Statistics, ''May 2016 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 812200—Death Care Services,'' *available at http://www.bls.gov/oes/current/naics4_812200.htm#11-0000.*

[10] Clerical related estimates are based on the mean hourly wage data for ''receptionists and information clerks.'' *See id.*

[11] Managerial or professional estimates are based on the mean hourly wage data for ''funeral service managers.'' *See id.* at *supra* note 9.

As previously noted, staff estimates that 52,528 hours of managerial or professional time is required annually to respond to telephone inquiries about prices.[12] The associated labor cost at $42.82 per hour is $2,249,249.

Based on past consultations with funeral directors, FTC staff estimates that funeral homes will require no more than two hours of training per year of licensed and non-licensed funeral home staff to comply with the Funeral Rule,[13] with four employees of varying types each spending one-half hour on training. Applying the assumptions stated above,[14] FTC staff further assumes labor costing as follows for the affected employees' time for compliance training: (a) Funeral service manager ($42.82 per hour); (b) non-manager funeral director ($26.21 per hour); (c) embalmer ($20.31 per hour); and (d) a clerical receptionist or administrative staff member, at $11.33 per hour.[15] This amounts to $972,573, cumulatively, for all funeral homes [($42.82 + $26.21 + $20.31 + $11.33) × ½ hour per employee × 19,322 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,816,783 ($1,459,970 + $107,564 + $2,249,249). The total labor cost for recordkeeping is $218,918. The total labor cost for disclosure, recordkeeping, and training is $5,008,274 ($3,816,783 for disclosure + $218,918 for recordkeeping + $972,573 for training).

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place necessary equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of required disclosures. Assuming, as required by the Rule, that one copy of the general price list is provided to consumers for each funeral or cremation conducted, at a cost of 25¢ per copy,[16] this would amount to 2,626,418 copies per year at a cumulative industry cost of $656,605 (2,626,418 funerals per year[17] × 25¢ per copy). In addition, the funeral providers that furnish consumers with a statement of funeral goods and services solely because of the Rule's mandate will incur additional printing and copying costs. Assuming that those 2,512 providers (19,322 funeral providers × 13%) use the standard two-page form shown in the compliance guide, at twenty-five cents per copy, at an average of twenty funerals per year, the added cost burden would be $12,560 (2,512 providers × 20 funerals per year × 25¢). Thus, estimated non-labor costs total $669,165 ($656,605 + 12,560).

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 23, 2017. Write ''Paperwork Comment: FTC File No. P084401'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/funeralrulepra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Funeral Rule PRA Comment: FTC File No. P084401'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

Because your comment will be placed on the publicly accessible FTC Web site at *https://www.ftc.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).

[12] Although some funeral providers may permit staff whom are not funeral directors to provide price information by telephone, the great majority reserve that task to a licensed funeral director. Since funeral home managers are also licensed funeral directors in most cases, we have used, conservatively, the mean hourly wage for ''funeral service managers,'' rather than ''funeral directors,'' for this calculation.

[13] Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, as noted above, the FTC provides its compliance guide to all funeral providers at no cost, and it is available on the FTC Web site. *See supra* note 5. Additionally, the NFDA provides online guidance for compliance with the Rule: *http://www.nfda.org/onlinelearning-ftc.html.*

[14] *See supra* note 8 and accompanying text.

[15] Mean hourly wages, respectively, for a funeral service manager, funeral director, and embalmer. *See supra* note 9. *See supra* notes 9 and 10 regarding the mean hourly wage for ''receptionists and information clerks.''

[16] Although copies of the casket price list and outer burial container price list must be shown to consumers, the Rule does not require that they be given to consumers. Thus, the cost of printing a single copy of these two disclosures to show consumers is *de minimis,* and is not included in this estimate of printing costs. Moreover, the general price list need not exceed, and may be still shorter than, the two-page model provided in the compliance guide.

[17] *See supra* note 3 and accompanying text.

In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Web site to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 23, 2017. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2017–10597 Filed 5–23–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Title IV–E Foster Care Eligibility Review and Child and Family Service Reviews; Final Rule.

OMB No.: 0970–0214.

Description: The following five separate activities are associated with this information collection: Foster Care Eligibility Review (foster care review) Program Improvement Plan; Child and Family Services Reviews (CFSR) State agency Statewide Assessment; CFSR On-site Review; CFSR Program Improvement Plan; and Anti-Discrimination Enforcement Corrective Action Plan. The collection of information for review of federal payments to states for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The foster care review systematically checks title IV–E agency compliance in meeting title IV–E eligibility requirements; validates the accuracy of the agency's claims for reimbursement of title IV–E payment made on behalf of children in foster care; and identifies and recovers improper payments. The collection of information for review of state child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) is to determine whether such programs are in substantial conformity with state plan requirements under parts B and E of the Act and is authorized by section 1123(a) [42 U.S.C. 1320a–1a] of the Act. The CFSR looks at the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes. Section 474(d) of the Act [42 U.S.C. 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 4371(a)(18) [42 U.S.C. 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a state is in violation of section 471(a)(18) of the Act. The information collection is needed: (1) To ensure compliance with title IV–E foster care eligibility requirements; (2) to monitor state plan requirements under titles IV–B and IV–E of the Act, as required by federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through state corrective action plans. The resultant information will allow ACF to determine if states are in compliance with state plan requirements and are achieving desired outcomes for children and families, help ensure that claims by states for title IV–E funds are made only on behalf of title IV–E eligible children, and require states to revise applicable statutes, rules, policies and procedures, and provide proper training to staff, through the development and implementation of corrective action plans. These reviews not only address compliance with eligibility requirements but also assist states in enhancing the capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and states' experiences in conducting reviews and developing program improvement plans.

Respondents: State Title IV–B and Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 1356.7 (i) Program Improvement Plan (IV–E review)	1	1	120	120
45 CFR 1366.33 (b) Statewide Assessment (CFSR)	14	1	120	1680
45 CFR 1355.33 (c) On-site Review (CFSR)	14	1	1,186	16,604
45 CFR 1355.35 (a) Program Improvement Plan (CFSR)	14	1	300	4,200
45 CFR 1355.38 (b) and (c) Corrective Action	1	1	780	780
Estimated Total Annual Burden Hours				23,384

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–10631 Filed 5–23–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Revised Annual and Final Reports for Performance Reporting Data From NIDILRR Grantees

AGENCY: National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR), Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), the National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR), Administration for Community Living (ACL), is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance.

DATES: Submit written comments on the collection of information by June 23, 2017.

ADDRESSES: Submit written comments on the collection of information by fax to (202) 395–5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Mary Darnell, (202) 795–7337; *Mary.Darnell@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) Administration for Community Living (ACL) of the Department of Health and Human Services (HHS) requests clearance for a 3-year period of the revised Annual Performance Report (APR) and Final Report forms to be completed by all NIDILRR grantees.

The Web-based system used for Reporting Year 2016 reporting incorporated a number of features to meet NIDILRR's information needs while minimizing burden. To further reduce burden, the proposed form is designed so that, instead of describing their accomplishments, grantees simply select their most important accomplishments from among the outputs they report. Data from grant applications, such as contact and budget information, are preloaded for efficiency. To facilitate grantee and NIDILRR staff review of information submitted, the system includes system-generated tables that summarize information entered in specific sections. The Web-based system also carries forward information from one section of the form to the next; for example, information on outcome-oriented goals is carried forward for convenient linkage with projects/activities and publications.

NIDILRR and HHS will use the information gathered annually from these data collection efforts to provide Congress with the information mandated in GPRA, provide OMB information required for assessment of performance on GPRA indicators, and support its evaluation activities. Data collected from the 10 grant programs will provide a national description of the research activities of approximately 275 NIDILRR grantees per year in fiscal years 2017–2019.

OMB approval is requested for 3 years. The average annual burden associated with these activities over a three-year period is summarized below. While the number of grantees will vary from year to year, all grantees will be required to submit an annual performance report and a final report at the completion of the project. Based on our experience with reporting burden, we estimate that it will take an average of 52 hours to complete the reporting form in a grantee's first year of award. In subsequent years, the estimated response burden is approximately 22 hours. The estimated response burden includes time to review the instructions, gather existing data, and complete and review the form. The number of respondents is based on the average number of grants administered by NIDILRR over time.

This notice collects comments on the information collection requirements relating to the revision of a currently approved collection (ICR Rev) covering ten NIDILRR programs (current approval number 1820–0675).

The forms included in this package are revised versions of those used by grantees in the following 10 programs to submit their Annual and Final Performance Reports for Reporting Year 2016 under OMB collection number 1820–0675:

- Rehabilitation Research Training Centers (RRTCs)
- Rehabilitation Engineering Research Centers (RERCs)
- Field Initiated Research Projects (FIPs)
- Advanced Rehabilitation Research Training Projects (ARRTs)
- Model Systems (including spinal cord injury, traumatic brain injury, and burn centers)
- Disability and Rehabilitation Research Projects (DRRPs)
- Knowledge Translation (KT) Projects
- ADA National Network Centers (ADAs)
- Small Business Innovation Research Projects (SBIR) grantees (Phase 2 only)
- Research Fellowships Program (RFP)

The APR includes common information and information specific to individual programs. The final report is a subset of items from the annual report and provides a summary of progress and outcomes for the full project period.

Comments in Response to the 60-day Federal Register Notice

A 60-day **Federal Register** Notice was published in the **Federal Register** on January 24, 2017, Vol. 82, Number 14; pp. 8191–8192. No comments were received in response to the 60-day **Federal Register** notice.

Burden Estimates

OMB approval is requested for 3 years. Burden estimates are based on historical patterns in data collection reported by the NIDILRR data collection contractor. The average annual burden associated with these activities over a three-year period is summarized below. The proposed NIDILRR Annual Performance Report (APR) and final report forms can be found on the ACL Web site at: *https://www.acl.gov/about-acl/policy-and-regulations.*

ACL estimates the burden hours for this collection of information as follows:

	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Grantees	75	1	52	3,900
Continuations and Final Reports	200	1	22	4,400
Total				8,300

Dated: May 18, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017–10634 Filed 5–23–17; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; Mentored Career Development (K) and Conference (R13) Award Application Review 2017–10.

Date: June 19, 2017.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John P Holden, Ph.D., Scientific Review Officer, National Institute of Health, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8947, *john.holden@nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Quantum Review Meeting (2017/01).

Date: June 28, 2017.

Time: 09:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov.*

Dated: May 18, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–10550 Filed 5–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), notice is hereby given of the joint meeting of the National Cancer Advisory Board (NCAB) and NCI Board of Scientific Advisors (BSA).

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

A portion of the National Cancer Advisory Board 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 Cancer Advisory Board *Ad Hoc* Subcommittee on Cancer Centers.

Open: June 19, 2017, 5:30 p.m. to 7:00 p.m.

Agenda: Discussion on Cancer Centers.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Dr. Henry P. Ciolino, Executive Secretary, NCAB *Ad Hoc* Subcommittee on Cancer Centers, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 2W102, Bethesda, MD 20892, (240) 276–5624, *henry.ciolino@nih.gov.*

Name of Committee: National Cancer Advisory Board *Ad Hoc* Subcommittee on Population Science, Epidemiology and Disparities.

Open: June 19, 2017, 7:30 p.m. to 9:00 p.m.

Agenda: Discussion on Population Science, Epidemiology and Disparities.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Dr. Deborah Winn, Executive Secretary, NCAB *Ad Hoc* Subcommittee on Population Science, Epidemiology and Disparities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 4E344, Bethesda, MD 20892, (240) 276–6755, *winnde@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board and NCI Board of Scientific Advisors.

Open: June 20, 2017, 8:00 a.m. to 4:30 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors; NCI Board of Scientific Advisors Concepts Review, NCI Acting Director's report.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board.

Closed: June 20, 2017, 4:45 p.m. to 5:30 p.m.

Agenda: Review of NCAB grant applications.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board and NCI Board of Scientific Advisors.

Open: June 21, 2017, 8:00 a.m. to 12:00 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors; NCI Board of Scientific Advisors Concepts Review.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Name of Committee: NCI Board of Scientific Advisors *Ad Hoc* Subcommittee on HIV and AIDS Malignancy.

Open: June 21, 2016, 1:00 p.m. to 5:00 p.m.

Agenda: Discussion on HIV and AIDS Malignancy.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Robert Yarchoan, Executive Secretary, NCI Board of Scientific Advisors *Ad Hoc* Subcommittee on HIV and AIDS Malignancy, National Cancer Institute, National Institutes of Health, 10 Center Drive, Building 10, Room 6N106, Bethesda, MD 20892, (301) 496–0328, *robert.yarchoan@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: NCAB: *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* BSA: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 18, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–10549 Filed 5–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Call for Nominations for the Non-Federal Members of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services, in accordance with the 21st Century Cures Act, is seeking nominations for the non-federal members of the ISMICC.

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240–276–1279; email: *pamela.foote@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ISMICC is established in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMI, SED, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect that federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than 1 (one) year after the date of enactment of the 21st Century Cures Act, and 5 (five) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

II. Committee Composition

The ISMICC will consist of federal members listed below or their designees and non-federal public members.

Federal Membership: The ISMICC will be composed of the following federal members or their designees:

- The Secretary of Health and Human Services;
- The Assistant Secretary for Mental Health and Substance Use;
- The Attorney General;
- The Secretary of the Department of Veterans Affairs;
- The Secretary of the Department of Defense;
- The Secretary of the Department of Housing and Urban Development;
- The Secretary of the Department of Education;
- The Secretary of the Department of Labor;
- The Administrator of the Centers for Medicare and Medicaid Services; and
- The Commissioner of the Social Security Administration.

In accordance with the Committee's authorizing statute, the Committee shall also ''include not less than 14 non-Federal public members appointed by the Secretary of Health and Human Services.'' 21st Century Cures Act, section 6031(e)(2).

All non-Federal public members are appointed as Special Government Employees for their service on the ISMICC, of which:

(A) At least 2 members shall be an individual who has received treatment for a diagnosis of a serious mental illness;

(B) At least 1 member shall be a parent or legal guardian of an adult with a history of a serious mental illness or a child with a history of a serious emotional disturbance;

(C) At least 1 member shall be a representative of a leading research, advocacy, or service organization for adults with a serious mental illness;

(D) At least 2 members shall be—

(i) A licensed psychiatrist with experience in treating serious mental illnesses;

(ii) A licensed psychologist with experience in treating serious mental illnesses or serious emotional disturbances;

(iii) A licensed clinical social worker with experience treating serious mental illnesses or serious emotional disturbances; or

(iv) A licensed psychiatric nurse, nurse practitioner, or physician assistant with experience in treating serious mental illnesses or serious emotional disturbances;

(E) At least 1 member shall be a licensed mental health professional with a specialty in treating children and adolescents with a serious emotional disturbance;

(F) At least 1 member shall be a mental health professional who has research or clinical mental health experience in working with minorities;

(G) At least 1 member shall be a mental health professional who has research or clinical mental health experience in working with medically underserved populations;

(H) At least 1 member shall be a State certified mental health peer support specialist;

(I) At least 1 member shall be a judge with experience in adjudicating cases related to criminal justice or serious mental illness;

(J) At least 1 member shall be a law enforcement officer or corrections officer with extensive experience in interfacing with adults with a serious mental illness, children with a serious emotional disturbance, or individuals in a mental health crisis; and

(K) At least 1 member shall have experience providing services for homeless individuals and working with adults with a serious mental illness, children with a serious emotional disturbance, or individuals in a mental health crisis.

The Department strives to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, sexual and gender minorities and people with disabilities are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to the ISMICC shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, disability, and cultural, religious, or socioeconomic status. Requests for reasonable accommodation to enable participation on the Committee should be indicated in the nomination submission.

III. Who is eligible?

Nominations for non-federal public members are encouraged, and self-nominations are permitted as well. Only one nomination per individual is required. Multiple nominations for the same individual will not increase likelihood of selection. The Secretary may select non-federal public members from the pool of submitted nominations or other sources as needed to meet statutory requirements and to form a balanced committee that represents the diversity within the population of individuals with SMI or SED. Those eligible for nomination include representatives of leading major SMI or SED research, advocacy and service organizations, parents or guardians of individuals with a serious mental illness or serious emotional disturbance, individuals who have received treatment for a diagnosis of a serious mental illness, a licensed psychiatrist, psychologist, clinical social worker, marriage and family therapist, licensed professional counselor, psychiatric nurse, nurse practitioner, or physician assistant with experience in treating SMI or SED, other licensed mental health professionals, criminal justice professionals, researchers and other individuals with professional or personal experience with a SMI or SED. Those eligible for nomination also include mental health professionals with research or clinical experience with minorities or underserved populations, certified peer support specialists, judges with experience related to criminal justice or SMI, law enforcement or corrections officers with experience in SMI and SED, and individuals with experience providing services for homeless individuals, adults with SMI and children with SED. In accordance with White House Office of Management and Budget guidelines (FR Doc. 2014–19140), federally-registered lobbyists are not eligible.

IV. Responsibilities of Appointed Non-Federal Public Members

As specified in the Committee's authorizing statute (section 6031 of the 21st Century Cures Act), the Committee, not later than 1 year after the date of enactment of this Act, and 5 years after such date of enactment, shall submit to Congress and any other relevant Federal department or agency a report including: (1) A summary of advances in serious mental illness and serious emotional disturbance research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of serious mental illnesses, serious emotional disturbances, and advances in access to services and support for adults with a serious mental illness or children with a serious emotional disturbance; (2) an evaluation of the effect that Federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of serious mental illnesses, serious emotional disturbances, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary; and; (3) specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with a serious mental illness or children with a serious emotional disturbance.

V. Member Terms

A member of the Committee appointed under subsection (e)(2), non-federal, shall serve for a term of 3 years, and may be reappointed for 1 or more additional 3-year terms. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has been appointed.

VI. Meetings

The ISMICC shall meet not fewer than 2 times each year.

VII. Submission Instructions and Deadline

Nominations should include: A cover letter and a current curriculum vitae or resume. Cover letters should be no longer than 3 pages, indicate which slot/slots the individual is applying for, describe relevant personal and professional experience with serious mental illness or serious emotional disturbance, and indicate their contact information. Up to 2 letters of support are permitted in addition to the

nomination, with a page limit of 3 pages per letter. Please do not include other materials unless requested.

Nominations are due June 2, 2017, by midnight eastern daylight time, and may be sent to Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; email: *pamela.foote@samhsa.hhs.gov* by standard or express mail, or via email:

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2017–10616 Filed 5–23–17; 8:45 am]

BILLING CODE 4162–20–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Issuance of Program Comment for Communications Projects on Federal Lands and Property

AGENCY: Advisory Council on Historic Preservation.

ACTION: Program Comment Issued to Tailor the Section 106 Review Process for Communications Projects on Federal Lands and Property.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) issued a Program Comment for Communications Projects on Federal Lands and Property at the request of the U.S. Department of Homeland Security (DHS) to accelerate the review of these projects, particularly broadband deployment, under Section 106 of the National Historic Preservation Act. The Program Comment can be used by federal land and property managing agencies who must comply with the requirements of Section 106 when deploying communications activities on public lands and property. Federal agencies using the Program Comment may fulfill their Section 106 responsibilities for the relevant undertakings by implementing the terms of this comment, which include processes for the identification of historic properties and consideration of effects to these properties. The Program Comment also identifies certain undertakings that require no further Section 106 review under specified conditions.

DATES: The Program Comment was issued by the ACHP on May 8, 2017 and went into effect that day.

ADDRESSES: Address all questions concerning the Program Comment to Charlene Dwin Vaughn, AICP, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street NW., Suite 308, Washington DC 20001–2637. You may submit questions through electronic mail to: *cvaughn@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Vaughn, (202) 517–0207, *cvaughn@achp.gov.*

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act (NHPA), as amended, 54 U.S.C. 306108 (''Section 106''), requires federal agencies to take into account the effects of undertakings they carry out, license, permit, or fund to historic properties and provide the Advisory Council on Historic Preservation (''ACHP'') a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these responsibilities. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under Section 800.14(e) of those regulations, federal agencies can request the ACHP to issue a ''Program Comment'' on a particular category of undertakings in lieu of conducting reviews for each individual undertaking in the category. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by implementing an applicable Program Comment that has been issued by the ACHP.

I. Background

At the request of the DHS, the ACHP has issued a Program Comment that provides a new efficiency in the Section 106 review for the deployment of communications projects. A program alternative was initially proposed by the White House Office of Science and Technology and an interagency Working Group comprised of representatives from the U.S. Department of the Interior's Bureau of Land Management, National Park Service (NPS), Fish and Wildlife Service; Department of Defense; the U.S. Department of Agriculture's Forest Service and Rural Utilities Service (RUS); and the Federal Communications Commission (FCC). The purpose of this Working Group was to explore how best to accelerate the deployment of communications projects, particularly broadband activities, on federal lands and properties by evaluating the Section 106 program alternatives outlined in 36 CFR 800.14. Many members of the Working Group had previously participated in another Interagency Working Group for Accelerating Broadband Infrastructure Deployment, established in 2012. This Interagency Working Group published a report with recommendations to expedite reviews and implement efficiencies for the deployment of broadband infrastructure on federal lands. Since this effort had not directly resulted in revisions based on the existing Section 106 regulations, in 2016 the Broadband Interagency Working Group, formerly known as the Broadband Opportunity Council, was established. This group reaffirmed the need to tailor the Section 106 review process so it could expedite broadband deployment, especially in rural and underserved communities.

The Working Group initially pursued a Standard Treatment in accordance with 36 CFR 800.14(d) consisting of a series of ''best practices'' in the deployment of broadband. If followed, these practices were likely to result in determinations of ''no historic properties affected'' or ''no adverse effect'' on historic properties. However, the Working Group was particularly interested in incorporating select provisions of the two FCC Nationwide Programmatic Agreements (NPAs) executed in 2001 and 2005, respectively, among FCC, the National Conference of State Historic Preservation Officers (NCSHPO), and the ACHP for tower siting and collocation activities on existing towers. The NPAs have been successfully used by applicants for more than a decade for streamlining the Section 106 review of tower siting and collocation activities. Use of the Standard Treatment alone would not have allowed federal land and property managing agencies to implement the efficiencies in the NPAs. Further, by their own terms, the NPAs state that they do not apply on federal lands and tribal lands.

II. Conversion of the Standard Treatment to a Program Comment

After meeting several times and receiving feedback on the draft Standard Treatment, it was recognized that the best practices proposed in the Standard Treatment would not achieve the review efficiencies that were being sought by the federal agencies. The Working Group, therefore, agreed to convert the Standard Treatment into a Program Comment under 36 CFR 800.14(e). The Program Comment would enable Property Managing Agencies (PMAS) and Land Managing Agencies (LMAs) to alter the standard Section 106 review process to achieve the desired process efficiencies, such as establishing limits to areas of potential effects (APEs), limiting the level of effort needed to identify historic properties in certain areas, and utilizing FCC's NPAs' exemptions, as appropriate.

While the Program Comment presents a change in the type of program alternative initially sought by the LMAs and PMAs, the structure and provisions are substantively similar to those included in the draft Standard Treatment. The Program Comment includes new administrative clauses such as reporting, amendment, and duration. Nonetheless, the overall purpose of the program alternative remains the same: assist LMAs and PMAs in expediting project delivery of broadband infrastructure to underserved communities, rural areas, and tribal communities. Further, the Program Comment is structured to cover the effects of all types of communication deployment undertakings, including constructing and placing antennae, towers, and associated equipment and facilities on federal property, and running buried and aerial fiber optic lines across federal lands. In order to expedite the review of broadband activities, the Program Comment defines the APE for certain undertakings to establish more consistent reviews by LMAs and PMAs on federal lands; specifies the process for collocation on federal buildings and federal lands; and clarifies review and installation procedures for buried and aerial fiber optic lines.

By utilizing the Program Comment, LMAs/PMAs can allow project proponents to coordinate the review of broadband deployment on both private and federal lands without experiencing unanticipated delays in the Section 106 process. Assistance agencies, such as FirstNet (Commerce), the Appalachian Regional Commission, and RUS, can use the Program Comment when they fund broadband activities that may involve the use of federal lands and properties. Other LMAs/PMAs and federal agencies not specifically identified in the Program Comment who wish to use the Program Comment to satisfy their Section 106 responsibilities must first notify the ACHP in writing of their interest and clarify the nature of their communications program. The ACHP will be responsible for acknowledging these notifications and posting them on the ACHP Web site.

The Program Comment is not applicable to undertakings that would occur on or affect the following federal lands: National Historic Landmarks (or the portion thereof that is located on federal land), National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, and National Battlefields. Should federal agencies or applicants propose communication deployment undertakings that may affect these properties, the responsible federal agency must follow the standard Section 106 process or another applicable program alternative. The LMAs/PMAS also must consult with State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), Indian tribes, Native Hawaiian organizations (NHOs), and other consulting parties when coordinating the standard Section 106 process.

Public Participation

In accordance with the 36 CFR 800.14(e), in developing the Program Comment the ACHP, in coordination with DHS and the Working Group, arranged for public participation appropriate to the scope of the category of undertakings it would cover and in accordance with the standards outlined in the Section 106 regulations. Due to the breadth and scale of the communications activities related to the Next Generation programs, ACHP, DHS, and the Working Group agreed that all stakeholders should be afforded an opportunity to review the draft Program Comment. It was posted on the ACHP's Web site with an explanation of the changes that were made to modify it from the proposed Standard Treatment.

On January 13, 2017, the draft Program Comment was distributed to SHPOs, THPOs, Indian tribes, NHOs, federal agencies, and broadband industry representatives for a three-week review period. The ACHP received 16 comments during this initial period. Because of the limited response, the comment period was extended for an additional two weeks until February 24, 2017. The ACHP hosted a webinar specifically for tribes, from which an additional three comments were received.

In response to the publication of the draft Program Comment on January 13, 2017, comments were received from a total of 24 organizations and federal agencies. None of the commenters opposed the issuance of the Program Comment. However, all of the commenters shared their observations regarding changes needed to make it less ambiguous or offered revisions to meet their program needs. SHPOs and THPOs both recommended revisions to clarify the procedures for conducting records checks, completing the identification and evaluation of properties, exempting activities from Section 106 reviews, as well as the use of the defined terms in the Program Comment.

Responses from nine SHPOs were received on the draft Program Comment, with most expressing concern about the continued applicability of Section 110(a) of the NHPA to federal LMAs/PMAs. SHPOs also questioned how the Program Comment would relate to the FCC NPAs, which they thought was not clear in the document. Many SHPOs were concerned about the identification and evaluation of historic properties under the Program Comment and wanted the following issues addressed: (1) The degree of flexibility given to federal land and property managing agencies to identify historic properties; (2) clarity regarding when or if field surveys would be needed; (3) clarity regarding how a ''records check would be conducted;'' (4) the level of SHPO review required for exemptions; and (5) clarity regarding the definition of the term ''low probability.'' SHPOs also could not determine the difference between ''rights of-way'' and ''previously disturbed right-of-way'' based on the language in the draft.

One SHPO recommended that the ACHP clarify whether new tower construction would be exempted and distinguish between a replacement tower and an additional tower. Further, the effect thresholds in the Program Comment elicited several SHPO comments. Concerns were expressed that the draft did not consider a situation in which the scale and nature of the previous undertaking could be significantly different from that created by a large cellular tower, that the draft erroneously concluded that new telecommunications towers would typically not result in an ''adverse effect,'' and that it did not adequately consider other types of adverse effects such as noise, visual, and cumulative effects. Finally, SHPOs believed it was important to take into account the passage of time when assessing effects on properties previously considered ineligible. SHPOS indicated that LMAs/PMAs should not only consult with the SHPO/THPO to confirm the APE, but should also reveal to the SHPO/THPO and Indian tribes the sources (records) and methods used to identify historic properties. Finally, a concern was raised that the draft narrowed the definition of ''historic properties'' and was inconsistent with the definition in the NHPA.

Five THPOs and Indian tribes responded to the draft Program Comment during the period it was available for review. Comments regarding the applicability of the Program Comment on tribal lands were noted, and several THPOs and Indian tribes expressed concern about the Program Comment applying off tribal lands, preferring that LMAs/PMAs adhere to the standard Section 106

process instead. Further, one THPO indicated that it was unclear if or when it would be possible to develop an agreement with the LMA/PMA to utilize the Program Comment on tribal lands. THPOs and Indian tribes recommended that the list of properties to which the Program Comment would not apply be expanded to include National Historic Landmarks, National Natural Landmarks, areas of critical environmental concern, and other federally owned localities and lands that have earned official recognition for their significance. With regard to the definitions, THPOs and Indian tribes recommended that the list of defined terms include other terms they believed were vague or inconsistently used throughout the document. THPOs and Indian tribes recommended that activities exempt from Section 106 review be limited to those that would not affect ''undisturbed areas.'' They also suggested that the radius for the ''presumed APE for visual effects'' in cases where the undertaking may affect properties or landscapes of significance to tribes should be expanded. The THPOs and Indian tribes believed that the identification process is the most important step of the Section 106 process and therefore, recommended that ''. . . great care is taken when limiting this step in order to establish efficiencies.'' One THPO took exception to the use of blanket ''no adverse effects'' determinations for the construction of lines from the road or utility right-of-way to a facility if there are no known historic properties within the APE. The THPO said this would work only when there are sufficient identification efforts completed such as survey or testing to support any previous ''no historic properties affected'' findings.

THPOs and Indian tribes also questioned the concept of ''records check'' as an adequate identification tool if it did not include consultation with the THPOs and Indian tribes as it did with the SHPOs. Likewise, they said that Federal LMAs/PMAs must involve the tribes in consultation regarding avoidance plans for historic properties. The THPOs and Indian tribes asserted that the Program Comment did not address the importance of ancestral homelands or areas through which a tribe has migrated or on which tribes have participated in past or present activities. The THPOs and Indian tribes stressed the importance of being clear on these issues. Regarding collocation on non-tower structures, the THPOs commented that the LMA/PMA must take into account historic properties of religious and cultural significance to tribes, and therefore consultation with tribes should occur prior to making a finding of ''no adverse effect.'' THPOs and Indian tribes also recommended including further consideration of the cumulative effects of telecommunication facilities on sites and landscapes eligible for listing in the National Register. In addition, the THPOs and Indian tribes suggested that the Program comment should acknowledge that many telecommunications facilities can have auditory and olfactory effects as well as mechanical and visual effects on historic properties.

The THPOs and tribes commented that annual reports from LMAs/PMAs should be submitted directly to affected THPOs and Indian tribes. Further, they suggested that the ACHP and LMAs/PMAs should consult with THPOs and Indian tribes before amending the Program Comment. They reiterated that the Program Comment should clearly state that it does not alter the roles or responsibilities of THPOs and Indian tribes in the Section 106 review process. For example, they commented that the Program Comment does not negate the right of THPOs and Indian tribes to request government-to-government consultation with LMAs/PMAs and other federal agencies. Finally, THPOs and tribes stated that the sole purpose of the Program Comment was to expedite and limit the scope of Section 106 review and asserted that this was problematical because it violated both the spirit and language of the NHPA.

The American Cultural Resources Association (ACRA) was concerned that the Program Comment would limit consultation on APEs to SHPOs and THPOs only. They recommended that it include other parties since they said that towers have large APEs and could impact traditional cultural properties, view sheds, etc. ACRA also objected to the exemption for previous surveyed areas, arguing it presupposes that earlier surveys were adequate. To that end, they noted that the term ''adequate was frequently used in throughout the Program Comment'' and asked the ACHP to clarify why.

Federal agencies were notified that a draft Program Comment had been developed to assist with the review of broadband deployment. Five agencies submitted comments during the review period, including some that were members of the Working Group, such as FCC. FCC indicated that it would be helpful if the Program Comment absolved the agency from complying with Section 106 when a LMA/PMA with related authority for the same undertaking already utilized the Program Comment on Federal lands and property for its Section 106 review. If this efficiency were not possible, FCC asked to be removed from participation in the Program Comment.

The US Postal Service (USPS) asked why agencies interested in using the Program Comment would be required to inform the ACHP and other government agencies. The agency wanted to know if notice to just the ACHP would be sufficient. Also, they expressed concerns about the definitions in the Program Comment and suggested that USPS would want to verify the references. USPS requested the Program Comment include a ''more detailed'' definition of ''undisturbed soils.'' USPS also clarified that it has its own policy that defines terms used in the Program Comment which can be found at 39 U.S.C. 401, ''General Powers of the Postal Service.'' With regard to the reference to ''delegation of authority'' the Program Comment should specify that it would be to the ''Applicant'' to avoid confusion. On a similar note, USPS requested that the ''responsibilities of applicants'' section include the following language at the end, ''the federal LMA/PMA shall be deemed to be in compliance under this PC if such compliance is carried out by an Applicant on behalf of such Federal LMA/PMA.'' USPS recommended that the APEs for new communication towers be increased by 0.5 to 1 mile given what it perceived to be the potential to construct stealth towers without appropriate review.

NPS requested that the ACHP include a definition of ''agency official'' to the general definitions section to explain who represents the agency. In addition, NPS indicated that the ACHP should clarify how undertakings occurring on or affecting National Parks would be handled under the exemptions outlined in Sections VI to XI of the Program Comment.

The telecommunications industry shared its views on the potential effectiveness of the Program Comment in the review of deployment of telecommunications activities. Many of their comments had previously been shared with FCC and Federal LMAs/PMAs over the years. However, industry representatives stated that they have not seen a number of efficiencies for deployment of telecommunication activities, particularly broadband, on federal lands and properties. Industry noted that although the Program Comment addressed a number of the comments previously shared with FCC, the NPAs were not helpful as they did not apply on federal lands and

properties. As such, FCC was unable to establish procedures for applicants.

Industry recommended that the ACHP require all LMAs/PMAs to use the Program Comment to satisfy their Section 106 responsibilities, and avoid leaving it to the discretion of agencies. While many applicants have had success in working with the Federal LMAs/PMAs, they expressed concern that the agencies did not operate in a consistent and predictable manner when conducting Section 106 reviews. They also wanted a lead federal agency for Section 106 purposes whenever multiple federal agencies are involved in reviewing deployment activities.

In addition, industry took exception to the Program Comment not being applicable to activities on all federal lands. They did not support the Program Comment excluding the review of undertakings occurring on or affecting National Parks, National Monuments, Trails, Battlefields, etc. It was recommended that the Program Comment consider effects to all historic properties.

Industry also asked for clarification regarding how the Program Comment would apply to the FCC's Collocation NPA. As drafted, industry believed that the Program Comment was ambiguous and used undefined terms about the actions agencies and applicants would take. Industry concluded that the term ''records check'' as a strategy for applicants to identify potentially affected historic properties was unnecessarily broad and ambiguous. They recommended that a ''records check'' be limited to: Searching available records for information about: properties listed on or formally determined eligible for the National Register; properties the SHPO/THPO certifies are in the process of being nominated to the National Register; and properties previously determined eligible as part of a consensus determination of eligibility. Since the Program Comment did not say how a site is determined eligible, industry suggested that the language should be revised to cross reference the definition of ''records check'' when determinations of eligibility are made. Another comment about existing records stated that if carriers (applicants) had access to these records, they could avoid historic properties all together and streamline the review even further.

Industry indicated that the Program Comment applied to a far broader range of collocations than those referenced in the definition for ''collocation of antennas on existing wireless towers.'' As such, they asserted that the title of Section I should be revised to align with the actual scope of the Program Comment. It also was recommended that two types of projects be deleted from the review process section of the Program Comment: The removal of towers or other structures housing wireless facilities and tower construction that occurs in conjunction with road maintenance projects that do not extend the area of previous ground disturbance. Industry stated that these projects would typically be considered to have ''no adverse effect'' to historic properties and thus should be categorically exempted. Likewise, it was recommended that tower replacement and new towers will not adversely affect historic properties and should be categorically exempted as well.

Industry recommended that if project applications were not approved or rejected in 180 days, or 90 days for collocations, they should be deemed approved. Industry also recommended that the Program Comment include rules governing application denials. Concerns about timing were expressed with a recommendation that the Program Comment needed strict time limits for consulting parties' review. Further, industry suggested that federal LMAs/PMAs should be required to provide review status updates to applicants. Additionally, they recommend that any fees charged for implementing the Program Comment should be public information and standardized.

Industry stated that the Program Comment did not explain why facilities under streamlined review are limited to those located in rights-of-way. They asserted that there was no basis to limit this efficiency, particularly in remote areas where coverage and rights-of-way may be farther apart and where providing broadband service may require deployment of facilities outside of the rights-of-way.

III. Response to Public Comments From Stakeholders

The comments and recommendations submitted by commenters were comprehensive. In order to adjudicate the comments, the ACHP reviewed and organized them into the following categories: Applicability of the Program Comment; relationship to the FCC NPAs; Federal LMA/PMA Section 110 responsibilities; definitions; roles and responsibilities; identification and eligibility of historic properties; effect findings; and time limits and transparency.

Concerns were expressed by representatives from each of the stakeholders that the applicability of the Program Comment was not clear and that its scope did not go far enough. In response, the Program Comment now clarifies that it can apply to communications undertakings located on federal lands and properties, or funded through loans and grants to private parties whose undertakings will involve public lands or properties. The Program Comment also clarifies that other federal agencies can use the Program Comment if they notify the ACHP of their intent to do so and upon receipt of ACHP's acknowledgment in response. Section XVIII was revised to clarify that the ACHP will acknowledge such notifications within 30-days and post them on its Web site. Other federal agencies do not need to be notified. The Program Comment was revised to exclude National Historic Landmarks or the portion thereof that is located on federal land. Because of the national significance of these historic properties, they would benefit from undertakings going through the standard Section 106 review process in consultation with diverse consulting parties. Furthermore, the exemptions outlined in Sections VI to XI would not apply to undertakings affecting these federally owned historic properties. Expansion of this list of excluded properties would require further identification and evaluation of other types of nationally significant properties by the Federal LMAs/PMAs.

Some commenters were unclear about how the Program Comment will use the efficiencies set forth in the FCC's NPAs. This is now clarified in the Introduction Section of the Program Comment. The NPAs have expedited tower siting and collocations on private properties due in large measure to the exemptions they include and other review efficiencies. Should FCC pursue future amendments to the NPAs similar to the 2016 amendment to the collocation NPA, which addresses small telecommunications towers and the distributed antennae system, the Program Comment may need to be amended. Any potential amendment to the Program Comment would be discussed with the Federal LMAs/PMAs and other consulting parties under the Section XVII, Reporting, and Section XVIII, Amendment.

Some commenters noted that the Program Comment deviated from the process set forth in the Section 106 regulations. This is true, because the purpose of a Program Comment is to provide an alternative method for complying with Section 106 in lieu of the standard process. It does not alter the statutory requirements of Section 106 (to ''take into account'' and ''afford the ACHP a reasonable opportunity to comment''), nor does it modify federal agency stewardship responsibilities as

set out in Section 110(a) of the NHPA. It does not relieve the Federal LMAs/PMAs and other agencies of the responsibility to complete Section 110(a) surveys, as appropriate. Likewise, the records check requirement in Section IV of the Program Comment does not alter any Section 110 responsibilities as they relate to identification and evaluation of historic properties. As to the comment that this Program Comment violates the letter and spirit of the NHPA, the ACHP disagrees. The purpose of a Program Comment is to provide an alternate method for complying with Section 106, in lieu of the standard process.

The definitions in Section III prompted widespread concerns among the commenters and numerous recommendations for revisions. Many of the stakeholders found the definitions to be vague and ambiguous, and too narrowly focused. All of the definitions have been fact checked again. Since many reference or are found in the ACHP's regulations, they cannot be modified. Minor revisions to the language have been made to other definitions as appropriate for clarity. For example, the term ''undisturbed soils'' is now defined to make it clear how this concept should be applied, and the definition of ''right-of-way'' has been clarified to include the types of rights-of-way that are specifically addressed in the Program Comment.

The majority of comments regarding the identification and evaluation of historic properties were submitted by SHPOs, THPOs, and Indian tribes. Serious concerns were expressed about the use of the term ''records check.'' The concept was revised to clarify what should be searched and how to determine if historic properties were known to exist within the APE. In those instances where the records check reveals no information on the presence of properties within the APE, the Federal LMA/PMA shall have a qualified professional consult further with the SHPO, THPO, Indian tribes, or NHO to determine if there are areas within the APE with a high probability of containing National Register eligible properties. If so, the area will be avoided. If it cannot be avoided, the Federal LMA/PMA will determine whether a survey or monitoring program is appropriate. Thus, the process has now been further detailed to address the concerns received. The Program Comment includes other criteria that can be applied by the Federal LMA/PMA to proposed undertakings to exempt them from further Section 106 review when clearly articulated circumstances exist. Applicants would follow these procedures and document for the Federal LMA/PMA the proposed determination of effect for their approval. Section II was added to require the Federal LMA/PMA to consider using the standard Section 106 process for an undertaking should a dispute arise over the use of the Program Comment for that undertaking, and notify all consulting parties of its decision.

Comments submitted about the roles and responsibilities described in Section IV suggested that the activities carried out by Federal LMAs/PMAs should also involve consultation with THPOs and Indian tribes, as appropriate. This Program Comment does not modify the federal trust responsibilities of any agency in regard to Indian tribes. The ACHP believes the Program Comment finds the right balance of consultation and streamlining for review of this category of undertakings. This section was also revised to clarify that when FCC and a Federal LMA/PMA have Section 106 responsibility for a communications undertaking involving private lands and federal lands and property, the Federal LMA/PMA shall be responsible for compliance with Section 106 and FCC shall have no further Section 106 responsibility for that undertaking.

Several SHPOs questioned the appropriateness of relying on previous determinations of eligibility without considering the passage of time. The Program Comment was revised to clarify a time limit for previous determinations of non-eligibility in order to utilize the stated efficiency. Several commenters expressed concerns that the Program Comment focused exclusively on visual effects. Section XIV, Unanticipated Discoveries, was revised to include language clarifying that unanticipated effects include cumulative, atmospheric, and audible effects. This allows consulting parties to notify the Federal LMAs/PMAs of activities that should not be exempted or conditionally exempted under Sections VI to XI.

Concerns were expressed that the Program Comment did not specify timelines or the rules governing denial of applications for communications deployment. It was also suggested that time limits be attached to approving or rejecting applications. Section IV was revised to clarify that Federal LMAs/PMAs, SHPOs, THPOs, Indian tribes, and NHOs should carry out their Section 106 responsibilities consistent with the Section 106 regulations and the FCC NPAs. Section II explains that Federal LMAs/PMAs will review disputes and consider the feasibility of adhering to the standard Section 106 process in lieu of applying the Program Comment for a particular undertaking. The issue of fees is not addressed in the Program Comment as this is a question that will be decided by Federal LMAs/PMAs and FCC, as appropriate.

The Program Comment will be monitored by consulting parties on a regular basis, and the ACHP will evaluate the effectiveness of the Program Comment in consultation with the Federal LMAs/PMAs and other consulting parties as part of the annual reporting process. Likewise, the ACHP will convene a follow up meeting in December 2018 to reexamine the Program Comment's use and implementation to determine whether any amendments are necessary to continue deploying communications projects without procedural delays.

IV. Final Text of the Program Comment

The following is the text of the Program Comment as issued by the ACHP:

Program Comment for Communications Projects on Federal Lands and Property

Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108 (Section 106), requires federal agencies to ''take into account'' the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting separate reviews of each individual undertaking under such category, as set forth in 36 CFR 800.3 through 800.7. Federal Land Managing Agencies (LMAs) and Federal Property Managing Agencies (PMAs) can meet their Section 106 responsibilities with regard to the effects of particular undertakings by taking into account this Program Comment and following the steps set forth therein.

I. Introduction

The purpose of issuing this Program Comment is to assist Federal LMAs/PMAs in permitting and approving the deployment of next generation technologies of communications infrastructure, *e.g.* 5G, more efficiently. This Program Comment establishes uniform procedures for addressing

Section 106 compliance for the collocation of antennae on existing communications towers, including the mounting or installation of an antenna on an existing tower, building, or structure; installation of aerial communications cable; burying communications cable in existing road, railroad, and utility rights-of-way (ROW); construction of new communication towers (facilities), and removal of obsolete communications equipment and towers (hereinafter, communication deployment undertakings). These undertakings would typically not result in adverse effects to historic properties. Federal LMAs/PMAs may elect to follow the efficiencies set forth in this Program Comment in lieu of the procedures in 36 CFR 800.3 through 800.7 for individual undertakings falling within its scope. Public involvement remains a critical aspect of the Section 106 process; therefore, it is the responsibility of the Federal LMAs/PMAs to determine their method for public engagement based on the agency's established protocols for their communications programs. In addition, for the purpose of this Program Comment, Federal LMAs/PMAs are encouraged to identify a single point of contact and a Lead Federal Agency for the purpose of carrying out Section 106 reviews when communications projects involve multiple federal agencies.

This Program Comment builds upon the precedent of two Nationwide Programmatic Agreements (NPAs) for wireless communications projects executed in 2001 and 2004, respectively, among the Federal Communications Commission (FCC), the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs have been successful in establishing efficiencies in the Section 106 review of tower construction and collocations, approaches which the Federal LMAs/PMAs are interested in following for their communications activities, including broadband deployment. The FCC NPAs apply on private lands where an applicant must obtain licenses or registrations. However, when an applicant deploys communications projects that involve private and federal lands, FCC and the applicant or licensee may coordinate with the Federal LMAs/PMAs to apply the terms of the NPAs as well as the provisions in this Program Comment.

Many State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Indian tribes, and Native Hawaiian organizations (NHOs) have been accustomed to reviewing applications for wireless communications facilities under the terms of the NPAs. As such, the NPAs were expanded to cover communications activities funded under the American Recovery and Reinvestment Act of 2009, through the ACHP's issuance of a Program Comment for the Broadband Initiatives Program and the Broadband Technology Opportunities Program. The 2009 Program Comment allows the U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of Commerce, National Telecommunications and Information Administration; and the U.S. Department of Homeland Security, Federal Emergency Management Agency, to rely on the FCC's review of tower and collocation undertakings under the NPAs, thereby eliminating duplicative reviews for undertakings subject to FCC licensing or registration. In 2015, the ACHP extended the Broadband Program Comment for an additional 20 years and expanded it to allow additional agencies that fund communication facilities, including the Department of Homeland Security (DHS) and it components, Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and FirstNet, to utilize its terms to comply with Section 106 for those undertakings.

Since the FCC NPAs do not apply on federal lands, Federal LMAs/PMAs can benefit from the use of this Program Comment for the deployment of communications infrastructure and facilities. The recommendation for developing such a program alternative on federal lands derived from the implementation of Executive Order 13616, Accelerating Broadband Infrastructure Deployment (77 FR 36903, June 20, 2012). Once Executive Order 13616 was issued, a Federal Property Working Group (Working Group) was established to expedite reviews and implement efficiencies for the deployment of broadband infrastructure on federal property. Subsequently the Broadband Opportunity Council (BOC) was established to produce specific recommendations to increase broadband deployment, competition, and adoption through actions within the scope of existing agency programs, missions, and budgets. The efforts of the BOC aligned with those of the Working Group, reaffirming the commitment to implement activities and policies that support increased broadband deployment, particularly in rural and underserved communities. Finally, the importance of broadband infrastructure deployment was reaffirmed with the issuance of Executive Order 13766, Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (82 FR 8657, January 30, 2017). This Executive Order requires infrastructure decisions to be accomplished with maximum efficiency and effectiveness, while also respecting property rights and protecting public safety. Further, all infrastructure projects, especially projects that are high priority for the nation, such as improving U.S. electric grids and telecommunications systems and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways are the focus of this executive order.

This Program Comment provides an alternate method for the Federal LMAs/PMAs to meet their Section 106 responsibilities in a flexible manner for communications undertakings. It does not modify the responsibilities of Federal LMAs/PMAs to comply with Section 110(a) of the NHPA. Nor does it relieve Federal LMAs/PMAs and other federal agencies who utilize the Program Comment from completing Section 110(a) surveys when they are appropriate on federal lands.

II. Applicability

This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, or assisted by the following LMAs: The U.S. Department of Agriculture's (USDA) U.S. Forest Service (USFS); the Department of the Interior's (DOI) National Park Service (NPS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and Bureau of Indian Affairs (BIA); and the following PMAs: The Department of Homeland Security and its components, Department of Commerce; Department of Veterans Affairs; and the General Services Administration. Other federal agencies responsible for carrying out, permitting, licensing, funding, or assisting in the deployment of communications activities, such as FCC and the USDA Rural Utilities Service (RUS), may utilize this Program Comment to satisfy their Section 106 responsibilities on federal lands after completing the process set forth in Section XVIII.B. below.

Federal LMAs/PMAs may have existing procedures in place, such as a Memorandum of Understanding with a SHPO, THPO, Indian tribe, or NHO to coordinate consultation or to expedite Section 106 reviews, or a program alternative developed pursuant to 36 CFR 800.14 that addresses agency

compliance with Section 106 for certain types of undertakings. If such procedures exist, the Federal LMAs/PMAs may coordinate with the signatories of those agreements or program alternatives to determine whether applying the terms of this Program Comment can substitute for those procedures.

This Program Comment is not applicable to undertakings proposed to be carried out, permitted, licensed, funded, or assisted by any federal agency that would occur on or affect the following federally owned lands: National Historic Landmarks (or the portion thereof that is located on federal land), National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, and National Battlefields. Should federal agencies or applicants want to deploy communications facilities that will affect these properties, the responsible federal agency must follow the standard Section 106 process under 36 CFR 800.3 through 800.7 (or another applicable Program Alternative under 36 CFR 800.14) for the review of such undertakings in consultation with the applicant, SHPO/THPO, Indian tribes, NHOs, and other consulting parties.

This Program Comment is not applicable to undertakings proposed to be carried out, licensed, permitted, or assisted by any federal agency that would occur on or affect historic properties located on tribal lands without the prior, written agreement between that Indian tribe and the federal agency, and notification by the relevant Federal LMA/PMA to the ACHP, NCSHPO, and NATHPO.

Should a dispute arise over applicability of this Program Comment, or its use for any particular undertaking, the Federal LMA/PMA will resolve the dispute and should consider following the standard Section 106 process under 36 CFR 800.3–800.7. The Federal LMA/PMA shall notify all consulting parties regarding its preferred approach to complying with Section 106 for a communications undertaking that is the subject of a dispute.

III. Definition of terms

A. Agency Official—It is the statutory obligation of the federal agency to fulfill the requirements of Section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance in accordance with 36 CFR part 800. The agency official has approval authority for the undertaking and can commit the federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance. The agency official may be a state, local, or tribal government official who has been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

B. Antenna—An apparatus designed for the purpose of emitting radio frequency radiation, to be operated or operating from a fixed location, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna.

C. Applicant—The party submitting an application for communications permitting, licensing, or lease on federally managed lands or federally managed property.

D. Area of Potential Effects (APE)—The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (source: 36 CFR 800.16(d)). For purposes of this Program Comment the APE includes the ROW, access routes, and staging areas as defined below.

E. Collocation—The communications industry's term for the construction of a new antenna or tower, or the mounting or installation of an antenna on an existing tower, building, or structure, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. It includes any fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that antenna or tower.

F. Consulting Parties—The parties with whom federal agencies consult in the Section 106 process. Consulting parties ''by right'' are those parties a federal agency must invite to consult and include the ACHP, and the relevant SHPO; THPO; Indian tribes, including Alaskan Native villages, Regional Corporations, or Village Corporations; and NHOs; representatives of local governments; and applicants for federal assistance, permits, license and other approvals. ''Certain individuals and organizations with a demonstrated interest in the undertaking'' may, at the discretion of the relevant agency, also participate as consulting parties ''due to their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties'' (source: 36 CFR 800.2(c)).

G. Effect and Adverse Effect—''Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places'' (source: 36 CFR 800.16(i)). ''An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association'' (source: 36 CFR 800.5(a)(1)).

H. Facility—Means the secured area including the building, tower, and related incidental structures or improvements, located on federal land.

I. Ground Disturbance—Any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils. ''Undisturbed soils'' refers to soils that possess significant intact and distinct natural soil horizons. Previously undisturbed soils may occur below the depth of disturbed soils.

J. Historic Property—Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes traditional cultural properties (TCPs) and properties of traditional religious and cultural significance to an Indian tribe, Alaskan Native village, Regional Corporation or Village Corporation, or NHO that meet the National Register criteria (source: 36 CFR 800.16(l)(1)).

K. Indian Tribe—An Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. It includes a Native village, Regional Corporation, or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

L. Property Managing Agency—Executive branch agencies and independent agencies that have authority to hold smaller swaths of land to support facilities that are necessary to the agency's mission and vision.

M. Land Managing Agency—Executive branch agencies that have the authority to hold broad swaths of land

for the agency's mission and other particular purposes such as management and administration of activities undertaken to support the agency.

N. Tribal Lands—Defined in 36 CFR 800.16(x) as including ''all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''

O. Pole—A pole is a non-tower structure that can hold utility, communications, and related transmission lines.

P. Right of Way—An easement, lease, permit, or license to occupy, use, or traverse public lands (source: Federal Land Policy and Management Act of 1976, As Amended 2001, Title V). For the purposes of this Program Comment, ROW includes a construction, maintenance, road, railroad, or utility ROW.

Q. Records Check—For the purpose of this Program Comment, a ''Records Check'' means searching SHPO/THPO, tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO/THPO, for any information about whether the following kinds of properties are known to exist within the APE: Properties listed on or formally determined eligible for the National Register; Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register; Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a federal agency or local government representing the Department of Housing and Urban Development; Properties listed and identified in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and Properties in their files that the SHPO/THPO considers eligible.

R. Staging Area—For the purpose of this Program Comment, a staging area is an area designated for short term use, not to exceed the duration of the project, and is often used for storing and assembling building materials equipment, and machinery, and for parking vehicles, temporary mobile offices, and staging area entrance/exit.

S. Substantial Increase in Size—This occurs when there is an existing antenna on a tower and:

1. Mounting of the proposed additional or replacement antenna would result in an increase of the existing height of the tower by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph, if necessary to avoid interference with existing antennae; or

2. Mounting of the proposed additional or replacement antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved (not to exceed four), or more than one new equipment shelter; or

3. Mounting of the proposed additional or replacement antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater), except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

T. Native Hawaiian Organizations—Defined as ''any organization which serves or represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians'' (source: 36 CFR 800.16(s)(1)). ''Native Hawaiian'' means any ''individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii'' (source: 36 CFR 800.16(s)(2)).

U. State Historic Preservation Officer—The state official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the state historic preservation program or a designated representative.

V. Tribal Historic Preservation Officer—The tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the NHPA.

W. Tower—Any structure built for the sole or primary purpose of supporting antennae, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower, but not installed as part of an antenna as defined herein (source: Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, September 2004).

IV. Roles and Responsibilities for Section 106 Review of Communication Deployment Undertakings

A. For each proposed undertaking subject to this Program Comment, the Federal LMAs/PMAs shall:

1. Consult with the SHPO/THPO, Indian tribes, or NHO to confirm the APE for each individual undertaking and provide notification to the appropriate SHPO/THPO, Indian tribes, or NHO of intent to follow this Program Comment. See Sections IX, X, and XI of this Program Comment regarding the determination of APEs for installation of buried communications cable, communications tower replacement, and new communications tower construction.

2. Identify known eligible or listed historic properties within the relevant APE that may be affected by the proposed communications undertaking by completing a Records Check. If a Records Check reveals no information on the presence of historic properties within the APE, the qualified professional (see Section XIII below) will consult with the SHPO/THPO, Indian tribes, or NHO to determine whether, based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible properties. If so, those areas within the APE will be avoided and the Federal LMA/PMA shall have no further Section 106 responsibility for the undertaking. If they cannot be avoided, the Federal LMA/PMA and applicant will consult with the SHPO/THPO, Indian tribes, or NHO to determine whether a survey or monitoring program should be carried out to identify historic properties, and to determine if any of the conditional exemptions listed in Sections VI–XI apply.

3. Consider whether any of the below criteria apply to a proposed undertaking and if so, notify consulting parties that no further Section 106 review will be required for any undertaking subject to this Program Comment that is proposed to occur within an APE:

a. That has been previously field surveyed (acceptable to current state standards or within the past 10 years) and there are no known historic properties located within the APE whose National Register qualifying characteristics would be adversely affected; or

b. that has been previously disturbed to the extent and depth where the

probability of finding intact historic properties is low; or

c. that is not considered to have a high probability for historic properties by qualified professionals and based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.

If none of these criteria apply to the undertaking, proceed to consider whether the conditional exemptions listed in Sections VI–XI are applicable.

4. Use existing agency procedures for implementation of this Program Comment which may include procedures for delegation of authority to the applicant, as appropriate.

5. Use qualified professionals for the disciplines under review in accordance with Section 110 of the NHPA and Section XIII of this Program Comment.

6. Document use of this Program Comment in the Section 106 review, and how it reached its decisions about the scope and level of effort for any historic property identification, for the undertaking's administrative record.

7. Where a Lead Federal Agency has been designated, and the Lead Federal Agency is in compliance with its responsibilities under this Program Comment, the other non-lead Federal LMAs/PMAs responsible for the subject undertaking shall also be deemed to be in compliance with Section 106 under this Program Comment.

B. The Applicant, on behalf of the Federal LMA/PMA, shall:

1. Notify the Federal LMA/PMA of its proposed application or request for assistance at the earliest possible opportunity in project planning.

2. Carry out and comply with the procedures for any delegation of authority to the applicant if established by the Federal LMA/PMA.

3. Assist the Federal LMA/PMA to determine the APE in consultation with the SHPO/THPO, Indian tribes, and NHO.

4. Conduct a Records Check to identify known historic properties within the APE, when requested by the Federal LMA/PMA.

5. Notify the Federal LMA/PMA if the undertaking is not proposed to be located within or immediately adjacent to a known historic property.

6. Document the recommended determination of effect to historic properties for and subject to the Federal LMA/PMA's approval when requested by the Federal LMA/PMA.

7. Where appropriate to avoid adverse effects to historic properties, ensure the site avoidance plan has been approved by the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO. In addition avoidance areas should be clearly marked during staging and construction activities, so construction crews are properly notified.

C. The Federal LMAs/PMAs, SHPOs, THPOs, Indian tribes, and NHOs shall carry out their Section 106 responsibilities in a timely manner and adhere to the timeframes outlined in the FCC NPAs or 36 CFR 800.3 to 800.7. This will avoid delays in the deployment of communications undertakings on federal lands and property.

D. Where FCC has Section 106 responsibility over a proposed communication deployment undertaking that also requires a license, permit, approval, or assistance from a Federal LMA/PMA, the Federal LMA/PMA shall be responsible for the Section 106 compliance for that undertaking and may utilize the terms of this Program Comment, including any applicable exemptions. FCC shall have no further Section 106 responsibilities for that undertaking.

V. Project Planning Considerations

A. The Applicant shall coordinate early with the Federal LMA/PMA regarding project planning activities. In the event the Applicant proposes a public-private project, the carrier, tower company, or others who may be recognized as the Applicant shall involve the Federal LMA/PMA in pre-application meetings to (1) decide whether this Program Comment will be used; (2) consider the scope of work for the identification of historic properties; (3) discuss protocols for consulting with Indian tribes or NHOs; and (4) discuss alternatives and alternative routes for the undertaking.

B. Noninvasive techniques are encouraged for identification and evaluation of all property types, if feasible, and for testing, including geotechnical testing, at archaeological sites, TCPs, and other sites important to Indian tribes.

C. Siting projects in previously disturbed areas is encouraged.

VI. Collocation of Communications Antennae

A. A Federal LMA/PMA may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended August 2016.

B. A tower collocation requires no further Section 106 review so long as:

1. It will not result in a substantial increase [1] in size of the existing tower; and

2. There are no Section 106 requirements in an existing special use permit, easement, or communications use lease for that site.

C. Collocations on non-tower structures on federal land require no further Section 106 review so long as one of the following conditions apply to the undertaking:

1. The structure is less than 45 years old; or

2. If more than 45 years old, the structure has been previously evaluated and determined not eligible for listing on the National Register; and

a. The structure is not adjacent to or within the boundary of a National Register-listed or previously determined eligible historic district; and

b. The structure is not designated as a National Historic Landmark or State Historic Landmark; and

c. Indian tribes or NHOs have not indicated there are known historic properties of traditional religious and cultural significance within the APE and there will be no cumulative effects to such historic properties.

VII. Above-Ground Communications Connections to and Collocations on Federal Buildings and Buildings Located on Federal Land

A. A Federal LMA/PMA may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended August 2016, for collocations on federal buildings and non-federal buildings located on federal lands.

B. Communications connections to buildings that have been determined not eligible for listing on the National Register via a previous Section 106 consultation completed in the past 15 years require no further Section 106 review.

C. Communications connections to and collocations on buildings listed in or eligible for listing in the National Register require no further Section 106 review, so long as:

1. All construction complies with the Secretary of the Interior's Standards for Rehabilitation; for example, when a new building entry is required because no entry points exist; and

a. Communications connections and collocations are placed on buildings behind parapets or the roof's edge in such a manner so that the connections

[1] Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

and collocations are not visible from ground level; and existing communications or utility entry points and infrastructure are used to the greatest extent feasible, in and on the historic building; or

b. If existing communications or utility entry points and infrastructure cannot be used for the subject collocation, any additional entry points and infrastructure required in or on the historic building are installed in such a way as to minimize adverse effects to historic materials.

VIII. Placement of Above-Ground Communications and Cable Lines on Existing Poles or Structures

A. The placement of above-ground communications and cable lines on existing poles or structures requires no further Section 106 review, as long as:

1. No new structures or poles need to be added to accommodate the new lines; and

2. The structure or pole is not a historic property and does not contribute to the significance of a historic district.

B. When replacement of structures or poles is planned, the undertaking requires no further Section 106 review, as long as:

1. The replacement structures or poles can be located within the same hole as the original structure and there is no new ground disturbance outside of previously disturbed areas associated with temporary support of the lines; and

2. The replacement structures or poles are within an existing ROW or easement which has been surveyed; and

3. The replacement structures or poles are consistent with the quality and appearance of the originals; and

4. Any proposed height increase of the replacement structures or poles is no more than 10 percent of the height of the originals; and

5. The original pole or structure is not a historic property and does not contribute to a historic district.

C. When infill structures or poles need to be added along an extant line, the undertaking requires no further Section 106 review, as long as:

1. The addition of new structures or poles within existing ROWs or corridors is not proposed within the boundary of a known historic property as identified by the Federal LMA/PMA; and

2. The additional structures or pole(s) are 100 feet or more beyond the boundary of any National Register listed or previously determined eligible historic districts significant for their visual setting; and

3. The additions are of generally consistent quality and appearance with the originals; and

4. The height of any added structure or pole is no greater than 10 percent taller than the height of the originals.

IX. Installation of Buried Communications Cable on Federally Managed Lands

A. The APE for installation of buried cable will be the width of the construction ROW plus any additional areas for staging or access.

B. The installation and maintenance of new or replacement communications cable and new or replacement associated vaults for cable access along or solely in previously disturbed areas or in existing communications or utilities trenches within existing road, railroad, and utility ROWs requires no further Section 106 review.

C. The installation of new or replacement vaults for cable access that are outside of existing road, railroad, and utility ROWs but located solely in previously disturbed soils requires no further Section 106 review so long as there are no known historic properties within the APE for the vaults.

D. The installation of new or replacement buried communication connections from road, railroad, and utility ROWs or vaults to a facility requires no further Section 106 review, so long as:

1. There are no known historic properties within the APE for the connection; or

2. The new or replacement communication connections are solely buried in previously disturbed existing rights-of-way up to the existing facility or building or to an overhead line that connects to the facility or building.

E. If the road, railroad, and/or utility ROW, or nearby previously disturbed area, or the area from the ROW to the individual user includes a known archaeological site(s), the undertaking requires no further Section 106 review so long as the depth and extent of the property's intact and undisturbed deposits within the APE can be predicted with relative certainty such that the cable can be directionally bored below the site(s).

X. Communications Tower Replacement

A. For the purpose of this section, the APE for direct effects for a tower, compound, and associated construction is the area of potential ground disturbance, any areas for staging or access, and any property, or any portion thereof that will be physically altered or destroyed by the undertaking (source: 2004 NPA, as amended).

B. For the purpose of this section, the APE for indirect visual effects is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity (source: 2004 NPA, as amended).

1. Unless otherwise established, or previously established through consultation and agreement between the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO the APE for visual effects for construction of new facilities or structures is the area from which the tower will be visible:

a. Within a 0.5 mile radius from the tower site if the proposed tower is 200 feet or less in overall height;

b. Within a 0.75 mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or

c. Within a 1.5 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.

2. These distances are a guideline that can be altered based on an otherwise established agreement and on individual circumstances addressed during consultation with the SHPO/THPO, Indian tribes, and NHO and consulting parties.

C. Replacement of a tower within an existing facility boundary that was previously reviewed pursuant to Section 106, and mitigated as necessary, requires no further Section 106 review so long as:

1. The proposed replacement tower does not represent a substantial increase [2] in size relative to the existing tower; and

2. The installation of the proposed replacement tower does not involve ground disturbance outside the facility's boundary; and

3. No new mitigation is required to address reasonably foreseeable cumulative effects.

XI. New Communications Tower Construction

A. For the purpose of this section, the direct APE for a tower, compound, and associated construction (staging area, access roads, utility lines, etc.) is the area of potential ground disturbance and any property, or any portion thereof, which would be physically altered or destroyed by the undertaking.

B. For the purpose of this section, the indirect APE for visual effects is the

[2] Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity of a historic property, including the landscape.

1. Unless otherwise established, or previously established through consultation and agreement between the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO the APE for visual effects for the construction of a new tower is the area from which the tower will be visible:

a. Within a 0.5 mile radius from the tower site if the proposed tower is 200 feet or less in overall height;

b. Within a 0.75 mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or

c. Within a 1.5 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.

2. These distances are a guideline that can be altered based on an otherwise established agreement or following consultation with SHPO/THPO, Indian tribes, and NHO and consulting parties.

C. For the purpose of this section, new construction of up to three towers within an existing communications compound that has previously been reviewed pursuant to Section 106, and will not adversely affect any identified historic properties within the compound, requires no further Section 106 review so long as the proposed new tower is not substantially larger in size [3] than the largest preexisting tower within the existing communications compound boundary.

XII. Removal of Obsolete Communications Equipment and Towers

A. Federal LMAs/PMAs may authorize the removal of obsolete existing communications equipment and towers (the undertaking) and may remove the existing communications equipment or tower with no further Section 106 review as long as the removal undertaking would not create an adverse effect to known historic properties.

B. Should a SHPO, THPO, Indian tribe, or NHO object within 30 days after receiving notification that the Federal LMA/PMA proposes to authorize removal of obsolete communications equipment and towers, the Federal LMA/PMA shall comply with the requirements of 36 CFR 800.3 to 800.7 for the proposed removal undertaking.

[3] Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

XIII. Professional Qualifications

A. All tasks implemented pursuant to this Program Comment shall be carried out by, or under the direct supervision of, a person or person(s) meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44716, 44738–39, September 29, 1983) in the appropriate disciplines. However, nothing in this section may be interpreted to preclude Federal LMAs/PMAs from using the properly supervised services of persons who do not meet the qualifications standards.

B. These qualification requirements do not apply to individuals recognized by THPOs, Indian tribes and NHOs to have expertise in the identification, evaluation, assessment of effects, and treatment of effects to historic properties of religious and cultural significance to their tribes.

XIV. Unanticipated Discoveries

A. If previously unidentified historic properties or unanticipated effects, including audible, atmospheric, and cumulative effects, to historic properties are discovered during project implementation, the contractor shall immediately halt all activity within a 50 foot radius of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours, the Federal LMA/PMA shall notify the relevant SHPO, THPO, Indian tribe, or NHO of the inadvertent discovery, and determine whether a Discovery Plan is necessary.

B. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or tribal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act and its implementing regulations (43 CFR part 10), and consistent with the Discovery Plan.

C. The Federal LMA/PMA shall ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an undertaking, all work within 50 feet of the discovery will cease, the area will be secured, and the Federal LMA/PMA's authorized official will be immediately contacted.

D. The Discovery Plan for inadvertent discoveries will include the following provisions.

1. Immediately halting all construction work involving subsurface disturbance in the area of the find and in the surrounding area where further subsurface finds can be reasonably expected to occur, and immediately notify SHPO, THPO, Indian tribes (as appropriate), and NHO of the find;

2. A qualified professional will immediately inspect the site and determine the area and nature of the affected find. Construction work may then continue in the area outside the find as defined by Federal LMA/PMA;

3. Within five working days of the original notification, the Federal LMA/PMA, in consultation with SHPO, THPO, Indian tribes, as appropriate, and NHO, will determine whether the find is eligible for the National Register;

4. If the find is determined eligible for listing in the National Register, the Federal LMA/PMA will prepare a plan for its avoidance, protection, or recovery of information in consultation with the SHPO, THPO, Indian tribes, as appropriate, and NHO. Any dispute concerning the proposed treatment plan will be resolved by the Federal LMA/PMA.

5. Work in the affected area will not proceed until either:

a. The plan is implemented; or

b. The determination is made that the unanticipated find is not eligible for inclusion in the National Register. Any disputes over the evaluation of unanticipated finds will be resolved in accordance with the requirements of 36 CFR 800.4(c)(2) as appropriate.

XV. Emergencies

Should the Federal LMAs/PMAs determine that an emergency or natural disaster has occurred during the implementation of any communications deployment activities covered under this Program Comment, the Federal LMAs/PMAs shall notify the appropriate SHPO, THPO(s), Indian tribes, and NHO(s) within seven days as to how they intend to repair or replace the communications equipment or facilities, or undertake other relevant actions in response to the emergency or natural disaster. Federal LMAs/PMAs shall ensure that any approvals, licenses, or permits issued for these emergency response activities refer to compliance with the terms of this Program Comment.

XVI. Effective Date

This Program Comment shall go into effect on May 8, 2017.

XVII. Reporting

A. Federal LMAs/PMAs individually will submit an annual report to the ACHP, NCSHPO, and NATHPO that summarizes the number of projects reviewed under the Program Comment within a calendar year as well as the number of activities that resulted in adverse effects to historic properties.

The annual report also will indicate whether any agreements regarding the applicability of this Program Comment on tribal lands have been developed in the past calendar year, and which Indian tribe(s) is a signatory. Annual reports will be submitted December 1 of each year, commencing in 2018.

B. The ACHP shall reexamine the Program Comment's effectiveness based on the information provided in the annual reports submitted by the Federal LMAs/PMA, and by convening an annual meeting with the Federal LMAs/PMAs, NCSHPO, NATHPO, tribal representatives, NHOs, and industry representatives. In reexamining the Program Comment's effectiveness, the ACHP shall consider any written recommendations for improvement submitted by stakeholders prior to the annual meeting.

XVIII. Amendment

A. The Chairman of the ACHP may amend this Program Comment after consulting with the Federal LMAs/PMAs and other relevant federal agencies, NCSHPO, NATHPO, tribal representatives, the National Trust for Historic Preservation, and industry representatives, as appropriate. The ACHP will publish a notice in the **Federal Register** informing the public of any amendments that are made to the Program Comment.

B. Should other federal agencies that propose to carry out, permit, license, fund, or assist in communications activities intend to utilize this Program Comment to satisfy their Section 106 responsibilities on federal lands, they must first notify the ACHP in writing of their intention. The ACHP will acknowledge in writing the agency's notification within 30 days following receipt of a request, and will put an announcement on its Web site when it receives such a notification. Upon receipt of the ACHP's acknowledgement, and without requiring an amendment to this Program Comment, the federal agency may utilize the Program Comment.

XIX. Sunset Clause

This Program Comment will expire December 31, 2027, unless it is amended prior to that date to extend the period in which it is in effect.

XX. Withdrawal

The Chairman of the ACHP may withdraw this Program Comment, pursuant to 36 CFR 800.14(e)(6), by publication of a notice in the **Federal Register** 30 days before the withdrawal will take effect.

Authority: 36 CFR 800.14(e).

Dated: May 19, 2017.

Javier Marques,

General Counsel.

[FR Doc. 2017–10630 Filed 5–23–17; 8:45 am]

BILLING CODE 4310–K6–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

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 June 23, 2017. 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 *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. (This is not a toll-free number.) All submissions received must include the agency name and the OMB Control Number 1615–0046.

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 Web site 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 March 23, 2017at 82 FR 14908, allowing for a 60-day public comment period. USCIS did not receive 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–2006–0062 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:* Inter-Agency Alien Witness and Informant Record; Agency Alien Witness and Informant Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–854A; Form I–854B; 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 A—Law enforcement agencies (LEAs) use Form I–854A to request an alien witness and/or informant receive classification as an S nonimmigrant. Form I–854B—LEAs use Form I–854B to request an alien in S nonimmigrant status be permitted to apply for adjustment of status to adjust to lawful permanent resident (LPR) status under section 245(j) of the Immigration and Nationality Act (INA).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–854A—150 responses at 3 hours per response, and Form I–854B—150 responses at 1 hour per response.

(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 600 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: May 19, 2017.

Jerry Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–10649 Filed 5–23–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2596–16; DHS Docket No. USCIS–2014–0001]

RIN 1615–ZB63

Extension of the Designation of Haiti for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Haiti for Temporary Protected Status (TPS) for 6 months, from July 23, 2017, through January 22, 2018. The Secretary has determined that a limited, 6-month extension is warranted because, although Haiti has made significant progress in recovering from the January 2010 earthquake that prompted its initial designation, conditions in Haiti supporting its designation for TPS continue to be met at this time. The Secretary is committed to making TPS determinations that fully comply with the Immigration and Nationality Act and the intent of the program to provide a temporary form of immigration relief and protection to eligible individuals who cannot return to their home country due to ongoing armed conflict, environmental disasters, or other extraordinary and temporary conditions. This Notice also sets forth procedures necessary for nationals of Haiti (or aliens having no nationality who last habitually resided in Haiti) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EAD) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue EADs with a January 22, 2018 expiration date to eligible Haiti TPS beneficiaries who timely re-register and apply for EADs under this extension. Provided a Haiti TPS beneficiary timely re-registers and properly files an application for an EAD during the 60-day re-registration period, his or her employment authorization will be automatically extended for an additional period not to exceed 180 days from the date the current EAD expires, *i.e.,* January 18, 2018. *See* 8 CFR 274a.13(d)(1). TPS beneficiaries are reminded that, prior to January 22, 2018, the Secretary will re-evaluate the designation for Haiti and decide anew whether extension, redesignation, or termination is warranted. During this period, beneficiaries are encouraged to prepare for their return to Haiti in the event Haiti's designation is not extended again, including requesting updated travel documents from the Government of Haiti.

DATES: *Extension of Designation of Haiti for TPS:* The 6-month extension of the TPS designation of Haiti is effective July 23, 2017, and will remain in effect through January 22, 2018. The 60-day re-registration period runs from May 24, 2017 through July 24, 2017.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about Haiti's TPS extension by selecting ''Haiti'' from the menu on the left side of the TPS Web page.
- You can also contact Guillermo Roman-Riefkohl, TPS Operations Program Manager, at the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at 202–272–1533 (this is not a toll-free number).

Note: The phone number provided here is solely for questions regarding this TPS 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 Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

The extension allows TPS beneficiaries to maintain TPS through January 22, 2018, so long as they continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because the conditions in Haiti that prompted the TPS designation, while significantly improved, continue to be met. There continue to be extraordinary and temporary conditions in Haiti that prevent Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) from returning to Haiti in safety. The Secretary also has determined that permitting such Haitian nationals to continue to remain in the United States, at this time, is not contrary to the national interest of the United States.

TPS beneficiaries are reminded that, prior to the conclusion of this six-month

extension period, the Secretary will re-evaluate Haiti's TPS designation and decide anew whether extension, redesignation, or termination is warranted. Because the designation of TPS was intended by Congress to be temporary in nature, and because the Government of Haiti has expressed a desire for its nationals to return to Haiti, the Secretary will fully re-evaluate the country conditions and any other factors he deems necessary to determine whether Haiti's TPS designation should continue. Among those factors, the Secretary will consider whether permitting Haitian nationals to remain in the United States is contrary to the national interest of the United States.

Thus, during this limited six-month period, beneficiaries are encouraged to prepare for their return to Haiti, including requesting updated travel documents from the Government of Haiti. The Secretary is committed to working with the Government of Haiti to ensure an orderly transition should Haiti's TPS designation be terminated at the conclusion of this limited six-month extension.

Re-registration is limited to persons who have previously registered for TPS under the designation of Haiti and whose applications have been granted. Certain nationals of Haiti (or aliens having no nationality who last habitually resided in Haiti) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria in 8 CFR 244.2(f)(2), which are also described on the TPS Web page at *https://www.uscis.gov/humanitarian/temporary-protected-status,* and (2) all TPS eligibility criteria (including continuous residence in the United States since January 12, 2011, and continuous physical presence in the United States since July 23, 2011).

For individuals who have already been granted TPS under Haiti's designation, the 60-day re-registration period runs from May 24, 2017 through July 24, 2017. USCIS will issue EADs with a January 22, 2018 expiration date to eligible Haiti TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on July 22, 2017. But provided a Haiti TPS beneficiary timely re-registers and properly files an application for an EAD during the 60-day re-registration period, his or her employment authorization will be automatically extended for an additional period not to exceed 180 days from the date the current EAD expires, *i.e.,* January 18, 2018. This notice explains how TPS beneficiaries and their employers may determine whether a beneficiary's employment authorization has been automatically extended and the impact on the Employment Eligibility Verification (Form I–9) and E-Verify processes. There are approximately 46,000 current Haiti TPS beneficiaries who are expected to file for re-registration under the extension.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When was Haiti designated for TPS?

On January 21, 2010, the Secretary designated Haiti for TPS based on extraordinary and temporary conditions within the country, specifically the effects of the 7.0-magnitude earthquake that occurred on January 12, 2010. *See Designation of Haiti for Temporary Protected Status,* 75 FR 3476 (Jan. 21, 2010). In 2011, the Secretary both extended Haiti's designation and redesignated Haiti for TPS for 18 months through January 22, 2013. *See Extension and Redesignation of Haiti for Temporary Protected Status,* 76 FR 29000 (May 19, 2011). This announcement is the fourth extension of TPS for Haiti since the 2011 redesignation. The Secretary last extended Haiti's designation on August 25, 2015. *See Extension of the Designation of Haiti for Temporary Protected Status,* 80 FR 51582 (Aug. 25, 2015).

What authority does the Secretary of Homeland Security have to extend the designation of Haiti for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If following this review the Secretary determines that a foreign state continues to meet the conditions for TPS designation (or makes no determination at all), the designation must be extended for an additional period of 6 months or, in the Secretary's discretion, for an additional 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Haiti through January 22, 2018?

Since the last extension was announced, DHS has reviewed conditions in Haiti. Based on this review and after consulting with DOS, the Secretary has determined that a limited, 6-month extension is warranted because, although Haiti has made significant progress in recovering from the January 2010 earthquake that prompted its initial designation, conditions in Haiti supporting its designation for TPS persist.

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, title XV, section 1517).

Although lingering effects of the 2010 earthquake remain, Haiti has made significant progress in addressing issues specific to the earthquake, as its economy continues to recover and grow. For example, 96% of people displaced by the earthquake and living in internally displaced person (IDP) camps have left those camps. Over 98% of the IDP camps have closed. However, over 55,000 Haitians who lost their homes in the earthquake are still living in 31 camps for internally displaced persons without viable options to leave. Gender-based violence in these camps continues to be a serious concern, and personal security is a serious and pervasive issue. Some people who were displaced by the earthquake, although no longer in camps, have moved back to unsafe homes or relocated to informal settlements located in hazardous areas. However, demonstrating improvement in Haiti's security situation, in March 2017, the United Nations announced that the mandate of the United Nations peacekeeping mission in Haiti will end in October 2017, to be replaced by a new police-only mission focused on rule of law.

Hurricane Matthew made landfall in Haiti on October 4, 2016, causing extensive damage to crops, housing, livestock, and infrastructure across Haiti's southwest peninsula. The Government of Haiti confirmed 546 fatalities from the storm, and over 175,000 people were left without housing. The most significant impact from the storm was concentrated in 3 of Haiti's 10 departments—Nippes, Grand'Anse, and Sud. Minimal damage was inflicted on the rest of the country, including the capital, Port-au-Prince, and the second largest city, Cap-Haïtien. Still, significant losses of crops and livestock in the regions damaged by Hurricane Matthew impacted the entire country.

Heavy rains in late April 2017 caused flooding and landslides in South, South East, Grand'Anse, and Nippes departments, with South department most impacted. At least four people were killed, nearly 10,000 homes may have been damaged, and at least 350,000 people may have been affected. According to a Haitian government official, an estimated 80% of the spring harvest in South department may have been destroyed. The damage from Hurricane Matthew and the recent heavy rains are compounding the existing food insecurity experienced by an estimated 3.2 million people (approximately 30 percent of the population) in September 2016.

Haiti's weak public health system is further strained due to an ongoing cholera epidemic, whose inception was traced to U.N. peacekeepers assisting with earthquake recovery. Since October 2010, close to 800,000 Haitians have contracted cholera, and nearly 10,000 people have died from the disease. However, progress has been made in combatting cholera, and Haiti has made some progress in the health sector in recent years. Nevertheless, Haiti faces longstanding public health challenges, where 40% of the population lacked access to basic health services before the 2010 earthquake. As of 2016, this figure remains the same—40% of the population lacks access to fundamental health and nutrition services. While the lack of access to safe drinking water and Haiti's weak sanitation infrastructure remain significant concerns, these are not new problems. Extreme poverty, corruption, and low levels of education in Haiti challenge its resilience and have contributed to the government's longstanding inability to adequately provide for the security, health, and safety of its citizenry.

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions that prompted the July 23, 2011 redesignation of Haiti for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Haiti that prevent Haitian nationals (or aliens having no nationality who last habitually resided in Haiti) from returning to Haiti in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit Haitians (or aliens having no nationality who last habitually resided in Haiti) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Haiti for TPS should be extended for a 6-month period from July 23, 2017, through January 22, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- It is in the best interest of TPS beneficiaries to prepare for their return to Haiti in the event that Haiti's TPS designation is not extended again, including requesting updated travel documents from the Government of Haiti.

Notice of Extension of the TPS Designation of Haiti

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, that the conditions that prompted the redesignation of Haiti for TPS on July 23, 2011, continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of Haiti for TPS for 6 months, from July 23, 2017, through January 22, 2018. *See* INA section 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2).

John F. Kelly,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Haiti, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee (or request a fee waiver) for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or are age 66 or older and applying for late initial registration.
- If you are applying for re-registration, you must pay the fee (or request a fee waiver) for the Application for Employment Authorization (Form I–765) only if you want an EAD, regardless of age.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.
- If you do not want to request an EAD now, you may also file Form I–765 later to request an EAD, and pay the fee (or request a fee waiver), provided that

you still have TPS or a pending TPS application. Your EAD application will be considered timely filed even if the date on your current TPS-related EAD has expired. But until you timely re-register and properly file an EAD application, your current employment authorization will end on July 22, 2017. Accordingly, you must also properly file your EAD application during the 60-day re-registration period in order for your current employment authorization to be automatically extended for 180 days (*i.e.,* Janaury 18, 2018). You are strongly encouraged to file your EAD application as early as possible during the 60-day re-registration period to avoid lapses in your employment authorization.

You must submit both completed application forms together, even if you are not currently requesting an EAD. If you are unable to pay for the Application for Employment Authorization (Form I–765) and/or biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please see the Instructions to Form I–821 or visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center (ASC) to have your biometrics captured. In such case, USCIS will send you an ASC scheduling notice.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

Note: As previously stated, although a re-registering TPS beneficiary age 14 or older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved the individual's TPS re-registration, if he or she is eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You live in Florida	*For U.S. Postal Service:* U.S. Citizenship and Immigration Services, P.O. Box 4464, Chicago, IL 60680. *For FedEx, UPS, and DHL deliveries:* U.S. Citizenship and Immigration Services, Attn: Haiti TPS, 131 S. Dearborn—3rd Floor, Chicago, IL 60603.
You live in the State of New York	*For U.S. Postal Service:* U.S. Citizenship and Immigration Services, P.O. Box 660167, Dallas, TX 75266. *For FedEx, UPS, and DHL deliveries:* U.S. Citizenship and Immigration Services, Attn: Haiti TPS, 2501 S. State Highway, 121 Business Suite 400, Lewisville, TX 75067.
You live in any other state	*For U.S. Postal Service:* U.S. Citizenship and Immigration Services, P.O. Box 24047, Phoenix, AZ 85074. *For FedEx, UPS, and DHL deliveries:* U.S. Citizenship and Immigration Services, Attn: Haiti TPS, 1820 E. Skyharbor Circle S, Suite 100, Phoenix, AZ 85034.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 1. When submitting a re-registration application and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

Supporting Documents

What type of basic supporting documentation must I submit?

To meet the basic eligibility requirements for TPS, you must submit evidence that you:

- Are a national of Haiti or an alien having no nationality who last habitually resided in Haiti. Such documents may include a copy of your

passport if available, other documentation issued by the Government of Haiti showing your nationality (*e.g.,* national identity card, official travel documentation issued by the Government of Haiti), and/or your birth certificate with English translation accompanied by photo identification. USCIS will also consider certain forms of secondary evidence supporting your Haitian nationality. If the evidence presented is insufficient for USCIS to make a determination as to your nationality, USCIS may request additional evidence. If you cannot provide a passport, birth certificate with photo identification, or a national identity document with your photo or fingerprint, you must submit an affidavit showing proof of your unsuccessful efforts to obtain such documents and affirming that you are a national of Haiti. However, please be aware that an interview with an immigration officer will be required if you do not present any documentary proof of identity or nationality or if USCIS otherwise requests a personal appearance. *See* 8 CFR 103.2(b)(9), 244.9(a)(1);

- Have continuously resided in the United States since January 12, 2011. *See* INA section 244(c)(1)(A)(ii); 8 U.S.C. 1254a(c)(1)(A)(ii); 8 CFR 244.9(a)(2); and
- Have been continuously physically present in the United States since June 23, 2011. *See* INA sections 244(b)(2)(A), (c)(1)(A)(i); 8 U.S.C. 1254a(b)(2)(A), (c)(1)(A)(i).

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''Haiti.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation. Depending on the nature of the question(s) you are addressing, additional documentation alone may suffice, but usually a written explanation will also be needed.

EAD

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic extension of my current EAD through January 18, 2018?

Provided that you currently have a Haiti TPS-based EAD, you may be eligible to have your employment authorization automatically extended to January 18, 2018 if you:

- Are a national of Haiti (or an alien having no nationality who last habitually resided in Haiti);
- Received an EAD under the designation of Haiti for TPS;
- Have an EAD with a marked expiration date of July 22, 2017, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category'';
- Timely re-registered for TPS during the 60-day re-registration period; and
- Properly filed an application for an EAD during the 60-day re-registration period.

Although you may be eligible to automatically extend your employment authorization through January 18, 2018, you must timely re-register for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS. You are strongly encouraged to file your EAD renewal application as early as possible during the 60-day re-registration period to avoid lapses in your employment authorization.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Form I–9. You can find additional detailed information about Form I–9 on the USCIS I–9 Central Web page at *http://www.uscis.gov/I–9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (which reflect both identity and employment authorization), or one document from List B (which reflects your identity) together with one document from List C (which reflects employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. An EAD is an acceptable document under List A. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of July 22, 2017, and states ''A–12'' or ''C–19'' under ''Category,'' and you timely filed an EAD renewal application during the 60-day re-registration period, you may choose to present your EAD to your employer together with the Form I–797C Notice of Action (showing the qualifying eligibility category of either A12 or C19) as proof of identity and employment authorization for Form I–9 through January 18, 2018 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) on the basis of automatically extended employment authorization for a new job?*'' for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that your employment authorization has been automatically extended through January 18, 2018. As an alternative to presenting evidence of your automatically extended employment authorization, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

What documentation may I show my employer to complete Employment Verification (Form I–9) if I am already employed but my current TPS-related EAD is set to expire?

Even though you may be eligible to have your employment authorization automatically extended, your employer will need to ask you about your continued employment authorization once July 22, 2017, is reached to meet its responsibilities for Form I–9. Your employer will need a new document to re-verify your employment authorization. Once presented, you and your employer must make corrections to the employment authorization

expiration dates in Section 1 and Section 2 of Form I–9 (see the subsection titled ''What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?'' for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Form I–9.

If you file your Form I–765 to renew your current EAD, *and* you receive a USCIS receipt notice (Form I–797C) stating that your current ''A–12'' or ''C–19'' coded EAD is automatically extended for 180 days, you may show that receipt notice to your employer along with your EAD to confirm automatic extension of employment authorization through January 18, 2018, unless your TPS has been finally withdrawn or your request for TPS has been finally denied. To avoid delays in receiving the Form I–797C and a lapse in your employment authorization, you should file your EAD renewal application as early as possible during the re-registration period.

By January 18, 2018, the expiration date of the automatic extension, your employer must re-verify your employment authorization. At that time, you must present any document from List A or any document from List C on Form I–9 to re-verify employment authorization, or an acceptable List A or List C receipt described in the Form I–9 Instructions. Your employer should complete either Section 3 of the Form I–9 originally completed for you or, if this section has already been completed or if the version of Form I–9 has expired (check the date in the bottom left-hand corner of the form), complete Section 3 of a new Form I–9 using the most current version. Note that your employer may not specify which List A or List C document employees must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Haitian citizenship?

No. When completing Form I–9, including re-verifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Form I–9 that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Haitian citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or re-verifying the employment authorization of current employees. If the expired EAD with category A12 or C19 is presented with the Form I–797C Notice of Action as described herein, an employer should accept this document combination as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Employment Eligibility Verification (Form I–9) on the basis of automatically extended employment authorization for a new job?

To evidence the automatic extension of your employment authorization, you may present your expired EAD with category A12 or C19 in combination with the Form I–797C Notice of Action showing that the EAD renewal application was timely filed and that the qualifying eligibility category is either A12 or C19. This document combination is considered an unexpired Employment Authorization Document (Form I–766) under List A. When completing Form I–9 for a new job before January 18, 2018, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter the date that is 180 days from the date your current EAD expires (January 18, 2018) as the ''employment authorized until mm/dd/yyyy'' date; and

b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS Number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. When completing Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring:

- It is in category A12 or C19;
- the ''received date'' on Form I–797 is on or before the end of the 60-day re-registration period stated in this Notice; and
- the category code on the EAD is the same category code on Form I–797C, noting that employers should consider category codes A12 and C19 to be the same category code;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Insert the date that is 180 days from the date the current EAD expires (January 18, 2018).

By January 18, 2018, employers must re-verify the employee's employment authorization in Section 3 of the Form I–9.

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job and your employment authorization has now been automatically extended when you timely filed a new application for employment authorization during the 60-day re-registration period, you may present your expired EAD with category A12 or C19 in combination with the Form I–797C Notice of Action. The Form I–797C should show that the EAD renewal application was timely filed and that the qualifying eligibility category is either A12 or C19. Your employer may need to re-inspect your current EAD if your employer does not have a copy of the EAD on file. You and your employer should correct your previously completed Form I–9 as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in Section 1;

b. Write the date that is 180 days from the date your current EAD expires (January 18, 2018) above the previous date (July 22, 2017); and

c. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring:

- It is in category A12 or C19;
- the ''received date'' on Form I–797 is on or before the end of the 60-day re-registration period stated in this Notice; and
- the category code on the EAD is the same category code on Form I–797C, noting that employers should consider category codes A12 and C19 to be the same category code;

b. Draw a line through the expiration date written in Section 2;

c. Write the date that is 180 days from the date the employee's current EAD expires (January 18, 2018) above the previous date (July 22, 2017); and

d. Initial and date the correction in the margin of Section 2.

Note: This is not considered a reverification; do not complete Section 3

until either the 180-day extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By January 18, 2018, when the employee's automatically extended employment authorization ends, employers must re-verify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify automated the verification process for employees whose TPS-related EAD was automatically extended in a **Federal Register** Notice. If you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. After completing the Form I–9 in accordance with the instructions above, the employer may create a case in E-Verify for a new employee using the information provided on Form I–9 and Form I–797C. The receipt number entered as the document number on Form I–9 should be entered into the document number field in E-Verify. By January 18, 2018, employment authorization must be re-verified in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov*. Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may also call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER), formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices, Employer Hotline at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov.* Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship or immigration status, or based on national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the IER Web site at *https://www.justice.gov/ier* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

(1) Your current EAD;

(2) A copy of this **Federal Register** Notice;

(3) A copy of your receipt notice (Form I–797C) for your application to renew your current EAD providing an automatic extension of your current expired or expiring EAD;

(4) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration; and

(5) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in

accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''For Benefits Applicants'' from the menu on the left, selecting ''Save Resources,'' followed by ''SAVE Fact Sheet for Benefit Applicants.''

[FR Doc. 2017–10749 Filed 5–23–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6011–N–01]

Annual Indexing of Basic Statutory Mortgage; Limits for Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with Section 206A of the National Housing Act, HUD has adjusted the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2016.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel J. Sullivan, Acting Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 402–6130 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FHA Down Payment Simplification Act of 2002 (Pub. L. 107–326, approved December 4, 2002) amended the National Housing Act by adding a new Section 206A (12 U.S.C. 1712a). Under Section 206A, the following are affected:

I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
II. Section 213(b)(2)(A) (12 U.S.C. 1715e (b)(2)(A));
III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k (d)(3)(B)(iii)(I));
IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 17151(d)(4)(ii)(I));
V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The Dollar Amounts in these sections are the base per unit statutory limits for FHA's multifamily mortgage programs collectively referred to as the 'Dollar Amounts,' they are adjusted annually (commencing in 2004) on the effective date of the Consumer Financial Protection Bureau's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103–325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Bureau of Consumer Financial Protection for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI–U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI–U is 0.7% and the effective date of the HOEPA adjustment is January 1, 2016. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2016.

The adjusted Dollar Amounts for Calendar Year 2016 are shown below:

Basic Statutory Mortgage Limits for Calendar Year 2016

Multifamily Loan Programs

Section 207—Multifamily Housing

Section 207 Pursuant to Section 223(f)—Purchase or Refinance Housing

Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0	$50,515	$58,921
1	55,958	65,286
2	66,841	80,053
3	82,386	100,263
4+	93,270	113,369

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0	$54,745	$58,291
1	63,122	66,042
2	76,127	80,307
3	97,443	103,892
4+	108,558	114,044

Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0	$55,862	$58,787
1	64,410	67,391
2	77,680	81,947
3	99,433	106,013
4+	110,772	116,369

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0	$50,273	$54,305
1	57,068	62,255
2	68,981	75,702
3	86,582	97,932
4+	97,836	107,501

Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0	$47,797	$54,305
1	53,433	62,255
2	63,808	75,702
3	76,789	97,932
4+	90,278	107,501

Section 207—Manufactured Home Parks Per Space—$23,191

Dated: May 17, 2017.

Genger Charles,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 2017–10558 Filed 5–23–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer, ATF Form 3 (5320.3)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 March 14, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 23, 2017.

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 Gary Schaible, Office of Enforcement Programs and Services, National Firearms Act Division, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) either by mail at 99 New York Ave. NE., Washington, DC 20226, by email at *nfaombcomments@atf.gov,* or by telephone at 202 648–7165. 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:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3 (5320.3).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: This form is used to transfer National Firearms Act (NFA) regulated items between Federal firearms licensees (FFL)/Special Occupational Tax (SOT) payers to be exempted from the transfer tax incurred for each item.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,500 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 88, 750 hours, which is equal to (177,500 (total # of annual responses) * .5 (30mins).

(7) *An Explanation of the Change in Estimates:* The adjustments for this information collection are an increase in the number of respondents by 4,500, and an increase in the number of responses by 107,000. As a result of these increases, the annual burden hours has increased by 53,500 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 19, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–10625 Filed 5–23–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Prevent All Cigarette Trafficking (PACT) Act Registration Form, ATF F 5070.1

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 March 14, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 23, 2017.

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 Keith Krolczyk, National Investigative Division, Alcohol and Tobacco Enforcement Branch, either by mail at 99 New York Avenue NE., Washington, DC 20226, by email at *ATEB@atf.gov,* or by telephone at 202–648–8526. 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:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Prevent All Cigarette Trafficking (PACT) Act Registration Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF F 5070.1.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The form is required for any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, shall file first with the Attorney General of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will utilize the form, and it will take each respondent approximately 1 hour to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 400 hours, which is equal to (400 (# of respondents) * 1 (hourly rate to complete the form).

(7) *An Explanation of the Change in Estimates:* This revision is due to ATF's most recent figures regarding the number of affected businesses annually, which have resulted in a decrease of respondents from 3,000 to 400, and a reduction in burden hours from 3,000 to 400. The wage rate is also updated to the September 2016 BLS wage rate, and also reflects a reduction in the burden costs for this collection from $42,000 to $9,396.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 19, 2017

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–10624 Filed 5–23–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *James F. Jerge, Jr.,* Case Number 1:17–cv–00428, was lodged with the United States District Court for the Western District of New York on May 17, 2017.

This proposed Consent Decree concerns a complaint filed by the United States against James F. Jerge, Jr., pursuant to Sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States and failing to comply with the terms and conditions of a permit issued by the Department of the Army. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore impacted areas, perform mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Amy N. Okereke, Assistant United States Attorney, United States Attorney's Office for the Western District of New York, 138 Delaware Avenue, Buffalo, NY 14202 and refer to *United States* v. *James F. Jerge, Jr.,* DJ # 90–5–1–1–20429.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of New York, 2 Niagara Square, Buffalo, NY 14202. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2017–10615 Filed 5–23–17; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2017

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2017.

SUMMARY: OMB is issuing its Final Sequestration Report to the President and Congress for FY 2017 to report on compliance of enacted 2017 discretionary appropriations legislation with the discretionary caps. The report finds that enacted appropriations are within the current law defense and non-defense discretionary limits for 2017; therefore, a sequestration of discretionary budget authority is not required. The report also finds that enacted supplemental appropriations for 2016 are within the 2016 caps.

DATES: *Effective* May 22, 2016. Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, requires the Office of Management and Budget (OMB) to issue its Final Sequestration Report 15 calendar days after the end of a congressional session. With regard to this final report and to each of the three required sequestration reports, section 254(b) specifically states the following:

SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the **Federal Register**.

However, a provision in the 2017 Continuing Resolution, which was in place until May 5, 2017, delayed the release of this report until 15 days after

the 2017 Continuing Resolution expired on May 5, 2017.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/public-releases.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

Mick Mulvaney,

Director.

[FR Doc. 2017–10660 Filed 5–23–17; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–043]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: The Office of Management and Budget (OMB) previously approved this information collection form for a period of three years. We plan to request an extension from OMB of that approval for another three years. This information collection gathers information from private foundations or other entities involved in funding, building, and transferring Presidential library facilities to NARA, and aids us in designing, constructing, and equipping the library. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before July 24, 2017.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (ID), Room 4400; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, fax them to 301–713–7409, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 or by fax at 301–713–7409 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, we solicit comments concerning the following information collection:

Title: Presidential Library Facilities.

OMB number: 3095–0036.

Agency form number: None.

Type of review: Regular.

Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated number of respondents: 1.

Estimated time per response: 40 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 40 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–10648 Filed 5–23–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award; Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Request for comment notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on the NSF Proposal and Award Policies and Procedures Guide (PAPPG). The primary purpose of this revision is to update the PAPPG to incorporate a number of policy-related changes. The draft NSF PAPPG is now available for your review and consideration on the NSF Web site at *http://www.nsf.gov/bfa/dias/policy/.*

DATES: Written comments should be received by July 24, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* The draft NSF Proposal and Award Policies and Procedures Guide may be found at: *http://www.nsf.gov/bfa/dias/policy/.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION: To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

In addition to the type of comments identified above, comments also 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; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or

other forms of information technology; 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.

Title of Collection: ''National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide''

OMB Approval Number: 3145–0058.

Expiration Date of Approval: October 31, 2019.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 50,000 proposals are expected during the course of one year for a total of 6,000,000 public burden hours annually.

Christopher A. Blair,

Executive Assistant to the Executive Officer of the National Science Board, National Science Foundation.

[FR Doc. 2017–10562 Filed 5–23–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of The ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on June 6, 2017, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 6, 2017–8:30 a.m. Until 5:00 p.m.

The Subcommittee will discuss the State-Of-the-Art Reactor Consequence Analysis (SOARCA) Project, Sequoyah Integrated Deterministic and Uncertainty Analyses. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Hossein Nourbakhsh (Telephone 301–415–5622 or Email: *Hossein.Nourbakhsh@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 17, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–10642 Filed 5–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0126]

Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 14.3.12, ''Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC),'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of this SRP update is June 23, 2017.

ADDRESSES: Please refer to Docket ID NRC–2016–0126 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0126. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision, previously issued draft revision for public use and comment, and redline strikeout comparing final revision with draft revision are available in ADAMS under the following Accession Nos.: ML16320A125, ML16032A050, and ML16342B303, respectively.
- *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: Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053; email: *Mark.Notich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 13, 2016 (81 FR 45312), the NRC published for public comment a proposed revision of Section 14.3.12, ''Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria,'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The public comment period closed on August 12, 2016. A summary of comments received and the staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft Standard Review Plan, Section 14.3.12, ''Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria,'' (ADAMS Accession No. ML16320A193). Subsequent to revising the text of SRP Section 14.3.12 to address public comments, the staff made an editorial change to the introductory paragraph on page 1 of this SRP Section. This edit did not change the staff's approach to reviewing physical security information in licensing applications.

II. Backfitting and Issue Finality

Chapter 14 of the SRP provides guidance to the staff for initial test program and ITAAC-design certification under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). Section 14.3.12 of the SRP provides guidance for reviewing an application for an early site permit, a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to systems associated with physical security.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated at Rockville, Maryland, this 16th day of May, 2017.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastruture and Advanced Reactors, Office of New Reactors.

[FR Doc. 2017–10629 Filed 5–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2017–0076]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a February 7, 2017, request from Entergy Nuclear Operations, Inc. (Entergy or the licensee), from certain regulatory requirements. The exemption would allow a certified fuel handler (CFH), besides a licensed senior operator, to approve the emergency suspension of security measures for Pilgrim Nuclear Power Station (PNPS) during certain emergency conditions or during severe weather.

DATES: The exemption was issued on May 16, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0076 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0076. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100, email: *John.Lamb@nrc.gov.*

I. Background

Entergy is the holder of Renewed Facility Operating License No. DPR–35 for PNPS. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The PNPS facility consists of a boiling-water reactor located in Plymouth County, Massachusetts.

By letter dated November 10, 2015 (ADAMS Accession No. ML15328A053), the licensee submitted a Notification of Permanent Cessation of Power Operations for PNPS. In this letter, Entergy provided notification to the NRC of its intent to permanently cease power operations no later than June 1, 2019.

In accordance with § 50.82(a)(1)(i) and (ii), and § 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), the 10 CFR part 50 license for the facility will no longer authorize reactor operation, placement, or retention of fuel in the reactor vessel after certifications of permanent cessation of operations and of permanent removal of fuel from the reactor vessel are docketed for PNPS.

By letter dated April 12, 2017 (ADAMS Accession No. ML17058A325), the NRC approved the Certified Fuel Handler Training and Retraining Program for PNPS.

II. Request/Action

By letter dated February 7, 2017 (ADAMS Accession No. ML17045A468), the licensee requested an exemption from § 73.55(p)(1)(i) and (ii), pursuant to § 73.5, ''Specific exemptions.'' Section 73.55(p)(1)(i) and (ii) require, in part, that the suspension of security measures during certain emergency conditions or during severe weather be approved by a licensed senior operator. Entergy requested an exemption from these rules to allow either a licensed senior operator or a CFH to approve the suspension of security measures. There is no need for an exemption from these rules for a licensed senior operator because the current regulation allows the licensed senior operator to approve the suspension of security measures. The exemption request relates solely to the licensing requirements specified in the regulations for the staff directing suspension of security measures in accordance with § 73.55(p)(1)(i) and (ii), and would allow a CFH, besides a licensed senior operator, to provide this approval.

The proposed exemption would authorize that the suspension of security measures during certain emergency conditions or during severe weather must be approved as a minimum by either a licensed senior operator or a CFH, at a nuclear power plant reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.

III. Discussion

The NRC's security rules have long recognized the potential need to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are ''needed to protect the public health and safety'' and there are no conforming comparable measures (48 FR 13970; April 1, 1983). As originally issued, the deviation from license conditions must be approved by, as a minimum, a licensed senior operator. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27817; August 4, 1986), the Commission issued § 73.55(a), which provides that the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. The regulation further requires that this suspension be approved as a minimum by a senior licensed operator prior to taking action.

In 1996, the NRC made a number of regulatory changes to address decommissioning. One of the changes was to amend § 50.54(x) and (y) to authorize a non-licensed operator called a ''Certified Fuel Handler,'' in addition to a licensed senior operator, to approve such protective steps in an emergency situation. Specifically, in addressing the role of the CFH during emergencies, the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37379; July 20, 1995):

> The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no

longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the NRC added the following definition to § 50.2: ''*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.'' However, the decommissioning rule did not propose or make parallel changes to § 73.55(a), and did not discuss the role of a non-licensed CFH.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated the security suspension requirements from § 73.55(a) to § 73.55(p)(1)(i) and (ii). The role of a CFH was not discussed in the rulemaking, so the suspension of security measures in accordance with § 73.55(p) continued to require approval as a minimum by a licensed senior operator, even for a site that otherwise no longer operates.

However, pursuant to § 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73, as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption from § 73.55(p)(1)(i) and (ii) would allow a CFH, besides a licensed senior operator, to approve the suspension of security measures, under certain emergency conditions or severe weather. The licensee intends to align these regulations with § 50.54(y) by using the authority of a CFH in place of a licensed senior operator to approve the suspension of security measures during certain emergency conditions or during severe weather.

Per § 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security

Relaxing the requirement to allow a CFH, besides a licensed senior operator, to approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described in this section.

First, § 73.55(p)(2) continues to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension for non-weather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(i) to protect public health and safety even after the exemption is granted.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement to receive input from the security supervisor or manager will remain. The exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(ii) to protect the health and safety of the security force.

Additionally, by letter dated April 12, 2017, the NRC approved Entergy's CFH training and retraining program for the PNPS facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during emergencies or severe weather will not result in undue risk to public health and safety.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to Entergy's ability to physically secure the sites or protect special nuclear material at PNPS, and thus would not have an effect on the common defense and security. The NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, relaxing the requirement to allow a CFH, besides a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather, does not adversely affect public health and safety issues or the assurance of the common defense and security.

C. Is Otherwise in the Public Interest

Entergy's proposed exemption would relax the current requirements by allowing a CFH, besides a licensed senior operator, to approve suspension of security measures in an emergency when ''immediately needed to protect the public health and safety'' or during severe weather when ''immediately needed to protect the personal health and safety of security force personnel.'' Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve the temporary suspension of security regulations during an emergency or severe weather, comparable to the authority given to the CFH by the NRC when it published § 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though PNPS would no longer require a licensed senior operator after the certifications required by 10 CFR 50.82(a)(1)(i) and 10 CFR 50.82(a)(1)(ii) were submitted. This exemption is in the public interest for two reasons. First, the exemption would allow the licensee to make decisions pursuant to § 73.55(p)(1)(i) and (ii) without having to maintain a staff of licensed senior operators at a nuclear power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel. The exemption would also allow the licensee to have an established procedure in place to allow a trained CFH to suspend security measures in the event of an emergency or severe weather. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the security regulations in 10 CFR part 73 and § 50.54(y), and the requirements concerning licensed operators in 10 CFR part 55. The NRC staff has determined that granting the licensee's proposed exemption would allow the licensee to designate an alternative position, with qualifications appropriate for a permanently shutdown

and defueled reactor, to approve the suspension of security measures during an emergency to protect the public health and safety, and during severe weather to protect the safety of the security force, consistent with the similar authority provided by § 50.54(y). Therefore, the exemption is in the public interest.

D. Environmental Considerations

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under § 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because allowing a CFH, besides a licensed senior operator, to approve the security suspension at a defueled shutdown power plant does 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. The exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be viewed as involving either safeguards, materials control, or managerial matters.

Therefore, pursuant to § 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and (ii), to authorize that the suspension of security measures must be approved as a minimum by either a licensed senior operator or a certified fuel handler, at a nuclear power plant reactor facility for which the certifications required under 10 CFR 50.82(a)(1) have been submitted. The exemption is effective upon receipt.

Dated at Rockville, Maryland, this 16th day of May 2017.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–10640 Filed 5–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2017–0125]

Vermont Yankee Nuclear Power Station; Entergy Nuclear Operations, Inc.; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct transfer of facility operating license and conforming amendment; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by the Entergy Nuclear Operations, Inc. (ENO) on February 9, 2017. The application seeks NRC approval of the direct transfer of Renewed Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (VYNPS), as well as the general license for the VYNPS Independent Spent Fuel Storage Installation, from ENO, the current licensed operator of VYNPS, to NorthStar Nuclear Decommissioning Company, LLC (NorthStar NDC), a wholly-owned subsidiary of NorthStar Group Services, Inc. (NorthStar). The request is also for the indirect transfer of control of Entergy Nuclear Vermont Yankee, LLC (ENVY), the licensed owner of the VYNPS, from ENVY's Entergy parent companies to NorthStar Decommissioning Holdings, LLC and its parents NorthStar, LVI Parent Corp., and NorthStar Group Holdings, LLC. The NRC is also considering amending the facility operating license for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by June 23, 2017. A request for a hearing must be filed by June 13, 2017. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0125. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jack Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634, email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0125 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0125.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0125 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 submissions into ADAMS.

II. Introduction

The NRC is considering a request for approval of an application for transfer of a license, under 10 CFR 50.80 and 72.50, approving the direct transfer of control of Facility Operating License No. DPR–28, for the VYNPS, as well as the general license for the VYNPS Independent Spent Fuel Storage Installation (ISFSI), currently held by ENO, to NorthStar NDC. The request is also for the indirect transfer of control of ENVY from ENVY's Entergy parent companies to NorthStar Decommissioning Holdings, LLC, and its parents NorthStar, LVI Parent Corp. and NorthStar Group Holdings, LLC. The NRC is also considering the request for amending the facility operating license for administrative purposes to reflect the proposed transfer.

The application now being considered is dated February 9, 2017 (ADAMS Accession No. ML17045A140), and was jointly filed by ENO, ENVY and NorthStar NDC (together, applicants). The applicants requested that the NRC consent to the transfers of the licensed possession, maintenance, and decommissioning authorities by December 31, 2017, to implement expedited decommissioning of the VYNPS.

Following approval of the proposed direct transfer of control of the license, NorthStar NDC would assume licensed responsibility for VYNPS through the direct transfer of ENO's responsibility for licensed activities at VYNPS to NorthStar NDC. NorthStar VY would also enter into an operating agreement with NorthStar NDC, which provides for NorthStar NDC to act as NorthStar VY's agent and for NorthStar VY to pay NorthStar NDC's costs of operation, including all decommissioning costs. If the proposed indirect transfer of control is approved, ENVY would change its name to NorthStar VY, but the same legal entity would continue to exist before and after the proposed transfer. NorthStar VY would own the VYNPS facility as well as its associated assets and real estate, including its nuclear decommissioning trust fund, title to spent nuclear fuel, and rights pursuant to the terms of its Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the U.S. Department of Energy. Certain off-site assets and real estate of ENVY are excluded, such as administrative offices, off-site training facilities, etc.

Upon the proposed license transfer, NorthStar NDC would assume responsibility for compliance with the current licensing basis, including regulatory commitments that exist at closing, and would implement any changes under applicable regulatory requirements and practices.

As discussed in ENVY's 2014 Post Shutdown Decommissioning Activities Report (2014 PSDAR, ADAMS Accession No. ML14357A110), under the December 23, 2013, settlement agreement with State of Vermont agencies (Attachment 2 to the 2014 PSDAR), ENVY committed to initiate radiological decommissioning when it had made a reasonable determination that it had sufficient funds to complete decommissioning and remaining spent fuel management obligations. Under the assumptions and circumstances described in the 2014 PSDAR, ENVY could commence radiological decommissioning under the agreement with the State of Vermont agencies in approximately 2053 and complete such activities in approximately 2060. However, ENVY's current decommissioning plans, as described in the 2014 PSDAR, assume that the completion of radiological decommissioning will be by the maximum allowed (under 10 CFR 50.82) date of 2073, with site restoration by 2075. In contrast, if the transfer to dry storage of the spent fuel proceeds as described in the ENO notification of schedule change for dry fuel loading dated April 12, 2017 (ADAMS accession number ML17104A050), transfer of the remaining spent fuel in the spent fuel pool would commence in 2017 and be complete in late 2018. Upon the proposed license transfer date at the end of 2018, NorthStar NDC would become responsible for an ISFSI that contains all of the VY spent fuel. NorthStar NDC then would begin VYNPS decommissioning activities promptly and would plan to complete radiological decommissioning and restoration of the non-ISFSI portions of the VYNPS site by the end of 2030 (and potentially as early as 2026). NorthStar VY and NorthStar NDC would then restore the site in

accordance with standards approved by the Vermont Public Service Board (PSB). Under Vermont state law, the PSB must also approve the transaction and issue an amended Certificate of Public Good. In parallel with NRC's review of the application, NorthStar NDC submitted an updated proposed PSDAR, dated April 6, 2017 (ADAMS Accession No. ML17096A394), to become effective after license transfer, which would reflect NorthStar NDC's plans for accelerated decommissioning following the proposed transfers of the license.

Before making a decision on the transfer, and before issuance of the proposed conforming license amendment, the Commission will evaluate the request against the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The NRC's regulations at § 50.80 and § 72.50 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91. An Environmental Assessment will not be performed because, pursuant to 10 CFR 51.22(c)(21), license transfer approvals and the associated license amendments are categorically excluded from the requirements to perform an environmental assessment.

III. Public Meeting and Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

In addition, the NRC staff will be participating in a public meeting of the Vermont Nuclear Decommissioning Citizens Advisory Panel (NDCAP) on May 25, 2017, in Brattleboro, VT. The time, location, and agenda for the meeting will be posted on the NDCAP Web site at: *http://publicservice.vermont.gov/electric/ndcap.* The NRC personnel will give a presentation on the license transfer application review process at the NDCAP meeting and will take any public oral or written comments on the application for the proposed license transfer and the associated proposed updated PSDAR. The meeting will be transcribed and will include: (1) A presentation by NorthStar and Entergy on the proposed license transfer; (2) a presentation by NRC on the review of the application for the proposed license transfer; and, (3) a discussion with the public on the proposed license transfer and the proposed updated PSDAR. To be considered, comments must be provided either at the transcribed public meeting or submitted by the comment deadline identified in the **DATES** section of this document. For additional information regarding the meeting, see the NRC's Public Meeting Schedule Web site at *http://meetings.nrc.gov/pmns/mtg.* The agenda will be posted no later than 10 days prior to the meeting.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 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 Web site 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 20 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 decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by June 13, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 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.

V. 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 Web site 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 Web site 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 Web site 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 Web site 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated February 9, 2017 (ADAMS Accession No. ML17045A140).

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Gregory G. DiCarlo, Vice President & General Counsel, NorthStar Group Services, Inc., at 203–222–0584 x3051, for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland, this 19th day of May, 2017.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

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

[FR Doc. 2017–10655 Filed 5–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0123]

Memorandum of Understanding Between the Federal Bureau of Investigation and the U.S. Nuclear Regulatory Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Memorandum of understanding; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Memorandum of Understanding (MOU), dated March 21, 2017, between the U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI) and the NRC. The MOU establishes and coordinates the roles, responsibilities, and functions between the two agencies regarding the accomplishment of firearms background checks on armed security personnel of NRC licensees, pursuant to Section 161A of the Atomic Energy Act of 1954, as amended (AEA).

DATES: The final MOU is available as of May 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0123 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0123. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* Address questions about this MOU to the individuals 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 ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of 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: Amy Roundtree, Office of Administration; telephone: 301–415–7414, email: *Amy.Roundtree@nrc.gov* or Philip Brochman, Office of Nuclear Security and Incident Response; telephone: 301–287–3691, email: *Phil.Brochman@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Purpose

This notice is to advise the public, NRC licensees, and other interested stakeholders of the issuance of an MOU between the FBI and the NRC regarding the accomplishment of firearms background checks on armed security personnel of NRC licensees, pursuant to Section 161A of the AEA, ''Use of Firearms by Security Personnel,'' (42 U.S.C. 2201a). This MOU is entitled ''Memorandum of Understanding on Implementation of Firearms Background Check Provisions Under Section 161A of the *Atomic Energy Act of 1954,* as amended, Revision 0.''

Under Section 161A of the AEA and Revision 1 to the Firearms Guidelines, security personnel whose official duties require access to covered weapons and who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee shall be subject to a firearms background check. Revision 1 to the Firearms Guidelines was published by

the NRC, with the approval of the U.S. Attorney General, on June 25, 2014 (79 FR 36100). The Firearms Guidelines provide direction to three Federal agencies (FBI, NRC, and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives) on the implementation of Section 161A of the AEA.

II. Relationship to Previous MOUs

This MOU addresses issues separate from two previous MOUs between the FBI and the NRC regarding ''Cooperation Regarding Threat, Theft, or Sabotage in U.S. Nuclear Industry,'' dated December 20, 1979 (44 FR 75535); and ''Nuclear Threat Incidents Involving NRC-Licensed Facilities, Materials, and Activities,'' dated May 16, 2000 (65 FR 31197). This MOU also addresses issues separate from a previous MOU between the DOJ and the NRC regarding ''Coordination of Enforcement Activities and Exchange of Information Between the NRC and the Department of Justice,'' dated December 14, 1988 (53 FR 50317).

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./**Federal Register** citation
Firearms Guidelines ..	74 FR 46800; Sep 11, 2009.
Firearms Guidelines, Revision 1.	79 FR 36100; Jun 25, 2014.
Memorandum of Understanding, Revision 0.	ML16215A117.

Dated at Rockville, Maryland, this 17 day of May, 2017.

For the Nuclear Regulatory Commission.

Sandra I. Schoenmann,

Acting Director, Division of Facilities and Security, Office of Administration.

[FR Doc. 2017–10641 Filed 5–23–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–145; MC2017–134 and CP2017–191; MC2017–135 and CP2017–192; CP2017–193]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 26, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–145; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 204, with Portions Filed Under Seal; *Filing Acceptance Date:* May 18, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* May 26, 2017.

2. *Docket No(s).:* MC2017–134 and CP2017–191; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 320 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* May 18, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* May 26, 2017.

3. *Docket No(s).:* MC2017–135 and CP2017–192; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 77 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* May 18, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* May 26, 2017.

4. *Docket No(s).:* CP2017–193; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* May 18, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* May 26, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–10654 Filed 5–23–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modification to existing systems of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify certain Customer Privacy Act Systems of Records to support the administration of United States customs, export control, and export statistics laws with regards to mailpieces exported from the United States.

DATES: These revisions will become effective without further notice on June 23, 2017 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service™ has determined that two Customer Privacy Act Systems of Records (SORs) should be revised to modify categories of records in the system, purposes, and routine uses of records in the system.

The Postal Service is proposing minor modifications to SORs 810.200 and 900.000. Certain of the SORs' stated categories of records in the system, purposes, and routine uses, as currently written, suggest that certain information is collected and shared only for enforcement of U.S. customs, export control, and export statistics laws, and not necessarily for other activities that relate to the administration of those laws. Compliance, licensing, and other agency personnel besides law enforcement personnel may legitimately access information from these SORs in order to make informed decisions that help the Postal Service provide effective customer service and maintain mail security. Therefore, the SORs are being revised to more clearly indicate the appropriate range of these legitimate disclosures. In addition, routine uses for disclosure to customs authorities and foreign postal operators are being revised to clarify the purposes for such disclosures. SOR 810.200 is also being revised to clarify the applicability of various routine uses and more closely align purposes between the two SORs.

Finally, administrative updates pertaining to the system manager for SORs 810.200 and 900.000 have been made.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights.

Accordingly, for the reasons stated, the Postal Service proposes changes in the existing system of records as follows:

USPS 810.200

SYSTEM NAME:

www.usps.com Ordering, Payment, and Fulfillment

* * * * *

PURPOSE:

* * * * *

[Change items 6 and 7 to read as follows:]

6. To satisfy reporting requirements for customs purposes.

7. To support the administration and enforcement of U.S. customs, export control, and export statistics laws.

* * * * *

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[Change to read as follows:]

Standard routine uses 1. through 7., 10., and 11. apply. In addition:

a. Customs declaration records may be disclosed to domestic and foreign customs agencies and postal operators, as well as intermediary companies involved in electronic data exchanges, for the purpose of facilitating carriage, security protocols, foreign or domestic customs processing, payment to operators, or delivery.

b. Records may be disclosed to the Office of Foreign Assets Control, the Bureau of Industry and Security, Customs and Border Protection, and other government authorities for the purpose of administering and enforcing export control laws, rules, and policies, including 50 U.S.C. 1702.

c. Customs declaration records may be disclosed to the U.S. Census Bureau for export statistical purposes pursuant to 13 U.S.C. 301–307.

* * * * *

RETENTION AND DISPOSAL:

[Change to read as follows:]

1. Records related to mailing online and online tracking or confirmation services supporting a customer order are retained for up to 30 days from completion of fulfillment of the order, unless retained longer by request of the customer.

2. Records related to shipping services and domestic and international labels are retained up to 90 days.

3. Delivery Confirmation and return receipt records are retained for 6 months.

4. Signature Confirmation records are retained for 1 year.

5. ACH records are retained for up to 2 years.

6. Customs declaration records stored in electronic data systems are retained 5 years, and then purged according to the requirement of domestic and foreign customs services. Other hard-copy customs declaration records are retained 30 days.

7. Other records related to shipping services and domestic and international labels are retained up to 90 days.

8. Other customer records are retained for 3 years after the customer relationship ends.

9. Online user information may be retained for 12 months.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[Change to read as follows:]

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 900.000

SYSTEM NAME:

USPS International Services

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

[Change to read as follows:]

1. *Customer information:* Customer name, customer IDs, customer signature, date and place of birth, signed certification regarding sender or recipient identity, and contact information.

* * * * *

3. Information pertaining to mailings: Information supplied through customs declaration forms: Contents, product information, quantity, order number, volume, destination, weight, country of origin, value, price, Harmonized Commodity Description and Coding System (HS) Tariff number, product classification information, license or certificate number, Automated Export System (AES) internal transaction

number or exemption, signature, date, postage and fees, insurance information, type of mailing, and applicable citation or legend required by the Foreign Trade Regulations.

* * * * *

PURPOSE(S):

* * * * *

[Delete item 5, and change item 4 to read as follows:]

4. To support the administration and enforcement of U.S. customs, export control, and export statistics laws.

* * * * *

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

[Change a. and b. to read as follows:]

a. Customs declaration records may be disclosed to domestic and foreign customs agencies and postal operators, as well as intermediary companies involved in electronic data exchanges, for the purpose of facilitating carriage, security protocols, foreign or domestic customs processing, payment to operators, or delivery.

b. Records may be disclosed to the Office of Foreign Assets Control, the Bureau of Industry and Security, Customs and Border Protection, and other government authorities for the purpose of administering and enforcing export control laws, rules, and policies, including 50 U.S.C. 1702.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[Change to read as follows:]

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–10573 Filed 5–23–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 24, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 18, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 77 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–135, CP2017–192.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–10580 Filed 5–23–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 24, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 18, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 320 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–134, CP2017–191.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–10575 Filed 5–23–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80716; File No. SR–FICC–2017–012]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to the Mortgage-Backed Securities Division Clearing Rules Regarding Fixed Income Clearing Corporation's (1) Time of Novation, (2) Treatment of Itself as the Settlement Counterparty for Certain Transaction Types, and (3) Proposal To Implement New Processes To Promote Operational Efficiencies for Its Clearing Members

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2017, Fixed Income Clearing Corporation (''FICC'' or the ''Corporation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'') of FICC.[3] In connection with this proposed rule change, FICC is proposing to (1) move the time that FICC treats itself as the settlement counterparty for SBO-Destined Trades[4] to the time of trade comparison, which is earlier in the lifecycle of the trade,[5] (2) move the time that FICC novates and treats itself as the settlement counterparty for Trade-for-Trade Transactions[6] to the time of trade

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used and not otherwise defined shall have the meaning assigned to such terms in the MBSD Rules or the FICC MBSD EPN Rules, as applicable, *available at http://www.dtcc.com/en/legal/rules-and-procedures.*

[4] Pursuant to the MBSD Rules, the term ''SBO-Destined Trade'' means a TBA transaction in the Clearing System intended for TBA Netting in accordance with the provisions of the MBSD Rules. *See* MBSD Rule 1, *supra* note 3.

[5] FICC currently novates SBO-Destined Trades at trade comparison. No changes are being proposed to the time that novation occurs.

[6] Pursuant to the MBSD Rules, the term ''Trade-for-Trade Transaction'' means a TBA Transaction submitted to the Corporation not intended for TBA

comparison, which is earlier in the lifecycle of the trade, (3) novate and establish itself as the settlement counterparty at the time of trade comparison for Specified Pool Trades,[7] and (4) guarantee and novate trades with stipulations (''Stipulated Trades''), a proposed new trade type, at the time of trade comparison and treat FICC as the settlement counterparty at such time.[8]

In connection with these changes, FICC is also proposing new processes that would promote operational efficiencies for MBSD Clearing Members.[9] These processes include the following: (1) Eliminating the Notification of Settlement [10] process, (2) establishing a process (referred to as the ''Do Not Allocate'' (''DNA'') process) that would permit offset among SBON Trades [11] and Trade-for-Trade Transactions, (3) establishing a secondary process for pool netting (referred to as the ''Expanded Pool Netting'' process), (4) eliminating the ''give-up'' process for Brokered Transactions,[12] and (5) amending the components of the Cash Settlement [13] calculation.

In addition, FICC would modify its Real-Time Trade Matching (''RTTM'') system to permit the submission of SBO-Destined Trades in all trade size amounts. This change would occur systemically in the RTTM system. MBSD's trade size submission requirements are not reflected in the MBSD Rules. As a result, this change would not require changes to the MBSD Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC currently processes SBO-Destined Trades, Specified Pool Trades and Trade-for-Trade Transactions.[14] For each of these trade types, FICC guarantees the settlement of such transactions at the time of trade comparison regardless of whether such transactions are (1) novated and settled versus FICC or (2) settled bilaterally between Clearing Members.[15] In connection with this guarantee, the buying Clearing Member and the selling Clearing Member counterparties are contractually bound, with FICC acting as a third-party guarantor in the event that either Clearing Member fails to meet its settlement obligations.

In addition to its guarantee, FICC also currently novates certain transactions—meaning that, the legal obligations that exist between Clearing Member counterparties are terminated and such obligations are replaced with new obligations to deliver securities to and receive securities from FICC. While FICC guarantees all SBO-Destined Trades, Specified Pool Trades and Trade-for-Trade Transactions at trade comparison,[16] currently, FICC novates and treats itself as the settlement counterparty for SBO-Destined Trades and Trade-for-Trade Transactions at different points during the lifecycle of each trade type.

More specifically, under the current MBSD Rules, FICC novates SBO-Destined Trades at the time of trade comparison, however, FICC does not treat itself as the settlement counterparty for purposes of processing and settlement until after the Pool Netting [17] process is complete and FICC has established Pool Receive Obligations [18] or Pool Deliver Obligations,[19] as applicable, for each Clearing Member that has entered into an SBO-Destined Trade.[20] With respect to Trade-for-Trade Transactions, FICC does not novate such transactions or treat itself as the settlement counterparty for purposes of netting, processing, and settlement until the Pool Netting process is complete [21] and each Clearing Member that has entered into a Trade-for-Trade Transaction receives its Pool Receive Obligations or Pool Deliver Obligations, as applicable. For Specified Pool Transactions, FICC does not novate Specified Pool Trades or treat itself as the settlement counterparty during any point of the trade lifecycle.

In connection with this proposed rule change, FICC's overarching goal is to novate and treat itself as the settlement counterparty to all Transactions [22] (other than Option Contracts [23]) at the

Netting in accordance with the provisions of the MBSD Rules. *See* MBSD Rule 1, *supra* note 3.

[7] Pursuant to the MBSD Rules, the term ''Specified Pool Trade'' means a trade in which all required pool data, including the pool number to be delivered on the Contractual Settlement Date, are agreed upon by Members at the time of execution. *See* MBSD Rule 1, *supra* note 3.

[8] For the avoidance of doubt, no changes are being proposed to FICC's trade guarantee (other than with respect to adding Stipulated Trades, the proposed new trade type, to the trade types guaranteed by FICC). FICC will continue to guarantee SBO-Destined Trades, Specified Pool Trades and Trade-for-Trade Transactions at trade comparison.

[9] Pursuant to the MBSD Rules, the term ''Clearing Member'' means any entity admitted into membership pursuant to Rule 2A. *See* MBSD Rule 1, *supra* note 3.

[10] Pursuant to the MBSD Rules, the term ''Notification of Settlement'' means an instruction submitted to the Corporation by a purchasing or selling Clearing Member pursuant to the MBSD Rules reflecting settlement of an SBO Trade, Trade-for-Trade Transaction or Specified Pool Trade. *See* MBSD Rule 1, *supra* note 3.

[11] Pursuant to this proposed rule change, FICC is proposing to amend the term ''SBON Trade'' to refer to a trade that Clearing Members settle directly with FICC. This proposed term is further described in section II.(A)1.II.H.1. of this proposed rule change.

[12] Pursuant to the MBSD Rules, the term ''Brokered Transaction'' means any ''give-up'' transaction calling for the delivery of an Eligible Security the data on which has been submitted to the Corporation by Members, to which transaction a Broker is a party. *See* MBSD Rule 1, *supra* note 3.

[13] Pursuant to the MBSD Rules, the term ''Cash Settlement'' refers to the payment each Business Day by the Corporation to a Member or by a Member to the Corporation pursuant to Rule 11. *See* MBSD Rule 1, *supra* note 3.

[14] FICC also processes Option Contracts, however, these transactions are not the subject of this filing and no changes are being proposed in connection with this trade type.

[15] *See* MBSD Rule 5, *supra* note 3.

[16] *Id.*

[17] Pursuant to the MBSD Rules, the term ''Pool Netting'' means the service provided to Clearing Members, as applicable, and the operations carried out by the Corporation in the course of providing such service in accordance with Rule 8. See MBSD Rule 1, supra note 3.

[18] Pursuant to the MBSD Rules, the term ''Pool Receive Obligation'' means a Clearing Member's obligation to receive Eligible Securities from the Corporation at the appropriate Settlement Value either in satisfaction of all or part of a Pool Net Long Position. *See* MBSD Rule 1, *supra* note 3.

[19] Pursuant to the MBSD Rules, the term ''Pool Deliver Obligation'' means a Clearing Member's obligation to deliver Eligible Securities to the Corporation at the appropriate Settlement Value either in satisfaction of all or part of a Pool Net Short Position. *See* MBSD Rule 1, *supra* note 3.

[20] *See* MBSD Rule 1, *supra* note 3.

[21] *Id.* FICC does not novate and does not become the settlement counterparty to Trade-for-Trade Transactions that do not enter the Pool Netting system. Instead, these transactions are required to settle among the Clearing Member counterparties outside of FICC.

[22] Pursuant to the MBSD Rules, the term ''Transaction'' means a trade that is eligible for processing by the Corporation in accordance with the MBSD Rules. *See* MBSD Rule 1, *supra* note 3.

[23] Pursuant to the MBSD Rules, the term ''Option Contract'' means an option to sell or buy a specified amount of Eligible Securities by or on a specified date to or from the other party to the contract against payment of the Strike Price. Upon exercise, a ''Call Option Contract'' entitles the purchaser to buy, and obligates the seller (writer) to sell, Eligible Securities for the Strike Price, whereas a ''Put Option Contract'' entitles the purchaser to sell, and obligates the seller (writer) to buy, Eligible

Continued

time of trade comparison. Specifically, FICC is proposing to (1) move the time that FICC treats itself as the settlement counterparty for SBO-Destined Trades to the time of trade comparison, which is earlier in the lifecycle of the trade, (2) move the time that FICC novates and treats itself as the settlement counterparty for Trade-for-Trade Transactions to the time of trade comparison, which is earlier in the lifecycle of the trade, (3) novate and establish itself as the settlement counterparty at the time of trade comparison for Specified Pool Trades, and (4) guarantee and novate Stipulated Trades at the time of trade comparison and treat FICC as the settlement counterparty at such time. These changes would not create any new material risk for FICC because FICC guarantees the settlement of all Transactions at trade comparison [24] and no changes (other than the proposed inclusion of Stipulated Trades) are being proposed in connection with the timing or substance of FICC's guarantee.

In order to achieve the above-referenced changes, FICC is also proposing to make certain operational changes that would create efficiencies for Clearing Members. These changes include: (1) Eliminating the Notification of Settlement process, (2) establishing the DNA process, (3) establishing the Expanded Pool Netting process, (4) eliminating the ''give-up'' process for Brokered Transactions, and (5) amending the components of the Cash Settlement calculation. In addition, FICC would modify its RTTM system to permit the submission of SBO-Destined Trades in all trade size amounts. These changes would not create any new material risk for FICC because these changes would be designed to enhance operational efficiencies while not materially affecting risk management processes.

I. MBSD Processing—Overview

MBSD's Current Trade Comparison and Netting Processes

MBSD processes (1) to-be-announced (''TBA'') transactions (''TBA Transactions''), which are trades for which the actual identities of and/or the number of pools underlying each trade are unknown at the time of trade execution and (2) Specified Pool Trades, which are trades for which all pool data is agreed upon by the Clearing Members at the time of execution. TBA Transactions are comprised of (i) SBO-Destined Trades, (ii) Trade-for-Trade Transactions and (iii) Option Contracts.

MBSD's Trade Comparison [25] system and TBA Netting [26] system form the basis of all of its other services. All Compared Trades [27] are risk managed by MBSD, but the remainder of their respective lifecycles differ according to their trade type.

The first step of MBSD's clearance and settlement process is trade comparison, which consists of the reporting, validating and matching by FICC of both sides of a Transaction to ensure that the details of the trades are in agreement between the parties.[28] Trade data is entered into the RTTM system by all parties and once the trade is deemed compared, FICC guarantees the settlement of the trade, provided that the trade meets the requirements of the MBSD Rules and was entered into in good faith.[29] With respect to SBO-Destined Trades, upon trade comparison such trades are also novated to FICC.[30] This novation consists of the termination of the deliver, receive and related payment obligations between Clearing Members and their replacement with identical obligations to and from FICC.[31] With respect to Trade-for-Trade Transactions, novation does not occur at the time of trade comparison; FICC only guarantees the settlement of such Transactions upon trade comparison.[32] Although FICC guarantees the obligations of Specified Pool Trade counterparties to deliver, receive and make payment for securities that satisfy the same generic criteria as the securities underlying Specified Pool Trades upon trade comparison, FICC does not novate such trades.[33]

Next, MBSD employs two netting processes to reduce settlement obligations as well as the number of securities and the amount of cash that must be exchanged to settle certain Transactions. The netting processes occur through the TBA Netting system and the Pool Netting system.[34]

The TBA Netting system is used to net SBO-Destined Trades that have compared and are eligible for the TBA Netting system.[35] Three days before the established contractual settlement day (referred to as ''72-Hour Day''),[36] TBA Netting for the applicable class occurs. On this date, all compared SBO-Destined Trades within the class that have been designated for the TBA Netting process are netted within and across counterparties. Even though FICC has become the legal counterparty for each SBO-Destined Trade upon trade comparison, TBA Netting occurs as though each SBO-Destined Trade is with the Original Contra-Side Member.[37] The net positions created by the TBA Netting process are referred to as the settlement balance order positions (''SBO positions''), which constitute settlement obligations against which Clearing Members will submit pool information (''Pool Instructs'') for the Pool Netting process.[38]

Two business days prior to the established settlement date of the TBA settlement obligations (known as ''48-Hour Day''), Clearing Members that have an obligation to deliver pools (''Pool Sellers'') must notify their counterparties (''Pool Buyers'') through MBSD's EPN Service [39] of the pools that

Securities for the Strike Price. *See* MBSD Rule 1, *supra* note 3.

[24] *See* MBSD Rule 5, *supra* note 3.

[25] Pursuant to the MBSD Rules, the term ''Trade Comparison'' means the service provided to Clearing Members and the operations carried out by the Corporation in the course of providing such service, in accordance with MBSD Rule 5. *See* MBSD Rule 1, *supra* note 3.

[26] Pursuant to the MBSD Rules, the term ''TBA Netting'' means the service provided to Clearing Members, as applicable, and the operations carried out by the Corporation in the course of providing such service in accordance with MBSD Rule 6. *See* MBSD Rule 1, *supra* note 3.

[27] Pursuant to the MBSD Rules, the term ''Compared Trade'' means a trade the data on which has been compared or deemed compared pursuant to Rule 5 or Rule 7, as applicable. *See* MBSD Rule 1, *supra* note 3.

[28] *See* MBSD Rule 5, *supra* note 3.

[29] *See* MBSD Rule 5 Section 8, *supra* note 3.

[30] *See* MBSD Rule 5 Section 13, *supra* note 3.

[31] *Id.*

[32] *Id.*

[33] *See* MBSD Rule 5 Section 12, *supra* note 3.

[34] *See* MBSD Rules 6, 7 and 8, *supra* note 3.

[35] Trade-for-Trade Transactions are not netted through the TBA Netting system, however, like the SBO positions, do constitute TBA settlement obligations against which Pool Instructs may be submitted. Specified Pool Trades are also not netted through the TBA Netting system, nor do such trades enter the Pool Netting system. *See* MBSD Rules 6 and 8, *supra* note 3.

[36] MBSD performs the TBA Netting process four times per month, corresponding to each of the four primary settlement classes and dates established by the Securities Industry Financial Markets Association (''SIFMA''). SIFMA publishes a calendar that specifies one settlement date per month for four different product classes (known as Classes A, B, C and D) that are used to categorize the various types of TBA securities. These product classes and the associated settlement dates are recognized by the industry, and they provide the foundation for MBSD's TBA Netting process.

[37] Pursuant to the MBSD Rules, the term ''Original Contra-Side Member'' means a Member with whom a Member has entered into a contract for the purchase or sale of an Eligible Security or an Option Contract. *See* MBSD Rule 1, *supra* note 3.

[38] *See* MBSD Rule 6, *supra* note 3.

[39] MBSD's electronic pool notification service (the ''EPN Service'') provides Clearing Members with the ability to electronically communicate pool information to MBSD, as described in the proposed rule changes. *See* MBSD Rule 1, *supra* note 3. FICC recognizes that the term ''EPN'' as used in connection with the ''EPN Service'' also reflects the acronym of ''Expanded Pool Netting.'' With this is mind, FICC wishes to clarify that the EPN Service and the Expanded Pool Netting process are not associated with one another. As described above,

such Pool Sellers intend to allocate in satisfaction of their SBO positions and/or Trade-for-Trade Transactions.[40] With respect to Trade-for-Trade Transactions, the relevant counterparty is the Original Contra-Side Member. With respect to SBO-Destined Trades, although MBSD is the legal counterparty, Clearing Members are directed to treat a designated SBO Contra-Side Member[41] as their counterparty. In addition, Clearing Members are also required to submit Pool Instructs on the 48-Hour Day to MBSD through its RTTM system for Pool Comparison[42] (which is a prerequisite to Pool Netting).[43] The pools must be bilaterally matched by each counterparty to the trade. Any pool allocations deemed compared at this stage (provided that neither Clearing Member has cancelled the submitted allocation) are processed through the Pool Netting system.[44] On the business day before the contractual settlement date (''24-Hour Day''), pool netting takes place. The Pool Netting system reduces the number of pool settlements by netting Pool Instructs stemming from SBO Trades[45] and Trade-for-Trade Transactions to arrive at a single net position per counterparty in a particular pool number for next-day delivery date.[46]

On each business day, MBSD makes available to each Clearing Member a Report[47] to enable such Clearing Member to settle its Pool Net Settlement Positions[48] on that business day. At the time that the Report is made available, all deliver, receive and related payment obligations between Clearing Members that were created by compared pools that comprise a Pool Net Settlement Position or Positions are terminated and replaced by the Pool Deliver Obligations, Pool Receive Obligations, and related payment obligations to and from FICC.[49] Each Clearing Member then provides appropriate instructions to its clearing bank to deliver to MBSD, and/or to receive from MBSD, Eligible Securities against payment or receipt at the appropriate settlement value.

Certain obligations among Clearing Members settle outside of FICC—meaning that, Clearing Members are required to settle such obligations directly with their applicable settlement counterparties.[50] These obligations include (1) Pool Instructs that are not included in Pool Netting (either because they are ineligible or because they do not meet selection criteria for inclusion) and (2) Specified Pool Trades, which are not eligible for Pool Netting. Clearing Members must report that an obligation has settled bilaterally with their applicable settlement counterparties to FICC by submitting a Notification of Settlement to MBSD for pool settlements relating to all trade types, with the exception of Option Contracts.[51] This is required because MBSD will not know which pools actually have settled directly between Clearing Members unless it receives a separate notification. Once the mandatory details on the Notification of Settlement instructions submitted by both Clearing Members are compared, the associated obligation is deemed to have settled and will therefore no longer be subject to MBSD's risk management.

II. MBSD Processing—Proposed Changes

A. FICC's Proposed Change To Novate All Transactions (Other Than Option Contracts) and Treat Itself as the Settlement Counterparty for All Such Transactions at Trade Comparison

MBSD is proposing to novate all Transactions (except Option Contracts) at the time of trade comparison. This means that, upon trade comparison, the deliver, receive and related payment obligations between the Clearing Members with respect to SBO-Destined Trades and Trade-for-Trade Transactions would terminate and be replaced by identical obligations to and from FICC (*i.e.,* FICC would become the buyer to every seller and the seller to every buyer). A similar process would occur for Specified Pool Trades and Stipulated Trades, except that, for those trades, the existing deliver, receive and related payment obligations would be terminated and replaced with obligations to deliver, receive and make payment for securities that satisfy the same generic criteria (such as coupon rate, maturity, agency, and product) as the securities underlying the Specified Pool Trades or Stipulated Trades. FICC would not novate or guarantee the obligations to deliver the particular securities underlying Specified Pool Trades or securities that contain the particular stipulations set forth in Stipulated Trades. In addition, FICC is proposing to treat itself as the settlement counterparty throughout the lifecycle of the trade for netting, processing and settlement purposes.[52] These changes are described in detail below.

1. SBO-Destined Trades

Currently, MBSD novates SBO-Destined Trades at the time of trade comparison, however, FICC does not treat itself as the settlement counterparty for netting and processing purposes until after the Pool Netting process is complete and FICC has established Pool Receive Obligations or Pool Deliver Obligations, as applicable,

the EPN Service is MBSD's electronic pool notification service, which is used by Clearing Members to electronically communicate pool information to MBSD as described in this proposed rule change. Expanded Pool Netting would be a secondary pool netting process that FICC is proposing to establish as described in this proposed rule change.

[40] Pool allocations occur for all TBA Obligations, whether established on 72-Hour Day through the TBA Netting process or established upon comparison when the Trade-for-Trade Transaction was submitted. Pool allocations are not performed for Specified Pool Trades because the pool that is to be delivered in connection with such trade is specified upon submission.

[41] Pursuant to the MBSD Rules, the term ''SBO Contra-Side Member'' means the Member with whom a Member is directed by the Corporation to settle an SBO Trade. An ''SBON Contra-Side Member'' is an SBO Contra-Side Member that is not an Original Contra-Side Member with respect to such SBO Trade. An ''SBOO Contra-Side Member'' is an SBO Contra-Side Member that is also an Original Contra-Side Member with respect to such SBO Trade. *See* MBSD Rule, supra *note 3*

[42] Pursuant to the MBSD Rules, the term ''Pool Comparison'' means the service provided to Clearing Members, as applicable, and the operations carried out by the Corporation in the course of providing such service, in accordance with Rule 7. *See* MBSD Rule 1, *supra* note 3.

[43] As with the EPN Service allocation process described above, Clearing Members submit Pool Instructs against all of their TBA Obligations regardless of whether the TBA Obligation stems from the TBA Netting process or the TBA Obligation is established upon comparison when the Trade-for-Trade Transaction was submitted.

[44] *See* MBSD Rule 8, *supra* note 3.

[45] Pursuant to the MBSD Rules, the term ''SBO Trade'' means a settlement balance order that offsets an SBO Net Open Position pursuant to the MBSD Rules. A Member which has one or more ''Long SBO Trades'' in a particular CUSIP number is a net purchaser with respect to that CUSIP number, as the case may be; a Member which has one or more ''Short SBO Trades'' is a net seller. An SBO Trade may be either an SBON Trade or an SBOO Trade. *See* MBSD Rule 1, *supra* note 3.

[46] A Clearing Member's ''counterparty'' for purposes of notifications, netting and processing as described in this paragraph is the SBO Contra-Side Member or the Original Contra-Side Member for SBO-Destined Trades and Trade-for-Trade Transactions, respectively. *See* MBSD Rule 6, *supra* note 3.

[47] Pursuant to the MBSD Rules, the term ''Report'' means any document, record, or other output prepared by the Corporation and made available to a Member in any format (including, but not limited to, machine-readable and print-image formats) or medium (including, but not limited to, print copy, magnetic tape, video display terminal, and interactive message formats) that provides information to such Member with regard to the services provided by, or the operations of, the Corporation. *See* MBSD Rule 1, *supra* note 3.

[48] Pursuant to the MBSD Rules, the term ''Pool Net Settlement Position'' means either a Pool Net Short Position or a Pool Net Long Position, as the context requires. *See* MBSD Rule 1, *supra* note 3.

[49] *Id.*

[50] *See* MBSD Rule 5 Section 12 and MBSD Rule 8 Section 2, *supra* note 3.

[51] *See* MBSD Rule 10, *supra* note 3.

[52] Upon trade comparison, Clearing Members would receive a notification through the RTTM system establishing FICC as each party's novated and settlement counterparty.

for each Clearing Member that has entered into an SBO-Destined Trade. As a result, Clearing Members are directed to (1) allocate pools through the EPN Service to designated SBO Contra-Side Members and (2) submit Pool Instructs through the RTTM system.[53]

MBSD is proposing to treat itself as settlement counterparty for netting and processing purposes, at the time of trade comparison. SBO-Destined Trades would proceed to the TBA Netting process as they do today; however, the SBO positions that result from the TBA Netting process would reflect FICC as the settlement counterparty. Thus, Clearing Members would no longer be directed to settle with a designated SBO Contra-Side Member,[54] but with FICC. On 48-Hour Day, Clearing Members that are Pool Sellers would notify MBSD (rather than their designated SBO Contra-Side Member) through the EPN Service of the allocated pools. FICC would then submit corresponding notifications to Clearing Members that are Pool Buyers. Pool Instructs (as defined above) would continue to be submitted to MBSD on 48-Hour Day through FICC's RTTM system. In an effort to create operational efficiencies, FICC is proposing to amend its MBSD Rules to provide that, if a Clearing Member does not submit its Pool Instructs by the established deadline, FICC would determine and apply the Pool Instructs for that Clearing Member. Such determination would be based on the allocated pools that the Clearing Member has submitted through the EPN Service. As a result of this proposed change, all pools would be compared and FICC would no longer require Clearing Members to settle uncompared pools directly with their applicable settlement counterparties (*i.e.,* outside of FICC).

In addition to the above, FICC is also proposing to eliminate the trade size restriction for SBO-Destined Trades. Currently, SBO-Destined Trades are only eligible for the TBA Netting process if such trades details are submitted through the RTTM system in multiple amounts of one million with the minimum set at one million. FICC is proposing to remove this restriction from the RTTM system. As a result, Clearing Members would be permitted to submit SBO-Destined Trades in any trade size. MBSD's trade size restrictions are not reflected in the MBSD Rules, thus the proposed change would not necessitate any changes to the MBSD Rules.

For the avoidance of doubt, FICC is not proposing to change the trade size restrictions for Trade-for-Trade Transactions and Specified Pool Trades.

2. Trade-for-Trade Transactions

Currently, FICC does not novate Trade-for-Trade Transactions or treat itself as settlement counterparty for purposes of netting, processing, and settlement until, in each case, the Pool Netting process is complete and each Clearing Member receives their Pool Receive Obligation or Pool Deliver Obligations, as applicable, from FICC.[55] As a result, Clearing Members are required to allocate pools to their original counterparty through the EPN Service and submit Pool Instructs through the RTTM system. Once Pool Netting is complete, the deliver, receive and related payment obligations between Clearing Members that were created by compared pools that comprise a Pool Net Settlement Position are terminated and replaced by Pool Deliver Obligations, Pool Receive Obligations, and related payment obligations to and from FICC.[56]

FICC is proposing to novate Trade-for-Trade Transactions at trade comparison and treat itself as settlement counterparty, at that time, for purposes of processing and settlement. Similar to the process with SBO-Destined Trades, Clearing Members with an obligation to deliver pools would notify MBSD (rather than their original counterparty) through the EPN Service and FICC would submit corresponding notifications to Clearing Members that are Pool Buyers. Clearing Members would continue to be required to submit Pool Instructs. In the event that Pool Instructs are not submitted by the established deadline, FICC would determine Pool Instructs for that Clearing Member.

3. Specified Pool Trades

Currently, FICC does not novate Specified Pool Trades during any point of the trade lifecycle (though, upon Trade Comparison of Specified Pool Trades, FICC guarantees the obligation to deliver, receive and pay for securities that satisfy the same generic criteria as the securities underlying the Specified Pool Trades).[57] Specified Pool Trades are eligible for neither the TBA Netting process nor the Pool Netting process. In addition, Specified Pool Trades are directly settled between the original counterparties.

FICC is proposing to novate Specified Pool Trades upon Trade Comparison. Such novation would be limited to the obligations to deliver, receive and make payment for securities satisfying the same generic criteria as the securities underlying the Specified Pool Trades. As a result, upon Trade Comparison, the existing deliver, receive and related payment obligations between Clearing Members under Specified Pool Trades would be terminated and replaced with obligations to or from FICC to deliver, receive and make payment for securities satisfying the same generic criteria as the securities underlying the Specified Pool Trades. FICC would not novate the obligation to deliver the securities for the particular specified pool.

Additionally, FICC is proposing to settle Specified Pool Trades directly with the Clearing Member party thereto (rather than require that counterparties to such trades settle directly with one another). No other changes are being proposed with respect to the processing of Specified Pool Trades. Such trades would continue to be ineligible for the TBA Netting and Pool Netting systems.

4. Stipulated Trades

FICC is proposing to introduce Stipulated Trades as a new trade type that would be eligible for processing by MBSD. A Stipulated Trade is a trade in which pools allocated and delivered against the trade must satisfy certain conditions (*i.e.,* stipulations) that are agreed upon by the parties at the time that the trade was executed.[58] FICC would guarantee and novate Stipulated Trades at Trade Comparison provided that such trade meets the requirements of the MBSD Rules and was entered into in good faith. Such guarantee and novation would be limited to the obligations to deliver, receive and make payment for securities satisfying the same generic criteria as the securities underlying the Stipulated Trade, but not the obligation to deliver securities that contain the particular stipulations contained in the Stipulated Trades. At Trade Comparison, the deliver, receive and related payment obligations between Clearing Members would be terminated and replaced with obligations to deliver, receive and make payment for securities satisfying the

[53] *See* MBSD Rule 7, *supra* note 3.

[54] FICC would eliminate its calculation for determining the Settlement Value of SBON Trades and SBOO Trades. The MBSD Rules refer to the calculation as ''CUSIP Average Price'' or ''CAP'' for SBON Trades and ''Firm CUSIP Average Price'' or ''FCAP'' for SBOO Trades. *See* MBSD Rule 6, *supra* note 3.

[55] *See* MBSD Rule 8 Section 4, *supra* note 3.

[56] *See* MBSD Rule 8 Section 6, *supra* note 3.

[57] *See* MBSD Rule 5, *supra* note 3.

[58] Trades carrying stipulations may reflect terms that include but are not limited to the following: Issuance year, issuance month, weighted average coupon, weighted average maturity and/or weighted average loan age, etc.

same generic criteria as the securities underlying the Stipulated Trades.

Because of the narrow nature of FICC's guarantee and novation, in the event of a Clearing Member's default, FICC would only be required to deliver, receive or make payment for securities that have the same generic terms, such as coupon rate, maturity, agency, and product, as the securities that underlay the Stipulated Transaction.

Clearing Members would be required to allocate Stipulated Trades to FICC through the EPN Service. Such allocation would result in the creation of pool obligations, which would settle with FICC based on the settlement date agreed to as part of the terms of the trade. Similar to Specified Pool Trades, Stipulated Trades would be eligible for neither the TBA Netting process nor the Pool Netting process.

B. Proposed Change To Eliminate the Notification of Settlement Process

As described above, the Notification of Settlement process requires Clearing Members to notify FICC of obligations that have settled directly between Clearing Members and their applicable settlement counterparties.[59] Once both parties to a Transaction submit a Notification of Settlement to MBSD through the RTTM system, the obligations are no longer subject to MBSD's margin calculation process.[60] Because FICC is proposing to novate and directly settle all SBO-Destined Transactions, Trade-for-Trade Transactions and Specified Pool Trades, the Notification of Settlement process would be eliminated from the MBSD Rules.

C. Proposed Change To Establish the DNA Process

FICC is proposing to establish a process that would give Clearing Members the ability to offset Trade-for-Trade Transactions[61] and/or SBON Trades.[62] This process would be referred to as the ''DNA'' process. The purpose of this process is to exclude SBON Trades and Trade-for-Trade Transactions from the pool allocation process[63] and securities settlement.

The Do Not Allocate process would be available to Clearing Members at the start of business day on 48-Hour Day through 4:30 p.m. on 24-Hour Day. During this time, Clearing Members with two or more open TBA Obligations[64] with the same Par Amount,[65] CUSIP Number[66] and SIFMA designated settlement date would be permitted to offset (*i.e.,* ''pair-off'') such obligations. In order to initiate the offset, Clearing Members would be required to submit a request (''DNA Request'') to MBSD through the RTTM system. Upon FICC's validation of this request, the obligations would be reduced and the Clearing Member would not be required to allocate pools against such obligations. As a result, a Clearing Member's overall number of open obligations would be reduced.

The proposed Do Not Allocate process would generate Cash Settlement credits and debits from the price differential of the resulting offsetting obligations. The proposed Cash Settlement obligations are described below in section F.

1. Cancellations

Clearing Members would be permitted to cancel a DNA Request, however, such cancellation must be submitted through the RTTM system prior to the time that the designated offsetting TBA Obligations have settled. Upon FICC's timely receipt of a cancellation request, the trades that were previously marked for the Do Not Allocate process would reopen and the Clearing Member would be expected to notify MBSD through the EPN Service of the pools that such Clearing Member intends to allocate to the open obligations.

2. Example of the Do Not Allocate Process

Assume that the TBA Netting process results in the following:

Dealer A as seller has a TBA Obligation to FICC in a Fannie Mae (''FNMA'') 30-year 3% coupon for a July 2017 settlement (CUSIP Number 01F030678) with a Par Amount of 100mm.

Assume that the following Trade-for-Trade Transaction has been novated to FICC:

Dealer A as buyer has a TBA Obligation to FICC in FNMA 30-year 3% coupon for a July 2017 settlement (CUSIP Number 01F030678) with a Par Amount of 100mm.

In connection with the above, Dealer A would have the option of submitting a DNA Request at anytime between the start of business day on 48-Hour Day through 4:30 p.m. on 24-Hour Day. Upon FICC's receipt and validation of the DNA Request, FICC would reduce each of Dealer A's TBA Obligations in accordance with the DNA Request and reduce the overall number of Dealer A's open TBA Obligations.

In addition, FICC would calculate a Cash Settlement obligation for Dealer A (the ''Do Not Allocate Transaction Adjustment Payment'') difference between the Settlement Price of the buy and sell TBA Obligation transactions multiplied by the contractual quantity.

In the event that Dealer A cancels its DNA Request, the marked TBA Obligations would reopen and Dealer A would be required to allocate pools for such obligations.

D. Proposed Change To Establish a Secondary Pool Netting Process—Expanded Pool Netting

As described above, the Pool Netting system reduces the number of pool settlements by netting Pool Instructs stemming from SBON Trades and Trade-for-Trade Transactions to arrive at a single net position per counterparty in a particular pool number for next-day delivery date.[67] Prior to the Pool Netting process, Pool Sellers must notify their Pool Buyers through MBSD's EPN Service of the pools that will be allocated in satisfaction of a TBA Obligation. In accordance with the SIFMA Guidelines,[68] such notifications

[59] *See* MBSD Rule 10, *supra* note 3.

[60] *See* MBSD Rule 4, *supra* note 3.

[61] Specified Pool Trades and Stipulated Trades would not be eligible for the proposed Do Not Allocate process because such trades are not eligible for the Pool Netting process. *See* MBSD Rule 8, *supra* note 3.

[62] The proposed MBSD Rules would use the term ''SBON Trades'' to signify obligations that result from the TBA Netting process. Such obligations would reflect FICC as the settlement counterparty.

[63] As noted above, the pool allocation process requires Clearing Members to allocate pools on 48-Hour Day through the EPN Service. Pursuant to this proposed change, Clearing Members would not be required to allocate pools for obligations that have been offset through the Do Not Allocate process.

[64] Pursuant to the MBSD Rules, the term ''TBA Obligations'' means SBO-Destined obligations and, with respect to Trade-for-Trade Transactions, settlement obligations generated by the Trade Comparison system. *See* MBSD Rule 1, *supra* note 3.

[65] Pursuant to the MBSD Rules, the term ''Par Amount'' means for Trade-for-Trade and SBO Transactions, Option Contracts and Pool Deliver and Pool Receive Obligations, the current face value of a Security to be delivered on the Contractual Settlement Date. With respect to Specified Pool Trades, ''Par Amount'' shall mean the original face value of a Security to be delivered on the Contractual Settlement Date. *See* MBSD Rule 1, supra note 3. Pursuant to this proposed rule change, FICC is proposing to amend this defined term as described in section H. 1.

[66] Pursuant to the MBSD Rules, the term ''CUSIP Number'' means the Committee on Uniform Securities Identification Procedures identifying number for an Eligible Security. *See* MBSD Rule 1, *supra* note 3.

[67] A Clearing Member's ''counterparty'' for purposes of notifications, netting and processing as described in this paragraph is the SBO Contra-Side Member or the Original Contra-Side Member for SBO-Destined Trades and Trade-for-Trade Transactions, respectively. *See* MBSD Rule 6, *supra* note 3.

[68] Pursuant to the MBSD Rules, the term ''SIFMA Guidelines'' means the guidelines for good delivery

Continued

must occur before 3:00 p.m.[69] on 48-Hour Day. Notifications that take place after this time are considered late and the delivery of such pools to the related Pool Buyers will be delayed for one additional business day.

In order to capture notifications submitted after 3:00 p.m. on 48-Hour Day through 4:30 p.m. on 24-Hour Day, FICC is proposing to establish an additional netting cycle (referred to as Expanded Pool Netting). Similar to the initial Pool Netting process, Expanded Pool Netting would result in a reduction in the number of Pool Delivery Obligations. As with the existing Pool Netting process, the proposed Expanded Pool Netting process would (1) calculate Pool Net Settlement Positions in a manner that is consistent with Section 3 of MBSD Rule 8 and (2) allocate Pool Deliver Obligations and Pool Receive Obligations in a manner that is consistent with Section 4 of MBSD Rule 8. The Expanded Pool Netting process would occur four times per month in accordance with the SIFMA designated settlement date. Pool Net Settlement Positions and the resultant Pool Deliver Obligations and Pool Receive Obligations would only be provided to Clearing Members during such times.

The proposed Expanded Pool Netting process would generate Cash Settlement credits and debits. The proposed Cash Settlement obligations are described below in section F.

E. Proposed Change To Eliminate the ''Give-up'' Process for Brokered Transactions

Currently, FICC operates its brokered business on a ''give-up'' basis. This means that MBSD discloses (or ''gives-up'') the identity of each Dealer[70] (to a Brokered Transaction) after a period of time.[71] Under the proposed rule change, FICC would eliminate the need to disclose Dealers' identities because FICC would novate all Brokered Transactions and treat itself as the settlement counterparty once such transactions have been Fully Compared.[72] Thus, the Report that FICC issues once a Brokered Transaction has been Fully Compared would refer to FICC as settlement counterparty.

F. Proposed Change to the Cash Settlement Process

Cash Settlement is a daily process of generating a single net credit or debit cash amount at the Aggregated Account[73] level and settling those cash amounts between Clearing Members and MBSD.[74] FICC's proposal to become the settlement counterparty upon trade comparison and the proposed Do Not Allocate process would necessitate the following changes to the Cash Settlement calculation.

1. FICC is proposing to eliminate the *SBO Market Differential*[75] because this amount calculates the price difference for SBO positions settled among Clearing Members. This amount would no longer be required because Clearing Members would settle all SBO-Destined Trades directly with FICC.

2. FICC is proposing to add the following components to the Cash Settlement calculation:

a. The proposed *TBA Transaction Adjustment Payment* would reflect the cash differential that would result when calculating the net proceeds of the contractual quantity of an SBO-Destined Trade when comparing such trade's Settlement Price and the System Price.[76]

The proposed TBA Transaction Adjustment Payment would be an amount equal to the difference between the SBO-Destined Trade's Settlement Price and the System Price, multiplied by the contractual quantity of such trade, and then divided by 100. To differentiate between the buyer and seller of the transaction, an indicator of -1 for the buy trade and +1 for the sell trade is multiplied by the contractual quantity of such trade.

For example, the TBA Transaction Adjustment Payment for an SBO-Destined Trade having a contractual quantity of 5,000,000 would be calculated as follows:

Contractual quantity (sell): 5,000,000.

SBO-Destined Trade—Settlement Price: 100.25.

System Price: 100.

Calculation: $1 \times 5{,}000{,}000$ $(100.25 - 100)/100$.

TBA Transaction Adjustment Payment: $12,500 (credit).

b. The proposed *Expanded Pool Net Transaction Adjustment Payment* would be included in the event that a Clearing Member misses the deadline established by FICC for the Pool Netting process. Unlike the Pool Netting process, which runs daily, the Expanded Pool Netting process would only run four times per month in accordance with the SIFMA designated settlement date. As a result, an Expanded Pool Net Transaction Adjustment Payment would only occur four times per month. The calculation for the Expanded Pool Net Transaction Adjustment Payment is the same as the Pool Net Transaction Adjustment Payment.

The Expanded Pool Net Transaction Adjustment Payment would reflect an amount equal to the difference between the System Price and the SBON Trade's Settlement Price or Trade-for-Trade Transaction's Settlement Price, as applicable, multiplied by the total current face value of the pools used to satisfy such obligation, then divided by 100. To differentiate between a buy and sell transaction, an indicator of +1 for a buy trade and -1 for a sell trade would be multiplied by the total current face value of the pools used to satisfy the obligation.

c. The proposed *Do Not Allocate Transaction Adjustment Payment* would reflect the cash differential among TBA Obligations that have been offset through the Do Not Allocate process. The proposed Do Not Allocate Transaction Adjustment Payment would be an amount equal to the difference between the Settlement Price of the buy and sell TBA Obligation transactions multiplied by the contractual quantity. To differentiate between a buy and sell transaction, an indicator of -1 for a buy trade and +1 for a sell trade is multiplied by the contractual quantity of such trade.

For example, the Do Not Allocate Transaction Adjustment Payment for a 2,000,000 DNA Request would be calculated as follows:

Contractual quantity: 2,000,000.

Trade price of buy transaction: 99.

Trade price of sell transaction: 100.

Buy calculation: $-1 \times 2{,}000{,}000 \times 99 = -\$1{,}980{,}000$.

of Mortgage-Backed Securities as promulgated from time to time by SIFMA. *See* MBSD Rule 1, *supra* note 3.

[69] All times referenced herein are Eastern Time.

[70] Pursuant to the MBSD Rules, the term ''Dealer'' means a Member that is in the business of buying and selling Securities as principal, either directly or through a Broker. *See* MBSD Rule 1, *supra* note 3.

[71] *See* MBSD Rule 5 Section 7, *supra* note 3.

[72] Pursuant to the MBSD Rules, the term ''Fully Compared'' means that trade input submitted by a Broker matches trade input submitted by each Dealer on whose behalf the Broker is acting in accordance with the Net Position Match Mode. *See* MBSD Rule 1, *supra* note 3.

[73] Pursuant to the MBSD Rules, the term ''Aggregated Account'' means either a single Account linked to an aggregate ID or a set of Accounts linked to an aggregate ID for the processing of Transactions in the Clearing System. Pursuant to the MBSD Rules, Members' Cash Settlement obligations and Mark-to-Market requirements are calculated on a net basis at the aggregate ID level. *See* MBSD Rule 1, *supra* note 3.

[74] *See* MBSD Rule 11, *supra* note 3.

[75] Pursuant to the MBSD Rules, the term ''SBO Market Differential'' means the amount computed pursuant to the MBSD Rules, reflecting the difference between Firm CUSIP Average Prices (in the case of an SBO Netted or SBO Net-Out Position) or between the CUSIP Average Price and the Firm CUSIP Average Price (in the case of an SBON Trade). *See* MBSD Rule 1, *supra* note 3.

[76] Pursuant to the MBSD Rules, the term ''System Price'' means the price for any trade or any Pool Deliver Obligations or Pool Receive Obligation not including accrued interest, established by the Corporation on each Business Day, based on current market information, for each Eligible Security. *See* MBSD Rule 1, *supra* note 3.

Sell calculation: 1 × 2,000,000 × 100 = $2,000,000.

Do Not Allocate Transaction Adjustment Payment: $20,000 (credit).

d. The proposed *TBA Reprice Transaction Adjustment Payment* would reflect the cash differential between the price of a TBA Obligation that was not allocated by a Clearing Member by the deadline established by FICC and the price of the replacement TBA Obligation that was calculated at the System Price.

The TBA Reprice Transaction Adjustment Payment would be an amount equal to the difference between the TBA Obligation's Settlement Price and the System Price, multiplied by the unallocated contractual quantity, then divided by 100. To differentiate between a buy and sell transaction, an indicator of −1 for a sell trade and +1 for a buy trade is multiplied by the unallocated pool's contractual quantity.

For example, the TBA Reprice Transaction Adjustment Payment for a TBA Obligation with a contractual quantity of 5,000,000 that was not allocated by a Clearing Member by the deadline established by FICC would be calculated as follows:

Contractual quantity (buy): 5,000,000.

SBON Trade—Settlement Price: 100.

System Price: 101.

Calculation: 1 × 5,000,000 (101 − 100)/100.

TBA Reprice Transaction Adjustment Payment: $50,000 (credit).

e. The proposed *Variance Transaction Adjustment Payment* would capture the variance (*i.e.,* difference) [77] between a TBA Obligation and the current face value of the pools allocated in satisfaction of such obligation. Specifically, this payment would reflect the cash differential calculated between the SBON Trade's Settlement Price or the Trade-for-Trade Transaction's Settlement Price, as applicable, and the System Price using the variance of the Pool Netting process or the Expanded Pool Netting process, as applicable, based on the current face value of the pools used in satisfaction of the trade.

The Variance Transaction Adjustment Payment would be an amount equal to the difference between the SBON Trade's Settlement Price or the Trade-for-Trade Transaction's Settlement Price, as applicable, and the System Price, multiplied by the difference between the TBA Obligation and the allocated pools used in satisfaction of such trade and then divided by 100. To differentiate between a buy and sell transaction, an indicator of −1 for a buy trade and +1 for a sell trade would be multiplied by the total variance amount.

For example, the Variance Transaction Adjustment Payment for a sell transaction that has one million under allocated and one million over allocated [78] would be calculated as follows:

Sell trade price: 100.125.

Good delivery million #1 allocation: 999,895.77.

Good delivery million #2 allocation: 1,000,007.13.

System Price: 99.

Calculation: 1 × (104.23 − 7.13) × (99 − 100.125)/100 = 1 × (97.10) × (−1.125)/100.

Variance Transaction Adjustment Payment: $1.09 (debit).

f. The proposed *Factor Update Adjustment Payment* would be calculated in the event that updated pool factor information is released after the clearing bank's settlement of a pool. This update would create a cash differential that would require a debit to the seller and a credit to the buyer.

Example:

Seller A sells Pool 1 FNMA 30yr 3% coupon to Buyer B with a contractual settlement date of April 3, 2017, at a price of 100. Because the April 2017 factor is unavailable on the contractual settlement date, the pool would settle at the clearing bank with a settlement amount based on the factor that was released in March 2017.

Principle—current face value × price.

Interest—current face value × coupon/360 × settlement date −1.

Original face	Current face value	Principal	Interest	Net money	Factor
1,000,000	1,000,000.00	1,000,000.00	166.67	1,000,166.67	1.00 (March).
1,000,000	990,000.00	990,000.00	165.00	990,165.00	0.99 (April).
				10,001.65	

Factor Update Adjustment amount: $10,001.65 (*i.e.,* the difference between the March 2017 and April 2017 settlement amounts) Since Seller A was overpaid for the original settlement, they will be debited to reflect the lower factor and Buyer B will be credited.

G. Delayed Implementation of the Proposed Rule Change

The proposed changes would become effective within 45 Business Days after the date of the Commission's approval of this proposed rule change. Prior to the effective date, FICC would add a legend to the MBSD Rules to state that the specified changes to the MBSD Rules are approved but not yet operative and to provide the date such approved changes would become operative. The legend would also include the file number of the approved proposed rule change and would state that once operative, the legend would automatically be removed from the MBSD Rules.

H. Detailed Description of the Proposed Changes to the MBSD Rules

1. Proposed Changes to MBSD Rule 1 (Definitions)

FICC is proposing to delete the terms ''Broker Give-Up Date'' and ''Broker Give-Up Trade'' because FICC would no longer disclose a Dealer's identity on the Report that FICC issues in connection with Brokered Transactions.

FICC is proposing to amend the term ''Brokered Transaction'' to delete the reference to ''give-up'' because FICC would no longer disclose a Dealer's identity on the Report that FICC issues in connection with Brokered Transactions.

FICC is proposing to amend the term ''Contractual Settlement Date'' to add a reference to ''Stipulated Trade,'' which would be a new eligible trade type. FICC is also proposing to replace the term ''SBO Trade'' with ''SBON Trade.'' The distinction between these two trade types would no longer be required because all obligations that result from the TBA Netting process would settle with FICC.

FICC is proposing to delete the term ''CUSIP Average Price'' and ''CAP'' because this calculation would be

[77] Pursuant to the SIFMA Guidelines, TBA trades are allowed to have a variance equal to plus or minus 0.01% of the dollar amount of the transaction agreed to by the parties. As a result of this guideline, FICC would capture the variance of TBA Obligations and the current face value of the pools allocated in satisfaction of such obligations.

[78] *Id.*

replaced by the System Price for SBON Trades.

FICC is proposing to add the new defined term ''Do Not Allocate'' to define the process that would allow Clearing Members to offset Trade-for-Trade Transactions and/or SBON Trades with the same Par Amount, CUSIP Number and established date in the settlement cycle.

FICC is proposing to add the new defined term ''Do Not Allocate Adjustment Payment'' to define the cash differential that would result when Trade-for-Trade Transactions and/or SBON Trades are offset through the Do Not Allocate process.

FICC is proposing to amend the term ''EPN Service'' to clarify that this service would be used by Clearing Members to electronically communicate pool information to FICC in accordance with the MBSD Rules.

FICC is proposing to add the new defined term ''Expanded Pool Net Transaction Adjustment Payment'' to define the cash differential that would result from SBON Trades and Trade-for-Trade Transactions, as applicable, that would be included in the Expanded Pool Netting process.

FICC is proposing to add the new defined term ''Expanded Pool Netting'' to define the netting process that would occur for SBON Trades and Trade-for-Trade Transactions that have missed the cut-off time for the Pool Netting process.

FICC is proposing to add the new defined term ''Factor Update Adjustment Payment'' to define the cash differential that would result when an updated factor is released after Pool Deliver Obligations and Pool Receive Obligations have settled.

FICC is proposing to delete the term ''Firm CUSIP Average Price'' and ''FCAP'' because this calculation would be replaced by the System Price for SBON Trades.

FICC is proposing to add the new defined term ''Guaranteed/Novated Obligations'' to define FICC's obligation to deliver or receive a Security satisfying TBA criteria and the payment related thereto.

FICC is proposing to delete the term ''Notification of Settlement'' because all SBO-Destined Trades, Trade-for-Trade Transactions and Specified Pool Trades would settle with FICC, thus the Notification of Settlement process would no longer be required.

FICC is proposing to amend the term ''Novation'' to mean the termination of deliver, receive and related payment obligations between Clearing Members and the replacement of such with obligations to deliver or receive a Security satisfying certain TBA criteria as determined by FICC and the payment obligations related thereto.

FICC is proposing to amend the term ''Par Amount'' to include a reference to ''Stipulated Trades,'' which would be a new trade type, and replace the term ''SBO Transaction'' with the term ''SBON Trade.''

FICC is proposing to add the new defined term ''Pool Settlement Position'' to define either a Pool Receive Obligation or a Pool Deliver Obligation.

FICC is proposing to add the new defined term ''SBO'' to define the settlement balance orders that constitute the net positions of a Clearing Member as a result of the TBA Netting process. The resulting transactions from this TBA Netting process are identified as SBON Trades.

FICC is proposing to delete the term ''SBO Contra-Side Member'' because FICC would no longer direct Clearing Members to settle trades with other Clearing Members.

FICC is proposing to delete the term ''SBO Market Differential'' because this term defines the price for SBO-Destined Trades that are settled between other Clearing Members. As described above, FICC would no longer direct a Clearing Member to settle its SBO obligation with another Clearing Member. As a result, the calculation for determining the price would no longer be required.

FICC is proposing to delete the term ''SBO Net-Out Position'' because FICC would no longer offset a Clearing Member's purchase and sale transactions with another Clearing Member.

FICC is proposing to delete the term ''SBO Netted Position'' because FICC would no longer offset a Clearing Member's purchase and sale transactions with another Clearing Member.

FICC is proposing to amend the term ''SBO Trade'' to refer to SBON Trade. This would be defined as a trade that is settled directly with FICC.

FICC is proposing to delete the existing definition of ''SBON Trade'' because FICC would no longer direct a Clearing Member to settle with another Clearing Member. FICC has redefined this definition as referenced above.

FICC is proposing to delete the term ''SBOO Trade'' because this term refers to a trade that FICC directs a Clearing Member to settle with another Clearing Member.

FICC is proposing to amend the term ''Settlement Price'' to (1) include a reference to ''Stipulated Trade,'' which would be a new trade type, (2) define the System Price as the Settlement Price for SBON Trades and (3) remove the reference to SBOO Trades and the related calculation for such trades.

FICC is proposing to amend the term ''Settlement Value'' to include a reference to ''Stipulated Trade,'' which would be a new trade type. FICC is also proposing to amend this definition to eliminate the reference to SBOO Trade, which is a term that FICC is also proposing to delete from the MBSD Rules.

FICC is proposing to add the new defined term ''Stipulated Trade'' because it would be a new trade type that Clearing Members would be permitted to submit to MBSD.

FICC is proposing to add the new defined term ''TBA'' or ''To-Be-Announced'' to define a contract for the purchase or sale of a mortgage-backed security to be delivered at an agreed-upon future date because as of the transaction date, the seller has not yet identified certain terms of the contract, such as the pool number and number of pools, to the buyer.

FICC is proposing to add the new defined term ''TBA Reprice Transaction Adjustment Payment.'' This term would provide FICC's cash settlement calculation for the repricing of TBA Obligations that have not been allocated by the time established by FICC.

FICC is proposing to add the new defined term ''TBA Transaction Adjustment Payment.'' This term would provide FICC's cash settlement calculation for SBO-Destined Trades.

FICC is proposing to amend the term ''Trade-for-Trade Transaction'' to state that this transaction type would be eligible for the Pool Netting system and the Expanded Pool Netting system.

FICC is proposing to add the new defined term ''Variance Transaction Adjustment Payment.'' This term would provide FICC's cash settlement calculation for SIFMA's permitted variances with respect to TBA Obligations.

2. Proposed Changes to MBSD Rule 2 (Members)

FICC is proposing to amend MBSD Rule 2 to delete the reference to ''Broker Give-Up Trades'' and replace it with ''Brokered Transactions'' because a Dealer's identity would no longer be disclosed in the Reports that FICC makes available in connection with Brokered Transactions.

3. Proposed Changes to MBSD Rule 4 (Clearing Fund and Loss Allocation) Section 1 (General)

FICC is proposing to amend this section to reflect that the term ''Transactions'' as used in MBSD Rule 4 would apply to Stipulated Trades.

4. Proposed Changes to MBSD Rule 5 (Trade Comparison)

Proposed Changes to MBSD Rule 5, Section 1 (General)

FICC is proposing to amend this section to specify the obligations that would be guaranteed and novated at Trade Comparison.

Proposed Changes to MBSD Rule 5, Section 2 (General Responsibilities of Members in the Trade Comparison System)

FICC is proposing to delete a paragraph that requires Clearing Members to settle certain Transactions directly with their applicable settlement counterparties.

Proposed Changes to MBSD Rule 5, Section 7 (Broker Give-Up Trades)

FICC is proposing to delete this section in its entirety because the identities of Dealers to a Brokered Transaction would no longer be disclosed in the Reports issued by FICC.

Proposed Changes to MBSD Rule 5, Section 8 (Binding Nature of Comparisons)

FICC is proposing to include a reference to the ''Open Commitment Report,'' which is currently a report provided to Clearing Members.

Proposed Changes to MBSD Rule 5, Section 9 (Cancellation and Modification of Trade Data by Members)

FICC is proposing to amend this section to state that trade data would be submitted to FICC.

Proposed Changes to MBSD Rule 5, Section 12 (Obligations)

FICC is proposing to amend this section to state that settlement obligations between each buyer and seller, respectively, would be established with FICC in connection with SBO-Destined Trades, Trade-for-Trade Transactions, Specified Pool Trades and Stipulated Trades.

Proposed Changes to MBSD Rule 5, Section 13 (Novation)

FICC is proposing to amend this section to state the following: (1) FICC will guarantee and novate Specified Pool Trades, Stipulated Trades and Trade-for-Trade Transactions that meet the requirements of the MBSD Rules and have been entered into in good faith; (2) FICC will not novate Specified Pool Trades, Stipulated Trades or Trade-for-Trade Transactions that are partially compared; (3) To the extent a partially compared Specified Pool Trade, Stipulated Trade or Trade-for-Trade Transaction becomes Fully Compared, FICC will novate such trade; (4) At the time that a Specified Pool Trade, Stipulated Trade or Trade-for-Trade Transaction is novated to FICC, such trade shall cease to be bound by any bilateral agreement between the parties to the trade with respect to the deliver, receive and related payment obligations; however, if the trade becomes uncompared or is cancelled, such trade shall be governed by the bilateral agreement that governs such trade prior to the novation.

5. Proposed Changes to MBSD Rule 6 (TBA Netting) Section 1 (Netting)

FICC is proposing to amend this section to delete the provisions that state that FICC would direct Clearing Members to settle SBO Trades with their original counterparties or other Clearing Members. FICC is also deleting its calculation of the Settlement Price of such trades. FICC is proposing amend this section to state that (1) TBA Netting would result in SBON Trades, (2) FICC would assign one or more SBON Trades to offset SBO Net Open Positions [79] and (3) the Settlement Price for SBON Trades would be the System Price.

6. Proposed Changes to MBSD Rule 7 (Pool Comparison)

Proposed Changes to MBSD Rule 7, Section 1 (Pool Comparison)

FICC is proposing to amend this section to state that Clearing Members with Stipulated Trades would be required to allocate and submit Pool Instructs for Pool Comparison. FICC is also proposing to amend this section to state that Clearing Members would be required to notify FICC of their pool allocations to satisfy open TBA Obligations and Stipulated Trade obligations, and that FICC would submit pool details on behalf of Clearing Members that do not submit such pool details by the time established by FICC. Because FICC would submit such details on behalf of Clearing Members, FICC is proposing to eliminate the provision that provides that pool details not submitted by Clearing Members would be identified as uncompared. FICC is also proposing to clarify that the data submitted by each contra-party would be submitted to the Corporation.

[79] Pursuant to the MBSD Rules, the term ''SBO Net Open Position'' means any SBO-Destined Trade that cannot be offset pursuant to the MBSD Rules. *See* MBSD Rule 1, *supra* note 3.

Proposed Changes to MBSD Rule 7, Section 2 (Cancellation and Modification of Data by Clearing Members)

In connection with a Clearing Member's request to cancel data, FICC is proposing to amend this section to state that data that has been submitted by a Clearing Member and affirmed by FICC would be deemed compared.

Proposed Changes to MBSD Rule 7, Section 3 (Do Not Allocate Process for TBA Obligations)

FICC is proposing to include this new section to describe the Do Not Allocate process. This process would allow Clearing Members that have two or more Trade-for-Trade Transactions and/or SBON Trades with the same Par Amount, CUSIP Number and established date in the settlement cycle to offset such obligations against one another. This section would provide the process for initiating a Do Not Allocate request and the process for cancelling such request.

Proposed Changes to MBSD Rule 7, Section 4 (Pool Settlement Positions for Stipulated Trades)

FICC is proposing to include this new section to describe Pool Settlement Positions, allocation of Pool Deliver Obligations and Pool Receive Obligations, and the process for substitutions regarding Stipulated Trades

Proposed Changes to MBSD Rule 7, Section 5 (Pool Deliver Obligations and Pool Receive Obligations for Specified Pool Trades)

FICC is proposing to include this new section to describe the Pool Deliver Obligations and Pool Receive Obligations for Specified Pool Trades.

7. Proposed Changes to MBSD Rule 8 (Pool Netting System)

Proposed Changes to MBSD Rule 8, Section 2 (Eligibility for Pool Netting)

FICC is proposing to refer to this section as ''Section 2A'' rather than ''Section 2.'' In addition, FICC is proposing to delete the provision that requires pools that are ineligible for the Pool Netting process to be settled bilaterally with their settlement counterparties.

Proposed Changes to MBSD Rule 8, Section 2B (Eligibility for Expanded Pool Netting)

FICC is proposing to amend Rule 8 to include new ''Section 2B.'' This section would establish a secondary pool netting process formally referred to as the Expanded Pool Netting process.

Proposed Changes to MBSD Rule 8, Section 3 (Calculation of Pool Net Settlement Positions)

FICC is proposing to amend this section to apply the calculation of Pool Net Settlement Positions to Eligible Securities processed by the Expanded Pool Netting process.

Proposed Changes to MBSD Rule 8, Section 4 (Allocation of Pool Deliver and Pool Receive Obligations)

FICC is proposing to amend this section to establish that Pool Deliver Obligations and Pool Receive Obligations would apply to Eligible Securities processed by the Expanded Pool Netting process.

Proposed Changes to MBSD Rule 8, Section 6 (Novation of Obligations)

FICC is proposing to amend this paragraph to state that novation would occur with respect to the Pool Deliver Obligations and Pool Receive Obligations.

Proposed Changes to MBSD Rule 8, Section 7 (Obligation To Submit SBOO and SBON Trades to Pool Netting)

FICC is proposing to delete the reference to ''SBOO.'' This term refers to SBO-Destined Trades that are settled between Clearing Members that are not original counterparties to such trades. This term would no longer be required because FICC is proposing to treat itself as the settlement counterparty to all SBO-Destined Trades. FICC is also proposing to amend this section to reflect that Trade-for-Trade Transactions would have to be submitted into the Pool Netting system.

8. Proposed Changes to MBSD Rule 10 (Notification of Settlement)

FICC is proposing to delete this rule because all SBO-Destined Trades, Trade-for-Trade Transactions and Specified Pool Trades would settle with FICC. As a result, the Notification of Settlement process would no longer be required.

9. Proposed Changes to MBSD Rule 11 (Cash Settlement)

FICC is proposing to delete the ''SBO Market Differential'' component and replace it with the term ''TBA Transaction Adjustment Payment.'' The term ''SBO-Market Differential'' calculates the price for SBO Trades originally among different counterparties as well as SBO Trades originally among the same counterparties. This calculation would be no longer required because all SBO Trades (referred to in proposed rules as ''SBON Trades'') would settle with FICC as the settlement counterparty. As a result, FICC is proposing to replace the ''SBO Market Differential'' component and replace it with the term ''Transaction Adjustment Payment.'' This component would calculate an SBO-Destined Trade in an amount equal to the difference between such trade's Settlement Price and System Price.

FICC is also proposing to add the following new components to the Cash Settlement calculation: (a) TBA Transaction Adjustment Payment, (b) Expanded Pool Net Transaction Adjustment Payment, (c) Do Not Allocate Transaction Adjustment Payment, (d) TBA Reprice Transaction Adjustment Payment, (e) Variance Transaction Adjustment Payment, and (f) Factor Update Adjustment Payment.

10. Proposed Changes to MBSD Rule 12 (Fails Charge)

FICC is proposing to amend this section to state that Clearing Members would be responsible for a fails charge if FICC receives an allocation of TBA Obligations prior to the established deadline and is unable to transmit the notification until after such time.

11. Proposed Changes to MBSD Rule 17 (Procedures for When the Corporation Ceases to Act) Section 2 (Action by the Corporation—Close-Out Procedure)

FICC is proposing to delete a provision that relates to the Notification of Settlement process. FICC is also proposing to amend certain provisions that are no longer necessary because FICC has specified the obligations that it novates in the proposed definition for the term ''Guaranteed/Novated Obligations.''

12. Proposed Changes to MBSD Rule 17A (Corporation Default)

FICC is proposing to delete the provision that establishes Novation for all Compared Trades. This provision is no longer necessary because SBO-Destined Trades, Specified Pool Trades, Stipulated Trades and Trade-for-Trade Transactions would occur at trade comparison.

2. Statutory Basis

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[80]

FICC believes that the proposed change to novate Specified Pool Trades, Stipulated Trades, and Trade-for-Trade Transactions at trade comparison would promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act, because this change would provide Clearing Members with legal certainty early in the trading cycle that FICC would become the legal counterparty to each Clearing Member (*i.e.,* FICC would become the buyer to every seller and the seller to every buyer) as set forth in the proposed rule change. The legal certainty would enable Clearing Members that submit such transactions to FICC to know early in the trade processing cycle that they have only one party (that is, FICC) with which to interact following trade comparison. FICC believes that this would, in turn, simplify processing for Clearing Members and thereby promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act.[81]

FICC also believes that the proposed change to establish itself as the settlement counterparty to SBO-Destined Trades, Specified Pool Trades, Stipulated Trades, and Trade-for-Trade Transactions at trade comparison would promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act because all such trades would settle directly with FICC. As such, the settlement of all such trades would be governed by the MBSD Rules (as opposed to potentially being subject to settlement mechanisms outside of FICC). FICC believes that this would streamline settlement processing because the MBSD Rules would govern all such processing and thereby promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act.[82]

FICC believes that the proposed rule changes associated with providing the operational efficiencies to Clearing Members noted in this filing would also promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act. These proposed rule changes are as follows: (a) The submission of Pool Instructs by Clearing Members would become optional because FICC would be permitted to submit on behalf Clearing Members, (b) Clearing Members would no longer to be required to fulfill Notification of Settlement obligations because all of the above-referenced

[80] 15 U.S.C. 78q–1(b)(3)(F).

[81] *Id.*

[82] *Id.*

transactions would settle with FICC, (c) Clearing Members would have the ability to exclude TBA Obligations from the pool allocation process, netting and securities settlement through the DNA process, (d) Clearing Members would have the ability to have their pools netted by the Expanded Pool Netting process in the event that such Clearing Members miss the established deadline for the initial Pool Netting process, (e) Dealer Netting Members would remain anonymous with the elimination of the ''give-up'' process for Brokered Transactions, (f) Clearing Members would be allowed to submit SBO-Destined Trades in all trade sizes, and (g) Clearing Members would be allowed to submit Stipulated Trades as a new trade type. All of these proposed changes would either eliminate operational steps on the part of Clearing Members (such as, for example, the elimination of the Notification of Settlement process where Clearing Members currently have required processing obligations) or would enable Clearing Members to take advantage of MBSD's processing efficiencies (such as enabling Clearing Members to submit SBO-Destined Trades in all trade sizes). FICC believes that the elimination of operational steps on the part of Clearing Members and the provision of further opportunities for Clearing Members to take advantage of MBSD's processing would streamline MBSD processing as a whole for Clearing Members and further extend the benefits of MBSD's clearance and settlement services to Clearing Members, and would thereby promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act.[83]

FICC believes that the proposed changes to the cash settlement components, which are necessitated from many of the proposed operational efficiencies discussed in this filing, would also promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act. These changes would allow FICC to continue to remain in a cash neutral position—neither owing Clearing Members funds nor having a surplus of funds on FICC's books and records. By allowing FICC to remain flat with respect to cash settlement items, the proposed rule changes would maintain the efficiency of MBSD's cash settlement process, which is an automated system for the settlement of funds. As such, FICC believes that adding the proposed changes to its automated system for funds settlement would promote the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Exchange Act.[84]

For these reasons, FICC believes that the proposed changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FICC, in particular Section 17A(b)(3)(F).[85]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule changes as described in this filing would impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[86]

While the proposed rule changes would require Clearing Members to make technological changes and thereby incur costs in doing so and this could burden the Members competitively, the proposed rules changes have been structured to better meet the needs of Clearing Members. Specifically, the proposed rule changes would meet Clearing Members' needs by:

- Novating Specified Pool Trades, Stipulated Trades, and Trade-for-Trade Transactions at trade comparison and thereby providing Clearing Members with legal certainty early in the trading cycle that FICC would become the legal counterparty to each Clearing Member (*i.e.,* FICC would become the buyer to every seller and the seller to every buyer) for such trades,
- eliminating operational steps on the part of Clearing Members (such as making the submission of Pool Instructs by Clearing Members optional, eliminating the ''give-up'' process for Brokered Transactions, and eliminating the Notification of Settlement process and Clearing Member obligations related thereto) and thereby streamlining MBSD processing as a whole for Clearing Members,
- enabling Clearing Members to take advantage of MBSD's processing efficiencies (such as, providing Clearing Members with the ability to exclude TBA Obligations from the pool allocation process, netting and securities settlement through the DNA process, allowing Clearing Members to submit SBO-Destined Trades in all trade sizes, and allowing Clearing Members to submit Stipulated Trades as a new trade type) and thereby further extending the benefits of MBSD's clearance and settlement services to Clearing Members,
- structuring the proposed changes to the cash settlement process, which are necessitated from many of the proposed operational efficiencies discussed in this filing, in a manner that would maintain the efficiency of the automated nature of the MBSD cash settlement process by calculating debits and credits to Clearing Members as applicable (and as has been described in detail in this filing) and allowing FICC to remain flat with respect to applicable cash settlement items.

Moreover, FICC believes that the proposed rule changes are appropriate in that such changes reflect Clearing Members' feedback. Consequently, FICC believes that any burden on competition derived from the proposed rule changes would be necessary and appropriate in support of the beneficial objectives of the proposed rule changes, which would be made in furtherance of the Exchange Act, as described above.

Additionally, FICC believes that any such burden on competition derived from the proposed rule changes would not be significant because Clearing Members have requested these changes and were involved in developing the business requirements.

The proposed rule changes would result in the removal of the option for Clearing Members to settle trades bilaterally amongst themselves because, as has been described in detail in this filing, FICC would treat itself as the settlement counterparty to all eligible transactions (except Option Contracts). FICC does not believe that this would impose a burden on competition. Specifically, FICC believes that trades, whether they settle with FICC or another counterparty, must settle; FICC does not believe that settling with FICC imposes greater costs on Clearing Members than settling outside of FICC. Therefore, FICC does not believe that the proposal imposes a burden on competition that is not appropriate in furtherance of the Exchange Act because all Clearing Members need to settle their trades, and FICC believes that there is an absence of any significant costs associated with its proposal that Clearing Members settle all Transactions (other than Option Contracts) with FICC.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] 15 U.S.C. 78q–1(b)(3)(I).

Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2017–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2017–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2017–012 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10584 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80721; File No. SR–BOX–2017–16]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BOX Fee Schedule To Adopt a Fee Schedule To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

May 18, 2017.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[6] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE

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[87] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed the proposed rule change on May 3, 2017 under File No. SR–BOX–2017–13. The Exchange subsequently withdrew that filing on May 11, 2017 and filed the proposed rule change on that date under File No. SR–BOX–2017–15. The Exchange withdrew that filing on May 15, 2017 and filed this proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

Arca, Inc. and NYSE National, Inc.[7] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[8] and Rule 608 of Regulation NMS thereunder,[9] the CAT NMS Plan.[10] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[11] and approved by the Commission, as modified, on November 15, 2016.[12] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[13] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[14] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[15] Accordingly, the Exchange submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below[16])

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable

[7] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[11] Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[12] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''Approval Order'').

[13] The Plan also serves as the limited liability company agreement for the Company.

[14] Section 11.1(b) of the CAT NMS Plan.

[15] *Id.*

[16] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. The Exchange will issue a Regulatory Circular to its Industry Members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [17] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [18]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [19] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[20]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[21] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[22] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [23]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[24] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[25] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[26] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[27]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [28] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[29] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[30]

[17] Approval Order at 84796.

[18] *Id.* at 84794.

[19] *Id.* at 84795.

[20] *Id.* at 84794.

[21] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[22] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[23] Approval Order at 84796.

[24] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[25] Approval Order at 85005.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 84796.

[29] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[30] Section 11.3(b) of the CAT NMS Plan.

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[31] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[32]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [33] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [34]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[35] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [36] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [37]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The Exchange notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable

[31] Section 11.2(c) of the CAT NMS Plan.

[32] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[33] Section 11.2(e) of the CAT NMS Plan.

[34] Approval Order at 84796.

[35] *Id.* at 84792.

[36] 26 U.S.C. 501(c)(6).

[37] Approval Order at 84793.

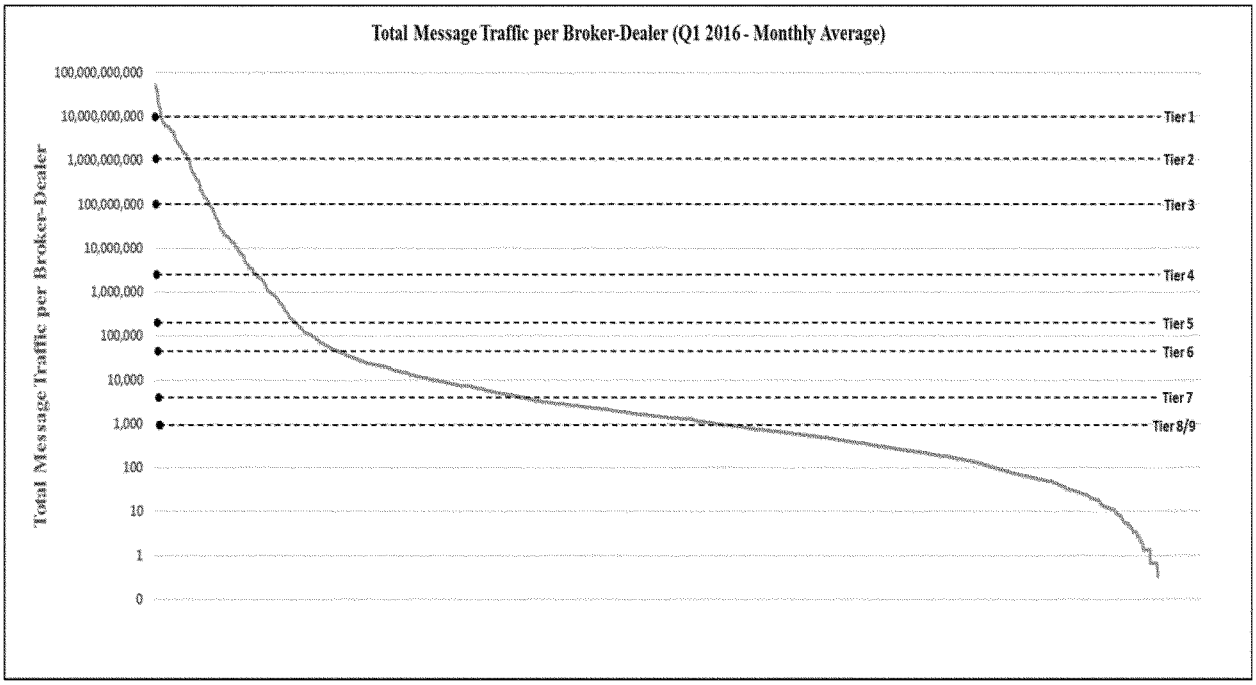
message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry member tier	Monthly average message traffic per industry member (orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three

months.[38] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[39] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[40]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).''[41]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[42]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue

[38] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[39] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[40] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

[41] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[42] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other

than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and

Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members *(i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[43]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[44] 5,000,000
	Insurance Costs	3,000,000

[43] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

Cost category	Cost component	Amount
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees: [45]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [47]
1	21,125	63,375	253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [48]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

Calculation of Annual Tier Fees for Industry Members (''IM'')

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25

[44] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[45] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[46] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[47] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[48] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry member tier	Estimated number of industry members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 0.5\%\ [\%\ of\ Tier\ 1\ IMs] = 8\ [Estimated\ Tier\ 1\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 8.50\%\ [\%\ of\ Tier\ 1\ IM\ Recovery]}{8\ [Estimated\ Tier\ 1\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 2.5\%\ [\%\ of\ Tier\ 2\ IMs] = 41\ [Estimated\ Tier\ 2\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 35\%\ [\%\ of\ Tier\ 2\ IM\ Recovery]}{41\ [Estimated\ Tier\ 2\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 2.125\%\ [\%\ of\ Tier\ 3\ IMs] = 35\ [Estimated\ Tier\ 3\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 21.25\%\ [\%\ of\ Tier\ 3\ IM\ Recovery]}{35\ [Estimated\ Tier\ 3\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 4.625\%\ [\%\ of\ Tier\ 4\ IMs] = 75\ [Estimated\ Tier\ 4\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 15.75\%\ [\%\ of\ Tier\ 4\ IM\ Recovery]}{75\ [Estimated\ Tier\ 4\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 3.625\%\ [\%\ of\ Tier\ 5\ IMs] = 59\ [Estimated\ Tier\ 5\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 7.75\%\ [\%\ of\ Tier\ 5\ IM\ Recovery]}{59\ [Estimated\ Tier\ 5\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 4\%\ [\%\ of\ Tier\ 6\ IMs] = 65\ [Estimated\ Tier\ 6\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 5.25\%\ [\%\ of\ Tier\ 6\ IM\ Recovery]}{65\ [Estimated\ Tier\ 6\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$2{,}560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 17.5\%\ [\%\ of\ Tier\ 7\ IMs] = 285\ [Estimated\ Tier\ 7\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 4.50\%\ [\%\ of\ Tier\ 7\ IM\ Recovery]}{285\ [Estimated\ Tier\ 7\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 20.125\%\ [\%\ of\ Tier\ 8\ IMs] = 328\ [Estimated\ Tier\ 8\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 1.50\%\ [\%\ of\ Tier\ 8\ IM\ Recovery]}{328\ [Estimated\ Tier\ 8\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [Estimated\ Tot.IMs] \times 45\%\ [\%\ of\ Tier\ 9\ IMs] = 735\ [Estimated\ Tier\ 9\ IMs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 75\%\ [IM\ \%\ of\ Tot.Ann.CAT\ Costs] \times 0.50\%\ [\%\ of\ Tier\ 9\ IM\ Recovery]}{735\ [Est.Tier\ 9\ IMs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$22}$$

Calculation of Annual Tier Fees for Equity Execution Venues (''EV'')

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [Estimated\ Tot.Equity\ EVs]\ \times 25\%\ [\%\ of\ Tier\ 1\ Equity\ EVs] = 13\ [Estimated\ Tier\ 1\ Equity\ EVs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.\ Ann.CAT\ Costs] \times 25\%\ [EV\ \%\ of\ Tot.Ann.CAT\ Costs] \times 26\%\ [\%\ of\ Tier\ 1\ Equity\ EV\ Recovery]}{13\ [Estimated\ Tier\ 1\ Equity\ EVs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$21,125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [Estimated\ Tot.Equity\ EVs]\ \times 75\%\ [\%\ of\ Tier\ 2\ Equity\ EVs] = 40\ [Estimated\ Tier\ 2\ Equity\ EVs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.\ Ann.CAT\ Costs] \times 25\%\ [EV\ \%\ of\ Tot.Ann.CAT\ Costs] \times 49\%\ [\%\ of\ Tier\ 2\ Equity\ EV\ Recovery]}{40\ [Estimated\ Tier\ 2\ Equity\ EVs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$12,940}$$

Calculation of Annual Tier Fees for Options Execution Venues (''EV'')

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [Estimated\ Tot.Options\ EVs]\ \times 75\%\ [\%\ of\ Tier\ 1\ Options\ EVs] = 11\ [Estimated\ Tier\ 1\ Options\ EVs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 25\%\ [EV\ \%\ of\ Tot.Ann.CAT\ Costs] \times 20\%\ [\%\ of\ Tier\ 1\ Options\ EV\ Recovery]}{11\ [Estimated\ Tier\ 1\ Options\ EVs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19,205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [Estimated\ Tot.Options\ EVs]\ \times 25\%\ [\%\ of\ Tier\ 2\ Options\ EVs] = 4\ [Estimated\ Tier\ 2\ Options\ EVs]$$

$$\left(\frac{\$50{,}700{,}000\ [Tot.Ann.CAT\ Costs] \times 25\%\ [EV\ \%\ of\ Tot.Ann.CAT\ Costs] \times 5\%\ [\%\ of\ Tier\ 2\ Options\ EV\ Recovery]}{4\ [Estimated\ Tier\ 2\ Options\ EVs]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13,204}$$

Traceability of Total CAT Fees

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1	13	253,500	3,295,500
	Tier 2	40	155,280	6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1	11	230,460	2,535,060
	Tier 2	4	158,448	633,792
Total		15		3,168,852
Total				50,709,036
Excess [49]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [50]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV complex
Execution Venue Complex 1	• Tier 1 (x2) • Tier 2 (x1)	• Tier 1 (x4) • Tier 2 (x2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (x2)	• Tier 1 (x2) • Tier 2 (x1)	1,863,801
Execution Venue Complex 3	• Tier 1 (x2) • Tier 2 (x2)	• Tier 1 (x2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry member complex	Listing of industry member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (x2)	• Tier 2 (x1)	$963,300
Industry Member Complex 2	• Tier 1 (x1) • Tier 4 (x1)	• Tier 2 (x3)	949,674
Industry Member Complex 3	• Tier 1 (x1) • Tier 2 (x1)	• Tier 2 (x1)	883,888

[49] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[50] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

INDUSTRY MEMBER COMPLEXES—Continued

Industry member complex	Listing of industry member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 4	• Tier 1 (x1) • Tier 2 (x1) • Tier 4 (x1)	N/A	808,472
Industry Member Complex 5	• Tier 2 (x1) • Tier 3 (x1) • Tier 4 (x1) • Tier 7 (x1)	• Tier 2 (x1)	796,595

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. The Exchange will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[51] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[52] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Exchange will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. The Exchange notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the Exchange notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

[51] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[52] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

The Exchange proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on BOX's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 16010 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

The Exchange proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of industry members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[53] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

[53] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. The Exchange will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

Although the exact fee collection system and processes for CAT fees has not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[54]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, the Exchange proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[55] which require, among other things, that the Exchange rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealer [sic], and Section 6(b)(4) of the Act,[56] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [57] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, the Exchange believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, the Exchange believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and

[54] Section 11.4 of the CAT NMS Plan.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(4).

[57] Approval Order at 84697.

Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, the Exchange believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [58] require [sic] that Exchange rules not impose any burden on competition that is not necessary or appropriate. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, the Exchange does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, the Exchange believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action Effectiveness

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [59] and Rule 19b–4(f)(2) thereunder,[60] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2017–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2017–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2017–16, and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10589 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[58] 15 U.S.C. 78f(b)(8).

[59] 15 U.S.C. 78s(b)(3)(A)(ii).

[60] 17 CFR 240.19b–4(f)(2).

[61] 17 CFR 200.30–3(a)(12).

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 6–K. SEC File No. 270–107, OMB Control No. 3235–0116.

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 collection of information discussed below.

Form 6–K (17 CFR 249.306) is a disclosure document under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) that must be filed by a foreign private issuer to report material information promptly after the occurrence of specified or other important corporate events that are disclosed in the foreign private issuer's home country. The purpose of Form 6–K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6–K is a public document and all information provided is mandatory. Form 6–K takes approximately 8.7 hours per response and is filed by approximately 34,794 issuers annually. We estimate 75% of the 8.7 hours per response (6.525 hours) is prepared by the issuer for a total annual reporting burden of 227,031 hours (6.525 hours per response × 34,794 responses). The remaining burden hours are reflected as a cost to the foreign private issuers.

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 Web site, *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: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 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: May 19, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10619 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32640; 812–14213]

The Mexico Equity & Income Fund, Inc. and Pichardo Asset Management, S.A. de C.V.

May 18, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit a registered closed-end investment company to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

APPLICANTS: The Mexico Equity & Income Fund, Inc. (the ''Fund''), a non-diversified closed-end investment company registered under the Act and organized as a corporation under the laws of Maryland and Pichardo Asset Management, S.A. de C.V. (the ''Adviser'') (together with the Fund, the ''Applicants''), registered under the Investment Advisers Act of 1940, organized as a corporation under the laws of Mexico, and serving as investment adviser to the Fund.

FILING DATES: The application was filed on September 23, 2013 and amended on December 2, 2013, March 21, 2016, August 2, 2016, and December 5, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Phillip Goldstein, The Mexico Equity & Income Fund, Inc., c/o U.S. Bancorp Fund Services, LLC, 615 East Michigan Street, Milwaukee, WI 53202 and Maria Eugenia Pichardo, Pichardo Asset Management, S.A. de C.V., Andres Bello 45, 22nd Floor, Col. Chapultepec Polanco, Del. Miguel Hidalgo, CDMX 11560.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel at (202) 551–6915, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company (''fund'') to distribute long-term capital gains more often than once every twelve months. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (''Code,'' and such dividends, ''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Applicants believe that the Fund's stockholders may prefer an investment vehicle that provides for more frequent capital gains distributions and a consistent cash flow. Applicants propose that the Fund be permitted to adopt a distribution policy pursuant to which the Fund would distribute periodically to its stockholders a fixed monthly percentage of the market price of the Fund's common stock at a particular point in time or a fixed monthly percentage of net asset value at a particular time or a fixed monthly

amount per share of common stock, any of which may be adjusted from time to time (a ''Distribution Policy'').

3. Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 to permit the Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act 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.

4. Applicants state that any order granting the requested relief will be subject to the terms and conditions stated in the application, which generally are designed to address the concerns underlying section 19(b) and rule 19b–1, including concerns about proper disclosures and shareholders' understanding of the source(s) of a Fund's distributions and concerns about improper sales practices. Among other things, such terms and conditions require that (1) the board of directors or trustees of the Fund (the ''Board'') review such information as is reasonably necessary to make an informed determination of whether to adopt the proposed Distribution Policy and that the Board periodically review the amount of the distributions in light of the investment experience of the Fund, and (2) that the Fund's shareholders receive appropriate disclosures concerning the distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10578 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–197, OMB Control No. 3235–0200]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15c3–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), 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 Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c3–1 requires brokers-dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates the monitoring of the financial condition of broker-dealers by the Commission and the various self-regulatory organizations. It is estimated that broker-dealer respondents registered with the Commission and subject to the collection of information requirements of Rule 15c3–1 incur an aggregate annual burden of 65,915.31 hours to comply with this rule and an aggregate annual external cost of $160,000.

Rule 15c3–1 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member.

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 Web site, *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: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 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: May 19, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10620 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80723; File No. SR–NYSEMKT–2017–27]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 103B—Equities

May 18, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 4, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 103B—Equities, which governs the allocation of securities to Designated Market Makers (''DMMs''). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 103B—Equities (''Rule 103B''), which governs the allocation of securities to DMMs, to streamline the allocation process and facilitate the selection of DMM units by issuers. Specifically, as described in more detail below, the Exchange proposes to:

- Amend Rule 103B(III)(A), which provides for issuer selection of DMM units, to require issuers select a minimum of four DMM units to interview, permit senior officials at issuers to designate a representative to attend DMM interviews, and eliminate the cap on the number of DMM representatives that can participate in issuer interviews;
- amend Rule 103B(III)(B), which provides for selection of DMM units by the Exchange, to remove the requirement that the Exchange Selection Panel (''ESP'') base its review only on information available to an issuer and reduce the size of the ESP to three Exchange employees designated by the Chief Executive Officer;
- renumber Rule 103B(III)(B)(2), which describes the DMM one year obligation, as new Rule 103B(III)(C) and make certain non-substantive changes to the existing rule text;
- renumber Rule 103B(III)(B)(3), which describes foreign listing considerations, as new Rule 103B(III)(D);
- amend Rule 103B(VI)(F), governing allocation of closed-end management investment companies, to specify that the group of eligible DMM units an issuer listing additional funds can select from also includes DMM units the issuer ''reviewed'' during the initial allocation;
- amend Rule 103B(VI)(G), governing the allocation freeze policy, to replace references to ''specialty stock'' with ''DMM interest''; and
- amend Rule 103B(VI)(H), setting forth the allocation sunset policy, to provide that allocation decisions remain effective for initial public offerings (''IPO'') that list on the Exchange within eighteen months of such decision rather than the current twelve months and to specify that, in situations where the proposed individual DMM is no longer with the selected DMM unit, the company may choose to stay with the selected DMM or be referred to allocation and may interview a replacement individual DMM prior to making that decision.

The proposed changes are based on recently adopted Exchange Rule 7.25E (DMM Security Allocation and Reallocation), which will govern, among other things, the allocation and reallocation of securities to DMMs once the Exchange transitions its cash equities trading platform to a fully automated price-time priority allocation model.[4]

Current Rule 103B

Rule 103B currently provides two options for the allocation of securities to DMMs: (1) The issuer selects the DMM unit; or (2) the issuer delegates selection of the DMM unit to the Exchange.

If the issuer proceeds under the first option, the listing company selects a minimum of two DMM units to interview.[5] A DMM unit's eligibility to participate in the allocation process is based on objective criteria and determined at the time the interview is scheduled. No more than three representatives of each DMM unit may currently participate in the interview, each of whom must be employees of the DMM unit.[6]

Within five business days after the issuer selects the DMM units to be interviewed, the issuer meets with representatives of each of the DMM units. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. Additionally, no more than three representatives of each DMM unit may participate in the meeting, each of whom must be an employee of the DMM unit, and one of whom must be the individual DMM who is proposed to trade the company's security, unless that DMM is unavailable to appear, in which case a telephone interview is permitted.

Following the interview, a DMM unit may not have any contact with an issuer. If an issuer has a follow-up question regarding any DMM unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange then contacts the unit(s) to which the question pertains and provides any available information received from the unit(s) to the listing company. Within two business days of the issuer's interviews with the DMM units, the issuer selects its DMM unit in writing. The Exchange then confirms the allocation of the security to that DMM unit, at which time the security is deemed to have been so allocated.

If the issuer proceeds under the second option and delegates selection of the DMM unit to the Exchange, the Exchange convenes an ESP to select the DMM unit based on a review of all information available to the issuer. The current ESP must consists of (1) at least one member of the Exchange's Senior Management, as designated by the CEO or his or her designee, (2) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and (3) three non-DMM Floor Governors for a total of six members.[7]

Proposed Rule Change

The Exchange proposes the following changes to Rule 103B to align the Rule with NYSE Rule 103B and streamline the allocation process and facilitate the selection of DMM units by issuers, as follows.

Rule 103B(III)(A)—Issuer Selection of DMM Unit by Interview

Rule 103B(III)(A) is currently titled ''DMM Unit Selected by the Issuer'' and describes the first allocation option, which is selection of a DMM unit by the issuer following interviews.

The Exchange proposes to delete the current title and replace it with ''Issuer Selection of DMM Unit by Interview'' to more specifically delineate the first option.

The Exchange proposes amending subsection (1) of Rule 103B(III)(A), which provides that the issuer shall select a minimum of two DMM units to interview, to require that issuers select a minimum of four DMM units to interview. To effectuate this change, the Exchange would replace ''four'' with ''two'' following the phrase ''select a minimum of'' and before ''DMM units to interview.'' Requiring issuers to select a minimum of four DMM units to interview would provide additional eligible DMM units with an opportunity to participate in the allocation process, which will lead to an increase in competition without being overly burdensome on the issuer. The Exchange believes that the increase in competition would provide DMM units with a greater incentive to perform optimally. The proposed change would also provide the issuer with more choice in the selection of its assigned DMM unit.

The Exchange also proposes a non-substantive change to Rule 103B(III)(A)(1) to replace ''shall'' with ''must'' before ''select.''

[4] *See* Securities Exchange Act Release No. 80577 (May 2, 2017) (SR–NYSEMKT–2017–04).

[5] *See* Rule 103B(III)(A)(1).

[6] *See* Rule 103B(III)(A)(2)(b).

[7] *See* Rule 103B(III)(B)(1).

Further, the Exchange proposes amending the first sentence of Rule 103B(III)(A)(2)(b), which provides that issuers meet with DMM units within five business days after the issuer select the DMM units, to add the word ''eligible'' before ''DMM units.''

The Exchange also proposes amending the second sentence of Rule 103B(III)(A)(2)(b), which provides that at least one representative of the listing company must be a senior official of the rank of Corporate Secretary or higher. The Exchange proposes to provide senior officials at the issuer with the option to designate an individual to participate in the meeting on their behalf by adding the clause ''or a designee of such senior official'' at the end of the second sentence of the Rule. The Exchange believes that the proposed change would enable issuers to more efficiently manage the interview process and prevent scheduling conflicts among its most senior executives from unduly delaying the interviews.

Current Rule 103B(A)(2)(b) further provides that no more than three representatives of each DMM unit may participate in the meeting, each of whom must be employees of the DMM unit. The Exchange proposes to eliminate the cap on the number of DMM representatives that can participate in issuer interviews by deleting the phrase ''No more than three'' before ''representatives of each DMM unit'' and capitalize the ''r''. The Exchange believes that the current cap on number of representatives from the DMM unit limits the ability of a DMM unit to assess who may be best suited to attend an interview with an issuer. The Exchange further believes that providing DMM units with greater flexibility in determining how many people to bring to an interview would enable the DMMs to make that determination as necessary.

The Exchange also proposes to make participation by representatives of the DMM units mandatory by deleting ''may'' before ''participate in the meeting'' and replacing it with ''must.''

In addition, the Exchange proposes to specify that employees of a member organization operating a DMM unit are permitted to attend allocation interviews by adding ''member organization operating a'' before ''DMM unit.'' Under Exchange Rules, a ''DMM unit'' can be operated as either a stand-alone member organization or as a trading unit within a member organization.[8] The proposed change would enable senior management of a broker-dealer operating a DMM unit to be eligible to participate in allocation interviews.

Finally, the Exchange proposes to delete the heading of Rule 103B(III)(A)(3), which is currently ''Issuer's Selection of DMM Unit,'' and subpart (a). The text of current Rule 103B(III)(A)(3)(a) would become the text of new Rule 103(III)(A)(3) and would be amended to replace references to ''shall'' with ''will'' in two places and ''shall then'' with ''will'' in another.

Rule 103B(III)(B)—Exchange Selection of DMM Unit by Delegation

Rule 103B(III)(B) is currently titled ''DMM Unit Selected by the Exchange'' and sets forth the second allocation option, which is selection of a DMM unit by the Exchange by delegation from the issuer.

The Exchange proposes to delete the current title and replace it with ''Exchange Selection of DMM Unit by Delegation'' to more accurately delineate the second option. As discussed below, the Exchange proposes various changes to Rule 103B(III)(B) to further delineate selection of a DMM unit based on delegated authority from the issuer and distinguish it from direct issuer selections under Rule 103B(III)(A).

The Exchange proposes to amend subsection (B)(1) to remove the clause providing that ESP selection of a DMM unit be ''based on a review of all information available to the issuer.'' The proposed change would enable the ESP to consider confidential statistical or market quality data for each eligible DMM unit that is only available to the Exchange. The Exchange believes that enabling the ESP, which as discussed below would be composed of Exchange staff only, to consider such information in its selection of a DMM unit on behalf of an issuer would facilitate more informed and objective decisions and would expedite the allocation, and ultimately the trading, of securities on the Exchange.

Relatedly, the Exchange proposes to reduce the size of the ESP to three Exchange employees designated by the Chief Executive Officer in order to streamline the ESP selection process and the operations of the ESP itself. The Exchange believes that limiting the ESP to Exchange employees would be appropriate given that the ESP would have access to highly confidential statistical or market quality data about DMM firms that would be inappropriate to share with non-Exchange employees.

Further, the second paragraph of current Rule 103B(III)(B)(1) would become Rule 103B(III)(B)(2). The Exchange proposes to specify in this provision that the ESP would select the DMM unit and remove the clause providing that the ESP select the DMM unit ''pursuant to the provisions of 103B(III)(A) above'' as unnecessary.

The second paragraph of current Rule 103B(III)(B)(1) would become Rule 103B(III)(B)(3). The Exchange proposes to remove the clause providing that tie votes are decided by the CEO of the Exchange or his or her designee as unnecessary given that the proposed three-person ESP could not deadlock. The Exchange also proposes non-substantive changes to the remainder of this paragraph to clarify that selection of the ESP selects the DMM unit and to replace ''shall'' with ''will'' in three places.

Current Rule 103B(III)(B)(2), governing the DMM one-year obligation, would become Rule 103B(III)(C). The first sentence would be deleted as unnecessary in order to streamline the Rule. The text of the Rule would also be amended to replace ''shall be'' with ''with'' before ''required.''

Finally, current Rule 103B(III)(B)(3), governing foreign listing considerations, would become Rule 103B(III)(D).

Rule 103B(VI)—Policy Notes

The Exchange proposes the following changes to Rule 103B(VI).

First, Rule 103B(VI)(F) (Allocation of Group of Closed-End Management Investment Companies) would be amended to specify that an issuer listing additional funds within nine months from the initial listing may select a different DMM unit from the group of eligible DMM units that the issuer interviewed or reviewed in the allocation process. The current Rule only references DMM units that the issuer has ''interviewed.'' Including ''or reviewed'' in the proposed Rule would explicitly cover allocations made by delegation to the Exchange under option two where an issuer reviewed but may not have formally interviewed a DMM unit.

Second, Rule 103B(VI)(G) (Allocation Freeze Policy) would be amended to remove outdated references to Exchange Rules 475 or 476, which have been replaced by the Rule 8000 and 9000 Series references in the Rule. Further, the Exchange proposes to replace the two outdated references to ''specialty stock'' with ''DMM security.''[9]

Finally, the Exchange proposes to amend Rule 103B(VI)(H) (Allocation

[8] *See* Rules 2(j)—Equities and 98(b)(1)—Equities.

[9] As defined in Rule 98(b)(2)—Equities, the term ''DMM securities'' means any securities allocated to the DMM unit pursuant to Rule 103B or other applicable rules.

Sunset Policy) to extend the period an allocation decision remains binding on an IPO listing from twelve to eighteen months of such decision. The proposed change would provide listing issuers with greater flexibility when an IPO is postponed before being referred for allocation through the allocation process pursuant to NYSE MKT Rule 103B (III).

The Exchange also proposes to amend the Rule to cover the contingency where the individual DMM selected by an issuer to trade its securities is no longer with the selected DMM unit during the period that allocation decisions remain effective. The Exchange proposes to permit a company in that circumstance to choose whether to stay with the selected DMM unit or be referred to allocation. Further, the Exchange proposes to provide the company with the choice of interviewing a replacement DMM from that DMM unit prior to deciding whether to stay with the selected DMM unit or be referred to allocation. Finally, the Exchange proposes to replace one reference to ''shall'' in the last sentence of the Rule with ''will.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, as follows.

The Exchange believes that the proposed amendments to Rule 103B(III)(A)(1) to provide that issuers interview four DMMs rather than two would promote just and equitable principles of trade because increasing the number of DMMs participating in the issuer allocation process would increase competition to provide services to issuers, and will provide the issuer with more choice in the selection of its DMM. Additionally, the Exchange believes that the proposal is designed to remove impediments to, and perfect the mechanism of a free and open market and a national market system, because it would lead to increased competition without being overly burdensome on issuers and would provide issuers with greater choice in the selection of a DMM unit. The Exchange believes that the increase in competition would also provide DMM units with a greater incentive to perform optimally.

The Exchange believes that the proposed amendments to Rule 103B(III)(A)(2)(b) to permit senior officials at issuers to designate a representative to attend DMM interviews would remove impediments to, and perfect the mechanism of a free and open market, by allowing issuers to more efficiently manage the interview process and prevent scheduling conflicts from unduly delaying interviews and the assignment of securities to DMM units, which ultimately facilitates the fair and orderly trading in the subject security.

The Exchange believes that the additional proposed amendments to Rule 103B(III)(A)(2)(b) to eliminate the cap on the number of DMM representatives that can participate in issuer interviews, making participation by representatives of the DMM units in such interviews mandatory, and permitting employees of a member organization operating a DMM to attend allocation interviews, is designed to remove impediments to, and perfect the mechanism of a free and open market, because it would give issuers greater exposure to management and other staff at the proposed DMM units and provide them with more information about the firms during the interview, thus enhancing the value of the interviews for issuers and facilitating their choice of DMM.

The Exchange believes that the proposed amendments to Rule 103B(III)(B)(1) to remove the requirement that the ESP base its review on information available to the issuer would remove impediments to, and perfect the mechanism of a free and open market, by enabling the ESP consider confidential statistical or market quality data for each eligible DMM unit that is only available to the Exchange, thereby facilitating more informed and objective decisions by the ESPs on behalf of issuers. Similarly, the Exchange believes that the proposed amendments to Rule 103B(III)(B)(1) reducing the size of the ESP to three Exchange employees designated by the Chief Executive Officer would streamline and facilitate the process of assigning securities to DMM units by allowing for more flexibility in composing the ESP, which ultimately facilitates and expedites the allocation and ultimately the trading of securities on the Exchange.

The Exchange believes that the amendments to Rule 103B(VI)(H) extending the sunset period from twelve to eighteen months will foster cooperation and coordination with person engaged in facilitating securities transactions and will remove impediments to a free and open market because it recognizes that all IPOs may not be brought to market in a twelve month period and avoids repeating administrative steps in the listing process, thereby promoting efficient use of the Exchange's resources. The proposed rule change also remove impediments to, and perfect the mechanism of a free and open market, by providing issuers with a greater opportunity for input in the allocation process.

Finally, the Exchange's proposal to make various technical, non-substantive changes to the text of Rules 103B(III) and (VI)—renaming headings and section renumbering, replacing ''shall'' with ''will,'' deleting redundant and unnecessary clauses, adding clarifying text and updated references, and replacing outdated references—adds clarity and transparency to the Exchange's Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would increase competition among DMM units by allowing more DMM units to participate in the interview process and provide DMM units with a greater incentive to perform optimally potentially and enhance the quality of the services DMMs provide to issuers. Further, the Exchange believes that the proposed changes would not be burdensome to issuers. Further, even assuming an increase in the burden on issuers during the allocation process resulting from the proposed changes, the Exchange believes that any such increased burden will be small relative to the benefits that additional competition between DMM units may provide. Issuers could, moreover, permit the Exchange to select the DMM unit pursuant to the process found in NYSE MKT Rule 103B(III)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow it to promptly harmonize its rule with recently adopted changes to NYSE Rule 103B. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to harmonize its rules, without undue delay, with both NYSE Rule 103B and Exchange Rule 7.25E,[18] which should help to alleviate potential confusion. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2017–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–27 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10592 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See supra* note 4 and accompanying text.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80724; File No. SR–PEARL–2017–22]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX PEARL Rules 503 and 515

May 18, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2017, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 503, Openings on the Exchange, and Rule 515, Execution of Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to adopt new rule text clarifying the treatment of orders that remain in the System [3] after the completion of the Opening Process.[4] Additionally, the Exchange proposes to amend Exchange Rule 515 by removing the provision which states that when the System opens a series for trading by disseminating the Exchange's best bid and offer, non-routable orders, or Do Not Route (''DNR'') orders,[5] that are in the System and that cross the ABBO,[6] will be cancelled and not included in the Managed Interest Process.[7]

Exchange Rule 503 provides that the Opening Process may open a series for trading on the Exchange (i) where there is a possible trade on the Exchange (''opening on a trade''); and (ii) where there is no possible trade on the Exchange (''opening on a quote''). Exchange Rule 503(b)(2) discusses the Opening Process when the series opens on a trade. More specifically, Rule 503(b)(2)(iii) discusses how the Exchange handles unexecuted orders that remain in the System after the conclusion of the Opening Process, stating that, ''[s]uch orders will be handled . . . in time sequence, beginning with the order with the oldest time stamp and may, in whole or in part, be placed on the Book, cancelled, executed, managed in accordance with Rule 515, or routed in accordance with Rule 529.''

Exchange Rule 503(b)(3) discusses the Opening Process when there is no possible trade on the Exchange, or when the series opens on a quote. However, this rule is silent on how orders that remain in the System after the conclusion of the Opening Process are handled. The Exchange proposes to adopt new rule text in Rule 503(b)(3) similar to that of Rule 503(b)(2)(iii) to codify existing behavior and explicitly state that, ''[o]rders in the System will be handled at the conclusion of the Opening Process in time sequence, beginning with the order with the oldest time stamp and may, in whole or in part, be placed on the Book, cancelled, executed, managed in accordance with Rule 515, or routed in accordance with Rule 529.'' This proposed amendment provides consistency in the Exchange's rules concerning the handling of unexecuted orders at the conclusion of the Opening Process.

Additionally, the Exchange proposes to eliminate paragraph (vi) in its entirety from Exchange Rule 515(d)(2) which currently states that when the System opens without an opening transaction, and instead opens by disseminating the Exchange's best bid and offer among quotes and orders that exist in the System at that time as described in Rule 503(b)(3), non-routable orders then in the System that cross the ABBO will be cancelled and are not included in the Managed Interest Process. Proposed Rule 503(b)(3) provides that when the series opens on a quote, any orders, including non-routable orders, that remain in the System at the conclusion of the Opening Process are re-introduced in time priority, oldest first. The proposed rule change provides that orders remaining in the System at the conclusion of the Opening process, including non-routable orders, will be included in the Managed Interest Process under Rule 515, as described below. Therefore, current paragraph (vi) of Exchange Rule 515(d)(2) is no longer necessary, and may be removed from the rule.[8]

The Exchange believes that the codification of the treatment of orders that remain in the System at the completion of the Opening Process reflects the Exchange's intention to provide uniform treatment for all non-routable orders that remain in the System after the Opening Process concludes. Additionally, the proposed treatment of non-routable orders that cross the ABBO when the series opens on a quote, aligns to the current treatment of non-routable orders that cross the ABBO when the series opens on a trade, in that these orders will be subject to the Managed Interest Process.

The Exchange notes that certain MIAX PEARL Rules were based upon the rules of the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX Options''), and that current MIAX PEARL Rule 515(d)(2)(iv) [sic] is identical (save for an internal rule reference) to MIAX Options Rule 515(c)(1)(ii)(B). However, when the MIAX Options Exchange opens on a trade, orders that cross the opening price are cancelled,[9] whereas on MIAX PEARL, orders that cross the opening price are re-introduced in time priority, and may be included in the Managed Interest Process. The Exchange's proposal to amend its rule is designed to provide consistent treatment of non-routable orders that remain in the System after the conclusion of the Opening Process on MIAX PEARL.

The Managed Interest Process for Non-Routable Orders described in Rule 515 provides that if the limit price of an order locks or crosses the current opposite side NBBO [10] and the PBBO [11] is inferior to the NBBO, the System will display the order one Minimum Price Variation (''MPV'') [12] away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's Book price will continuously re-price to lock the new NBBO and the managed order's displayed price will continuously re-price one MPV away from the new NBBO until (A) the order has traded to and including its limit price, (B) the order has traded to and including its price protection price limit at which time any remaining contracts are cancelled, (C) the order is fully executed or (D) the order is cancelled.[13]

This proposal should eliminate any investor confusion arising from the cancellation of some non-routable orders versus the management of others, depending upon whether the Exchange opened on a quote or a trade respectively. The proposed rule change should also assist market participants in making decisions concerning order routing by simplifying and clarifying the relationship between the Exchange's

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of Securities. *See* Exchange Rule 100.

[4] *See* Exchange Rule 503(a)(1).

[5] A Do Not Route or ''DNR'' order is an order that will never be routed outside of the Exchange regardless of the prices displayed by away markets. A DNR order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order will be handled in accordance with the Managed Interest Process described in Rule 515(d)(2). *See* Exchange Rule 516.

[6] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[7] *See* Exchange Rule 515(d)(2).

[8] The Commission notes that elimination of paragraph (vi) from Exchange Rule 515(d)(2) would allow non-routable orders then in the System that cross to ABBO to be placed on the Book, cancelled, executed, managed in accordance with Rule 515, or routed in accordance with Rule 529 when the system opens with a quote.

[9] *See* MIAX Options Rule 503(f)(2)(vii)(B)(5).

[10] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[11] The term ''PBBO'' means the best bid or offer on the PEARL Exchange. *See* Exchange Rule 100.

[12] *See* Exchange Rule 510.

[13] *See* Exchange Rule 515(d)(2)(ii).

Opening Process and the Managed Interest Process for Non-Routable Orders. Additionally, the proposed change provides consistency in the Exchange's Rules concerning orders that remain in the System at the conclusion of the Opening Process.

2. Statutory Basis

MIAX PEARL believes that its proposed rule change is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal codifying the Exchange's handling of orders after the Opening Process is complete promotes transparency and clarity in the Exchange's rules. The transparency and accuracy resulting from the codification of this functionality is consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, by accurately describing the steps taken by the System when a series opens on a quote and on a trade.

The Exchange believes its proposal to provide equal treatment to non-routable orders that remain in the System after the conclusion of the Opening Process to be one that protects investors and the public interest by eliminating the potential for confusion that could arise as a result of non-routable orders that cross the ABBO being cancelled when the series opens on a quote, while non-routable orders that cross the ABBO remain in the System and are subject to the Managed Interest Process when the series opens on a trade.

The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System.

MIAX PEARL participants should have a better understanding of the Exchange's treatment of orders remaining in the System at the conclusion of the Opening Process. The codification and clarification of the System's functionality is designed to promote just and equitable principles of trade by providing a clear and objective description to all participants of how orders will be handled, and should assist investors in making decisions concerning their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule changes will impose any burden on intra-market competition as the Rules apply equally to all Exchange Members.

The Exchange does not believe that the proposed rule changes will impose any burden on intra-market competition as the proposal is one that promotes order handling efficiency on the Exchange.

For the reasons stated, the Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange states that a recent rule change to permit Post-Only Orders [20] to participate in the Opening Process became operative on the Exchange on May 3, 2017.[21] The Exchange represents that this change may result in an increase in the number of non-routable orders in the System at the conclusion of the Opening Process, and these orders may be cancelled under the current rule. The Exchange believes that the proposed rule change may reduce potential confusion by providing consistent treatment to non-routable orders when the Exchange opens on a trade or a quote. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See* Exchange Rule 516(j). Post-Only Orders are non-routable. *Id.*

[21] *See* Securities Exchange Act Release No. 80384 (April 6, 2017), 82 FR 17700 (April 12, 2017) (SR–PEARL–2017–16).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2017–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2017–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2017–22 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10593 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80722; File No. SR–GEMX–2017–13]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees To Offer the Historical GEMX Open/Close Trade Profile

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for each GEMX-listed option on both an intraday and end-of-day basis, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis. The data provided with this product is similar to the historical data provided with the ISE Open/Close Trade Profile products.[3] The Exchange is prepared to offer this product upon filing.

The historical GEMX Open/Close Trade Profile, available to both members and non-members, will provide subscribers with the ability to analyze trade and volume data for options and create and test trading models and analytical strategies. The service will provide over 80 fields of data for GEMX-listed options, which will include an ''Origin Code'' [4] identifying the type of trader participating in a transaction; data on opening buys and sells and closing buys and sells; [5] trading volume and number of trades information summarized by day and series; a code indicating the degree to which a series is ''in'' or ''out'' of the ''money''; [6] the

[3] Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday); *see also* Securities Exchange Act Release 56254 (August 15, 2007) 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70).

[4] The ''Origin Code'' identifies the type of trader involved in a transaction: Customer, Professional Customer, Firm or Market Maker. ''Customer'' includes both retail and institutional customers. A ''Professional Customer'' is a high-activity customer that enters into more than 390 orders per day over the course of a one-month period. A ''Firm'' is a broker-dealer trading in its own proprietary account or on behalf of another broker-dealer. A ''Market Maker'' is a broker-dealer that assumes the risk of holding a position in a series to facilitate trading.

[5] An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

[6] The degree to which a series is ''in'' or ''out'' of the ''money'' will be identified according to the following five levels of ''moneyness'': (i) ''Deep in the Money'' means that the strike price of this option is more than 12% lower than the price of the underlying security if it is a call or more than 12% higher if it is a put; (ii) ''In the Money'' means that the strike price of this option is within the range of 5%–12% lower than the price of the underlying security if it is a call or within the range of 5%–12% higher if it is a put; (iii) ''At the Money'' means that the strike price of this option is within the range of 5% higher or lower than the price of the underlying security; (iv) ''Out of the Money'' means that the strike price of this option is within the range of 5%–12% higher than the price of the underlying security if it is a call or 5%–12% lower if it is a put; and (v) ''Deep out of the

Continued

number of days to expiration; an indication of the degree to which there is ''Open Interest'' [7] for each series; and a comparison of the volume of trading at GEMX relative to the industry as a whole. The data will help subscribers understand the market, identifying, for example, the types of market participants—Customers, Professional Customers, Firms or Market Makers—trading in certain options or engaging in particular trading strategies.

Requests for end-of-day data will be charged $400 per request per month, and requests for intraday data (available in 10 minute increments) will be charged $750 per request per month. Historical data is available starting in August 2013.

The proposed rule change is fair and reasonable and will increase transparency in the market by making previously unavailable data on GEMX-listed options available to both members and non-members. This newly-available data will allow firms to create and test trading models and analytical strategies that may be used to improve market performance.

The proposed fees are entirely optional in that they apply only to firms that elect to purchase these products. The proposed changes do not impact the cost of any other GEMX product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [11] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [13]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the creation of the historical GEMX Open/Close Trade Profile product is reasonable and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. The proposed changes will increase transparency by allowing firms currently unable to access the information contained in the GEMX Open/Close Trade Profile the ability to analyze option trade and volume data and create and test trading models and analytical strategies. The proposed fees, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other options exchanges.[15] The proposed fees are not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated subscribers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will amend the Exchange's Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis. End-of-day data will be available for $400 per request per month, and intraday data will be available for $750 per request per month.

GEMX market data fees are constrained by competition among exchanges and other entities seeking to attract order flow, and the existence of substitutes that are offered, or may be offered, by other entities. Order flow is the ''life blood'' of the exchanges. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade, as demonstrated by the proliferation of new options exchanges such as EDGX Exchange and MIAX Options within the last four years. Each options exchange is permitted to produce proprietary data products.

The markets for order flow and proprietary data are inextricably linked: A trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with GEMX and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the prospective customer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products.

The price of options data is also constrained by the existence of multiple substitutes offered by a number of entities, and non-proprietary data disseminated by the Options Price Reporting Authority, LLC (''OPRA'').

Money'' means that the strike price of this option is more than 12% higher than the price of the underlying security if it is a call or more than 12% lower if it is a put.

[7] ''Open Interest'' is the total number of outstanding contracts for each series across all options exchanges for the trade date of the file.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[12] *See NetCoalition,* at 534–535.

[13] *Id.* at 537.

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] The Exchange notes that the fees for the proposed product are less than the fees for similar products sold by the Nasdaq ISE exchange. *See* Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday).

OPRA is a securities information processor that disseminates last sale reports and quotations, as well as the number of options contracts traded, open interest and end-of-day summaries. Many customers that obtain information from OPRA do not also purchase proprietary data, but in cases in which customers buy both products, they may shift purchasing decisions based on price changes. OPRA constrains the price of proprietary data products on options exchanges because no customer would pay an excessive price for these products when they already have data from OPRA. Similarly, no customer would pay an excessive price for Exchange data when they have the ability to obtain similar proprietary data from other exchanges. It is not necessary that products be identical in order to be reasonable substitutes for each other.

For these reasons, the competition for order flow and the existence of multiple substitutes will constrain prices for the GEMX Trade Profile product. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can immediately offer subscribers the historical GEMX Open/Close Trade Profile. The Exchange represents that waiver of the 30-day operative delay would allow it to provide data to customers who have expressed a specific interest in purchasing it. The Exchange also represents that the data is purely historical and only of use to create and test trading models and analytical strategies, similar data is already being provided by the ISE, and the purchase of such data is purely optional. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–13 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10590 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80714; File No. SR–BatsBZX–2016–60]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change to Bats BZX Rule 14.13, Company Listing Fees, and to the Bats BZX Fee Schedule

May 18, 2017.

On September 29, 2016, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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 amend (1) the fees set forth in BZX Rule 14.13 applicable to securities listed on the Exchange, and (2) the fee schedule applicable to Members [3] and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c). BZX designated the proposed rule change as immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] On October 14, 2016, the Commission published notice of filing of the proposed rule change and pursuant to Section 19(b)(3)(C) of the Act: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[5] On April 14, 2017, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve or disapprove the proposed rule change.[7] The Commission received three comment letters on the proposal.[8] On May 17, 2017, the Exchange withdrew the proposed rule change (SR–BatsBZX–2016–60).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10582 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* BZX Rule 1.5(n).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 79103, 81 FR 72624 (Oct. 20, 2016).

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 80461, 82 FR 18681 (Apr. 20, 2017). The Commission designated June 17, 2017, as the date by which it should approve or disapprove the proposed rule change.

[8] *See* letter to Brent J. Fields, Secretary, Commission, from Kyle Murray, Assistant General Counsel, Bats Global Markets, Inc., dated November 22, 2016; letter to Brent J. Fields, Secretary, Commission, from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, Inc., dated December 20, 2016; and letter to Brent J. Fields, Secretary, Commission, from Andrew Madar, Senior Associate General Counsel, NASDAQ Stock Market LLC, dated January 27, 2017. Comment letters are available at: *https://www.sec.gov/comments/sr-batsbzx-2016-60/batsbzx201660.shtml.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17a–11. SEC File. No. 270–94, OMB Control No. 3235–0085.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a–11 (17 CFR 240.17a–11) under the Exchange Act on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels.

To ensure the provision of these types of notices to the Commission, Rule 17a–11 requires every national securities exchange or national securities association to notify the Commission when it learns that a member broker-dealer has failed to send a notice or transmit a report required under the Rule.

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

The Commission expects to receive 253 notices from broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems and ten notices each year from national securities exchange or national securities association notifying it that a member broker-dealer has failed to send the Commission a notice or transmit a report required under the Rule. The Commission expects that it will take approximately one hour to prepare and transmit each notice.

Rule 17a–11 also requires broker-dealers engaged in securities lending or repurchase activities to either: (1) File a notice with the Commission and their DEA whenever the total money payable against all securities loaned, subject to a reverse repurchase agreement or the contract value of all securities borrowed or subject to a repurchase agreement, exceeds 2,500% of tentative net capital; or, alternatively, (2) report monthly their securities lending and repurchase activities to their DEA in a form acceptable to their DEA.

The Commission estimates that, annually, six broker-dealers will submit the monthly stock loan/borrow report. The Commission estimates each firm will spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to prepare and send the report or to prepare the information for the FOCUS report (as required by the firm's DEA, if applicable). Therefore, the Commission estimates the total annual reporting burden arising from this section of the amendment will be approximately 72 hours.[1]

Therefore, the total annual reporting burden associated with Rule 17a–11 is approximately 335 hours.[2]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

[1] 6 broker-dealers × 12 hours per year = 72 hours.

[2] 253 + 10 + 72.

estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 19, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10618 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80715; File No. SR–ISE–2017–45]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Section X of the ISE Fee Schedule

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') at Section X of the ISE Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee schedule to establish the fees for Industry Members related to the CAT NMS Plan.

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[4] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[5] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[6] and Rule 608 of Regulation NMS thereunder,[7] the CAT NMS Plan.[8] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[11] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[12] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[13] Accordingly, the Exchange submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed the proposed rule change on May 3, 2017 under File No. SR–ISE–2017–40. The Exchange subsequently withdrew that filing on May 12, 2017 and filed this proposed rule change.

[4] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

[5] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[10] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[11] The Plan also serves as the limited liability company agreement for the Company.

[12] Section 11.1(b) of the CAT NMS Plan.

[13] *Id.*

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below) [14]

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. ISE will issue an information circular (''Circular'') to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [15] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [16]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [17] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory

[14] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

[15] Approval Order at 84796.

[16] *Id.* at 84794.

[17] *Id.* at 84795.

facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[18]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[19] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[20] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [21]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[22] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[23] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[24] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[25]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [26] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[27] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[28]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[29] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[30]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [31] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [32]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be

[18] *Id.* at 84794.

[19] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[20] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[21] Approval Order at 84796.

[22] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[23] Approval Order at 85005.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 84796.

[27] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[28] Section 11.3(b) of the CAT NMS Plan.

[29] Section 11.2(c) of the CAT NMS Plan.

[30] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[31] Section 11.2(e) of the CAT NMS Plan.

[32] Approval Order at 84796.

distributed to the Participants as profits.[33] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [34] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [35]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. ISE notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating

[33] *Id.* at 84792.

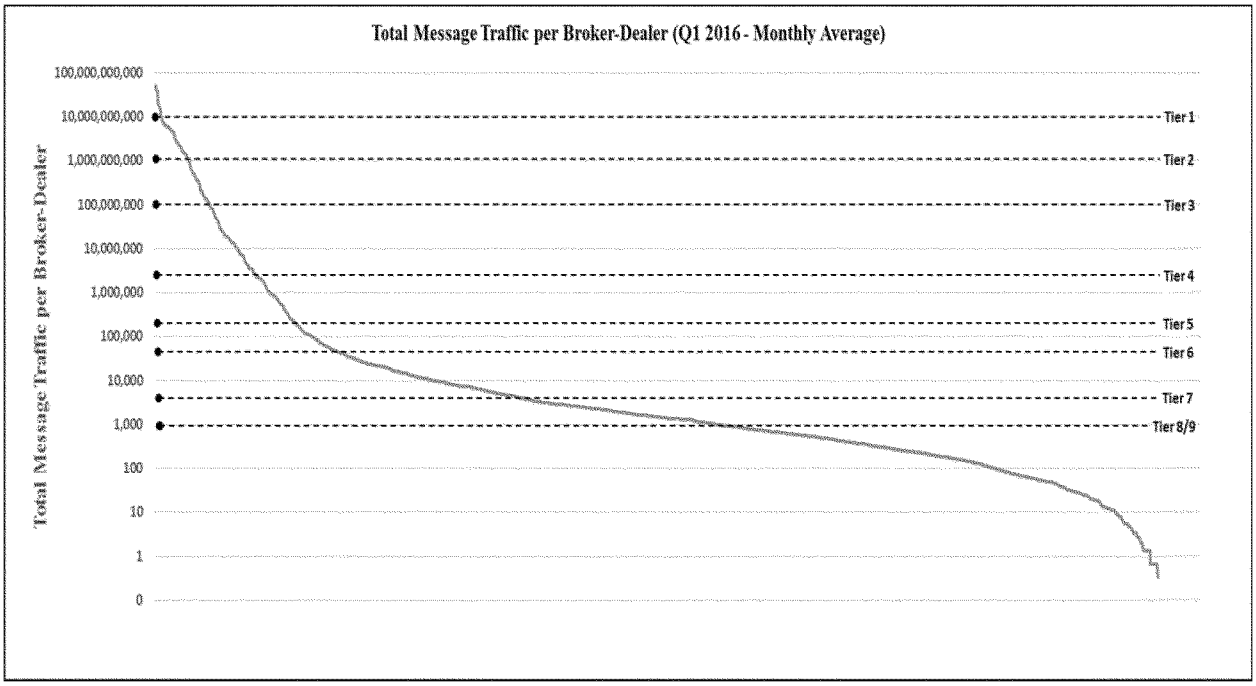
[34] 26 U.S.C. 501(c)(6).

[35] Approval Order at 84793.

Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry member tier	Monthly average message traffic per industry member (Orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[36] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[37] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[38]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has

[36] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (March 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[37] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[38] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' [39]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[40]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery,

[39] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[40] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[41]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[42] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:[43]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually[44]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740

[41] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

[42] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[43] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[44] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [44]
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [45]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry member tier	Estimated number of industry members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65

[45] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

[46] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

Industry member tier	Estimated number of industry members
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{2{,}560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 25\%\ [\%\ \text{of Tier 1 Equity EVs}] = 13\ [\text{Estimated Tier 1 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\text{\% of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$21{,}125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 75\%\ [\%\ \text{of Tier 2 Equity EVs}] = 40\ [\text{Estimated Tier 2 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\text{\% of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$12{,}940}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES ("EV")

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated Number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 75\%\ [\%\ \text{of Tier 1 Options EVs}] = 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 20\%\ [\text{\% of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 25\%\ [\%\ \text{of Tier 2 Options EVs}] = 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 5\%\ [\text{\% of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13{,}204}$$

Traceability of Total CAT Fees

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1	13	253,500	3,295,500
	Tier 2	40	155,280	6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1	11	230,460	2,535,060
	Tier 2	4	158,448	633,792
Total		15		3,168,852
Total				50,709,036
Excess [47]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [48]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total Fees by EV Complex
Execution Venue Complex 1	• Tier 1 (x2) • Tier 2 (x1)	• Tier 1 (x4) • Tier 2 (x2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (x2)	• Tier 1 (x2) • Tier 2 (x1)	1,863,801
Execution Venue Complex 3	• Tier 1 (x2) • Tier 2 (x2)	• Tier 1 (x2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry member complex	Listing of industry member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (x2)	• Tier 2 (x1)	$963,300
Industry Member Complex 2	• Tier 1 (x1) • Tier 4 (x1)	• Tier 2 (x3)	949,674
Industry Member Complex 3	• Tier 1 (x1) • Tier 2 (x1)	• Tier 2 (x1)	883,888

[47] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[48] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

INDUSTRY MEMBER COMPLEXES—Continued

Industry member complex	Listing of industry member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 4	• Tier 1 (x1) • Tier 2 (x1) • Tier 4 (x1)	N/A	808,472
Industry Member Complex 5	• Tier 2 (x1) • Tier 3 (x1) • Tier 4 (x1) • Tier 7 (x1)	• Tier 2 (x1)	796,595

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. ISE will issue a Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[49] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[50] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then ISE will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. ISE notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, ISE notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

[49] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[50] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

ISE proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on ISE's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 900 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

ISE proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of industry members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	$19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[51] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

[51] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. ISE will provide Industry Members with details regarding the manner of payment of CAT Fees by Circular.

Although the exact fee collection system and processes for CAT fees has not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[52]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, ISE proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[53] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[54] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

ISE believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [55] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, ISE believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

ISE believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, ISE believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, ISE believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or

[52] Section 11.4 of the CAT NMS Plan.

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(4) and (5).

[55] Approval Order at 84697.

between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, ISE believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [56] requires that SRO rules not impose any burden on competition that is not necessary or appropriate. ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ISE notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist ISE in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, ISE believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, ISE does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, ISE believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[57] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2017–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–45, and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10583 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[56] 15 U.S.C. 78f(b)(8).

[57] 15 U.S.C. 78s(b)(3)(A)(ii).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80717; File No. SR–FICC–2017–013]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Government Securities Division CCIT Members, and Netting Members That Engage in CCIT Transactions

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the *Fee Structure* in the Government Securities Division (''GSD'') Rulebook (''GSD Rules'') [5] in order to establish fees for (i) CCIT Members, including those that participate through a Joint Account, and (ii) Netting Members that engage in CCIT Transactions.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC has established the CCIT™ Service, which enables Netting Members that participate in the GCF Repo Service to engage in CCIT Transactions with CCIT Members and submit those transactions to FICC for clearing.[6] Accordingly, FICC is proposing rule changes to amend the *Fee Structure* in the GSD Rules in order to establish fees for (1) CCIT Members, including those that participate through a Joint Account,[7] and (2) Netting Members that engage in CCIT Transactions, as further described below.

Section I.D (Trade Comparison Fees, Modifications and Cancellations)

Section I.D of the *Fee Structure* (Trade Comparison Fees, Modifications and Cancellations) would be amended to exclude CCIT Transactions from the 25 cents per request charge for modification or cancellation of either side of a trade or Repo Transaction, consistent with the treatment of GCF Repo Transactions. This section also would be amended to provide that the charge to a Member for the entry of a request by such Member to modify or cancel a side of a CCIT Transaction would be 5 cents per 50 million of par value, consistent with the treatment of GCF Repo Transactions.

Section I.E (Trade Comparison Fees, Locked-In Trade Data)

Section I.E of the *Fee Structure* (Trade Comparison Fees, Locked-In Trade Data) would be amended to provide that the ''Trade Submission'' fee associated with the submission of trade data to FICC on a Locked-In Trade basis would not apply to CCIT Transactions, consistent with the treatment of GCF Repo Transactions. This section also would be amended to provide that, consistent with the treatment of GCF Repo Transactions, non-Inter-Dealer Broker Members would be subject to a onetime recording fee for the processing and reporting by FICC of a CCIT Transaction submitted to FICC on a Locked-In Trade basis in the amount of 7 cents per million gross dollar amount of such CCIT Transaction (with a minimum charge of $2.50).

Section I.F (Trade Comparison Fees, CCIT Transactions Submitted for Bilateral Comparison)

A new Section I.F of the *Fee Structure* (Trade Comparison Fees, CCIT Transactions Submitted for Bilateral Comparison) would be added by this filing to provide that, consistent with the treatment of GCF Repo Transactions and CCIT Transactions submitted to FICC on a Locked-In Trade basis, CCIT Members and Netting Members would be subject to a onetime recording fee for the processing and reporting by FICC of a CCIT Transaction submitted to FICC on a bilateral basis in the amount of 7 cents per million gross dollar amount of such CCIT Transaction (with a minimum charge of $2.50).

Section III.A.1 (Netting Fee and Charges, Netting Fee)

Section III.A.1 of the *Fee Structure* (Netting Fee and Charges, Netting Fee) would be amended to provide that the fees applied to netted Compared Trades, Start Legs of Repo Transactions, Close Legs of Repo Transactions, Fail Deliver Obligations and Fail Receive Obligations on a per side and par value basis would not apply to CCIT Transactions, consistent with the treatment of GCF Repo Transactions.

Section III.D.4 (Netting Fee and Charges, Clearance Charges)

Section III.D.4 of the *Fee Structure* (Netting Fee and Charges, Clearance Charges) describes clearing bank fees and charges incurred by FICC for the services FICC performs in connection with Netting Members' activity. Subsection (c) of this Section III.D.4, which describes The Bank of New York Mellon (''BNY'') fee on each GCF Repo Deliver Obligation that FICC creates from its BNY account, would be amended to provide that, when this BNY fee is assessed on FICC's GCF Repo Deliver Obligations at BNY that are created versus CCIT Members at BNY, the fee would be calculated as 1 basis point per annum on a dollar amount of the underlying CCIT Transactions, and the fee would be passed through to the Dealer Account at BNY of the Netting Member that is the Repo Party to such CCIT Transactions. In addition, in order to distinguish it from the treatment of CCIT Transactions, FICC is proposing to amend this section to state that the fees assessed on FICC's GCF Repo Deliver Obligations that are created versus Netting Members would be allocated to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[6] *See* Securities Exchange Act Release Nos. 80574 (May 2, 2017), 82 FR 21439 (May 8, 2017) (SR–FICC–2017–005) and 80546 (April 27, 2017), 82 FR 20652 (May 3, 2017) (SR–FICC–2017–803).

[7] With respect to CCIT Members participating through a Joint Account, the proposed fees that are the subject of this filing would be applied at the Joint Account level.

Dealer Accounts at BNY and to Dealer Accounts at J.P. Morgan Chase (''JPM'').

Section III.E (Netting Fee and Charges, Repo Transaction Processing Fee)

Section III.E of the *Fee Structure* (Netting Fee and Charges, Repo Transaction Processing Fee) would be amended to exclude CCIT Transactions from the fee imposed on term Repo Transactions that have been compared and netted, but which have not yet settled, consistent with the treatment of GCF Repo Transactions. This section also would be amended to provide that, consistent with the treatment of a GCF Repo Transaction, for a CCIT Transaction that has been compared and netted, but which has not yet settled, a processing fee would be calculated as follows:

(1) For all Netting Members and CCIT Members, a 0.04 basis point charge (*i.e.,* four hundredths of a basis point) would be applied to the gross dollar amount of such CCIT Transaction; and

(2) a 0.08 basis point charge (*i.e.,* 8 hundredths of a basis point) would be applied to the net dollar amount of a Netting Member's or CCIT Member's Collateral Allocation Entitlements and Collateral Allocation Obligations.

These fees would be applied each calendar day, but calculated on an annualized basis, as currently provided in this section.

Section III.G (Netting Fee and Charges, Repo Collateral Substitution Fees)

Section III.G of the *Fee Structure* (Netting Fee and Charges, Repo Collateral Substitution Fees) would be amended to exclude CCIT Transactions from the processing charge associated with repo collateral substitution requests. To be consistent with the treatment of GCF Repo Transactions, FICC is amending this section to state that GCF Repo Transactions would also be excluded from the processing charge associated with repo collateral substitution requests.

Section IV (Minimum Monthly Fee) and Section V (Fees Applicable to Additional Accounts)

Under Sections IV and V of the *Fee Structure* (Minimum Monthly Fee and Fees Applicable to Additional Accounts), CCIT Members would be excluded from the minimum monthly account fees charged to Comparison-Only Members and Netting Members for their primary GSD accounts and fees for any additional accounts they maintain with GSD.

Section VIII (Definition)

Section VIII of the *Fee Structure* (Definition) would be amended to exclude CCIT Transactions from the requirement that, for purposes of the *Fee Structure,* a ''side'' of a trade or transaction, and a Start Leg or a Close Leg of a Repo Transaction, be limited to $50 million increments, consistent with the treatment of GCF Repo Transactions.

Member Impact

Participation in the CCIT Service is voluntary. Institutional cash lenders that wish to become CCIT Members, and Netting Members that wish to participate in the CCIT Service, have an opportunity to review the terms of the CCIT Service and determine if they would like to participate. Choosing to participate in the CCIT Service would subject these entities to all of the rules applicable to the CCIT Service, including the fees reflected in GSD's *Fee Structure* as proposed by this filing.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the GSD Rules ''provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.'' [8] FICC believes the proposed fees are equitably allocated among GSD Members because these fees would only be imposed upon those GSD Members that chose to utilize the CCIT Service. FICC also believes the proposed fees are reasonable because these fees would allow FICC to recover the costs (including pass-through costs from certain third parties) of providing the CCIT Service from those GSD Members that enjoy its benefits. Therefore, FICC believes the proposed fees are consistent with the requirements of Section 17A(b)(3)(D) of the Act.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes the proposed fees may impose a burden on competition by limiting participation in the CCIT Service to institutional cash lenders and Netting Members that are willing to pay the fees associated with their participation in the CCIT Service. However, FICC believes any burden on competition that may result from the proposed fees would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,[9] for the reason described below.

Although the proposal would impose fees on CCIT Members and Netting Members for their use of the CCIT Service, FICC believes that any burden on competition that may result from the proposal would be necessary and appropriate because the proposed fees would provide FICC with the ability to achieve and maintain its operating margin, recover the cost of providing the CCIT Service and also pass through certain third-party fees that FICC would incur in connection with the CCIT Service. Moreover, as described in Section II.(A)1. above, participation in the CCIT Service is entirely voluntary, and, if Netting Members and their institutional counterparties do not wish to pay the fees associated with the service, they would be able to enter into non-cleared tri-party repo transactions in GCF Repo eligible asset classes outside of GSD.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2017–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78q–1(b)(3)(I).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2017–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2017–013 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10585 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80726; File No. SR–MRX–2017–04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Section IV of the MRX Fee Schedule

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') at Section X [sic] of the MRX Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee schedule to establish the fees for Industry Members related to the CAT NMS Plan.

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[4] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[5] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[6] and Rule 608 of Regulation NMS thereunder,[7] the CAT NMS Plan.[8] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[11] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed the proposed rule change on May 3, 2017 under File No. SR–MRX–2017–03. The Exchange subsequently withdrew that filing on May 12, 2017 and filed this proposed rule change.

[4] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

[5] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[10] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[11] The Plan also serves as the limited liability company agreement for the Company.

implemented by the Participants (''CAT Fees'').[12] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[13] Accordingly, the Exchange submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below [14])

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. MRX will issue an information circular (''Circular'') to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [15] and ''reflects a reasonable exercise of the Participants' funding authority to recover the

[12] Section 11.1(b) of the CAT NMS Plan.

[13] *Id.*

[14] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

[15] Approval Order at 84796.

Participants' costs related to the CAT.'' [16]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [17] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[18]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[19] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[20] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [21]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[22] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[23] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[24] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[25]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [26] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[27] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[28]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[29] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[30]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [31] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he

[16] *Id.* at 84794.

[17] *Id.* at 84795.

[18] *Id.* at 84794.

[19] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[20] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.*, an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[21] Approval Order at 84796.

[22] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[23] Approval Order at 85005.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 84796.

[27] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[28] Section 11.3(b) of the CAT NMS Plan.

[29] Section 11.2(c) of the CAT NMS Plan.

[30] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[31] Section 11.2(e) of the CAT NMS Plan.

Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [32]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[33] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.'' [34] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [35]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. MRX notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message

[32] Approval Order at 84796.

[33] *Id.* at 84792.

[34] 26 U.S.C. 501(c)(6).

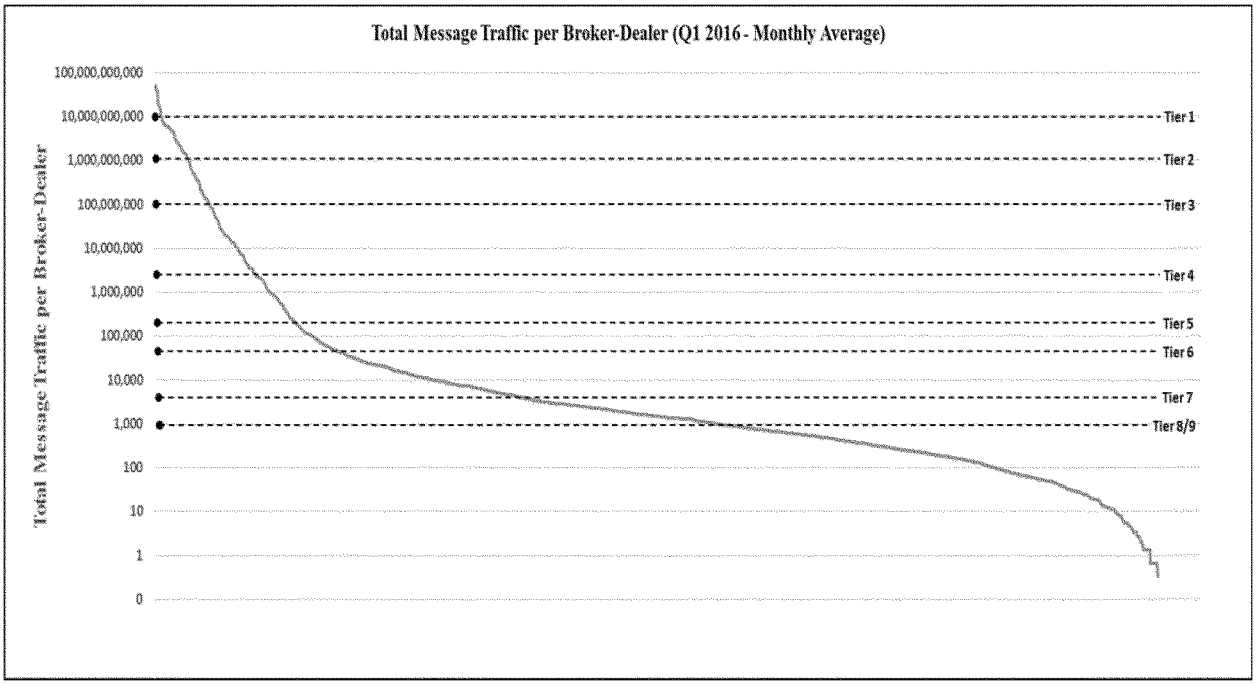
[35] Approval Order at 84793.

traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry Member tier	Monthly average message traffic per Industry Member (orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[36] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[37] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[38]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has

[36] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (March 7, 2016)). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[37] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[38] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' [39]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[40]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery,

[39] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[40] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75

percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[41]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[42] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:[43]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually[44]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

[41] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

[42] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[43] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[44] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [45]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry member tier	Estimated number of industry members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

[45] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

[46] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{2{,}560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue Tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue Tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 25\%\ [\%\ \text{of Tier 1 Equity EVs}] = 13\ [\text{Estimated Tier 1 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\%\ \text{of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$21{,}125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 75\%\ [\%\ \text{of Tier 2 Equity EVs}] = 40\ [\text{Estimated Tier 2 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\%\ \text{of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$12{,}940}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue Tier	Estimated number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 75\%\ [\%\ \text{of Tier 1 Options EVs}] = 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 20\%\ [\%\ \text{of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 25\%\ [\%\ \text{of Tier 2 Options EVs}] = 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 5\%\ [\%\ \text{of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13{,}204}$$

Traceability of Total CAT Fees

Type	Industry Member tier	Estimated number of Members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720

Type	Industry Member tier	Estimated number of Members	CAT fees paid annually	Total recovery
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1 Tier 2	13 40	253,500 155,280	3,295,500 6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1 Tier 2	11 4	230,460 158,448	2,535,060 633,792
Total		15		3,168,852
Total				50,709,036
Excess [47]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [48]

EXECUTION VENUE COMPLEXES

Execution Venue Complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV complex
Execution Venue Complex 1	• Tier 1 (x2) • Tier 2 (x1)	• Tier 1 (x4) • Tier 2 (x2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (x2)	• Tier 1 (x2) • Tier 2 (x1)	1,863,801
Execution Venue Complex 3	• Tier 1 (x2) • Tier 2 (x2)	• Tier 1 (x2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry Member complex	Listing of Industry Member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (x2)	• Tier 2 (x1)	$963,300
Industry Member Complex 2	• Tier 1 (x1) • Tier 4 (x1)	• Tier 2 (x3)	949,674
Industry Member Complex 3	• Tier 1 (x1) • Tier 2 (x1)	• Tier 2 (x1)	883,888
Industry Member Complex 4	• Tier 1 (x1) • Tier 2 (x1) • Tier 4 (x1)	N/A	808,472
Industry Member Complex 5	• Tier 2 (x1) • Tier 3 (x1) • Tier 4 (x1) • Tier 7 (x1)	• Tier 2 (x1)	796,595

[47] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[48] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. MRX will issue a Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[49] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[50] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then MRX will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. MRX notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, MRX notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1

[49] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[50] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

MRX proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on MRX's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 900 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

MRX proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[51] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. MRX will provide Industry Members with details regarding the manner of payment of CAT Fees by Circular.

Although the exact fee collection system and processes for CAT fees has

[51] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[52]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, MRX proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[53] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[54] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

MRX believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [55] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, MRX believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

MRX believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, MRX believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, MRX believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, MRX believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [56] requires that SRO rules not impose any burden on competition that is not necessary or appropriate. MRX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MRX notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist MRX in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities

[52] Section 11.4 of the CAT NMS Plan.

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(4) and (5).

[55] Approval Order at 84697.

[56] 15 U.S.C. 78f(b)(8).

exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, MRX believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, MRX does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, MRX believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[57] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2017–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2017–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2017–04, and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Eduardo A. Aleman,

Assistant Secretary.

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[57] 15 U.S.C. 78s(b)(3)(A)(ii).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80718; File No. SR–ISE–2017–44]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend the Implementation of QCC With Stock Order Functionality Upon Migration to INET

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation of QCC with Stock Order functionality with the migration to Nasdaq INET.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delay the implementation of QCC with Stock Order functionality offered to members on a voluntary basis. QCC with Stock Orders will be temporarily unavailable in symbols that have migrated to the INET architecture as this functionality will be introduced later in the launch of the INET trading system. The QCC with Stock Order is a piece of functionality that facilitates the execution of the stock component of qualified contingent trades in connection with the execution of a Qualified Contingent Cross (''QCC'') Order on the Exchange. Specifically, a QCC with Stock Order is defined as a QCC Order [3] entered with a stock component to be communicated to a designated broker-dealer for execution pursuant to Rule 721(c).[4]

Rule 721(c) and the Supplementary Material thereto describe how the stock component of QCC with Stock Orders are executed. Since QCC Orders represent one component of a qualified contingent trade, each QCC Order must be paired with a stock transaction. When a member enters a QCC Order, the member is responsible for executing the associated stock component of the qualified contingent trade within a reasonable period of time after the QCC Order is executed. QCC with Stock Order functionality is a voluntary piece of functionality that provides members with an automated means of executing the stock component of a qualified contingent trade. Specifically, when a member enters a QCC with Stock Order, a QCC Order is entered on the Exchange. That QCC Order is automatically executed upon entry provided that the conditions of Rule 721(b) are met. If the QCC Order is executed, the Exchange will automatically communicate the stock component to the member's designated broker-dealer for execution. Currently, members that execute the options component of a qualified contingent trade entered as a QCC with Stock Order remain responsible for the execution of the stock component if they do not receive an execution from their designated broker-dealer. Although QCC Orders are eligible for automatic execution, it is possible that the QCC Order may not be executable based on market prices at the time the order is entered. If the QCC Order is not capable of being executed, the entire QCC with Stock Order, including both the stock and options components, is cancelled.

QCC with Stock Order functionality will not initially be available on INET for symbols that have been migrated to that platform. In conjunction with the upcoming migration to INET, the Exchange proposes to temporarily suspend the availability of QCC with Stock Order functionality provided under Rule 721(c) and the Supplementary Material to Rule 721 until a date to be announced by the Exchange via an Options Trader Alert, which date shall occur prior to August 1, 2017. QCC with Stock Orders in symbols that have migrated to INET will be rejected until such time as that functionality is introduced on INET. Specifically, the Exchange has filed and received approval for a proposed rule change to begin the system migration to INET in Q2 of 2017.[5] The migration to INET will be on a symbol-by-symbol basis as will be communicated by the Exchange in a notice to Members.[6] The Exchange proposes to implement QCC with Stock Order functionality on the INET platform during the INET symbol migration. Once QCC with Stock Order functionality is launched on INET, members may utilize this functionality for symbols as they migrate to INET. The Exchange will announce a date, via an Options Trader Alert, when the functionality will be available. At that time, all symbols that have migrated to INET as of that date will be able to utilize the QCC with Stock Order functionality. All other symbols that migrate after that date, if any, would be able to utilize the QCC with Stock Order functionality as they migrate. The QCC with Stock Order functionality will continue to be available on the legacy ISE system until the symbols migrate to INET.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because QCC with Stock Order functionality is currently offered to members on a voluntary basis to assist in their execution of qualified contingent trades. Furthermore, members that execute the options component of a Qualified Contingent Trade entered as a QCC with Stock Order remain responsible for the execution of the stock component if they do not receive an execution from their designated broker-dealer. There is no requirement that members utilize QCC with Stock functionality, and members will continue to be able to enter regular QCC Orders where the exchange does not assist with the execution of the stock component of the trade and the members do so themselves. Specifically, Members would remain able to execute QCC Orders on the INET platform prior to QCC with Stock functionality being turned back on, provided that the member would be responsible for executing the associated stock component of the qualified contingent trade within a reasonable period of time after the QCC Order is executed. Furthermore, the Exchange will continue to offer the QCC with Stock Order functionality on the legacy ISE system until such time as each symbol migrates to INET. The Exchange intends to introduce QCC with Stock Order functionality on INET during the symbol migration, and prior to the rollout of the majority of symbols on

[3] A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 715(j).

[4] *See* Rule 715(t).

[5] *See* Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR–ISE–2017–03) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Amend Various Rules in Connection with a System Migration to Nasdaq INET Technology).

[6] The Exchange will issue an Options Trader Alert prior to the migration and will specify the dates that symbols will migrate to the INET platform. The Exchange is staging the re-platform to provide maximum benefit to its Members while also ensuring a successful rollout. INET is the proprietary core technology utilized across Nasdaq's global markets and utilized on The NASDAQ Options Market LLC (''NOM''), NASDAQ PHLX LLC (''Phlx'') and NASDAQ BX, Inc. (''BX'') (collectively, ''Nasdaq Exchanges''). The migration of ISE to the Nasdaq INET architecture would result in higher performance, scalability, and more robust architecture.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

INET. Based on the Exchange's anticipated symbol rollout, the affected symbols will not include symbols where members typically enter a significant volume of QCC with Stock Orders.[9] The Exchange also notes that it has issued an Options trader Alert providing Members notice of its proposal to delay the QCC with Stock Order functionality during the initial launch of the INET technology until such time as the Exchange announces the availability of the QCC with Stock Order functionality.[10] The Exchange intends to make clear the implementation timeline of this functionality within its rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. No market participant would be able to submit a QCC with Stock Order on INET until such time as the Exchange turns back on the functionality with notice to members. The Exchange believes that notwithstanding the delay of this functionality, ISE will continue to remain a competitive with other options markets. Moreover, Members will still be able to execute QCC Orders on the Exchange using other means to ensure the execution of the stock component of those qualified contingent trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

In its filing, ISE requested that the Commission waive the 30-day operative delay in order to enable the Exchange to launch the new INET system on the schedule previously announced to members. The Commission believes that such waiver is consistent with the protection of investors and the public interest. The Exchange represented that delaying the launch of the INET system could harm members that have relied upon the schedule previously announced by ISE. Moreover, ISE explained that waiving the 30-day operative delay would have limited consequences; members received notice of the proposed change on April 28, 2017, and the Exchange will migrate symbols that have a higher volume of QCC with Stock Orders later in its INET rollout in order to reduce the impact on its members. For these reasons, the Commission believes that proposed rule change will provide clarity to ISE members regarding the availability QCC with Stock Order functionality on the Exchange and designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2017–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–44 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10586 Filed 5–23–17; 8:45 am]

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[9] Of the 3,172 symbols listed on ISE, the Exchange anticipates rolling out approximately 151 symbols prior to introducing QCC with Stock Order functionality on INET.

[10] *See* Options Trader Alert #2017–32.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80719; File No. SR–BOX–2016–48]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Adopt Rules for an Open-Outcry Trading Floor

May 18, 2017.

On November 16, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules for an open-outcry trading floor. The proposed rule change was published for comment in the **Federal Register** on December 05, 2016.[3] The Commission received three comment letters in response to the publication of the Notice.[4] On January 10, 2017, 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 March 05, 2017.[5] On February 21, 2017, the Commission received a response letter from the Exchange, as well as Amendment No. 1 to the proposed rule change.[6] On March 1, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] In response to the OIP, the Commission received five additional comment letters.[8] On May 17, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the original filing, as modified by Amendment No. 1, in its entirety.[9]

Section 19(b)(2) of the Act [10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 05, 2016.[11] June 3, 2017 is 180 days from that date, and August 2, 2017 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment Nos. 1 and 2, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's Response to comments. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates August 2, 2017 as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 (File No SR–BOX–2016–48).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10587 Filed 5–23–17; 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. 79421 (November 29, 2016), 81 FR 87607 (''Notice'').

[4] *See* letters to Brent J. Fields, Secretary, Commission, from Angelo Evangelou, Deputy General Counsel, The Chicago Board Options Exchange, Inc. (''CBOE''), dated January 10, 2017; Steve Crutchfield, Head of Market Structure, CTC Trading Group, LLC (''CTC Trading''), dated December 31, 2016; and Joan C. Conley, Senior Vice President and Corporate Secretary, The Nasdaq Stock Market LLC (''Nasdaq''), dated December 22, 2016.

[5] *See* Securities Exchange Act Release No. 79768, 82 FR 4956 (January 17, 2017).

[6] *See* letter to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, Exchange, received February 21, 2017, and Amendment No. 1, dated February 21, 2017.

[7] *See* Securities Exchange Act Release No. 80134, 82 FR 12864 (March 7, 2017) (''OIP'').

[8] *See* letters to Brent J. Fields, Secretary, Commission, from Angelo Evangelou, Deputy General Counsel, CBOE, dated April 21, 2017; Steve Crutchfield, Head of Market Structure, CTC Trading, dated April 13, 2017; John Kinahan, CEO, Group One Trading, LP, dated April 11, 2017; Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, dated March 28, 2017; and Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, dated March 27, 2017.

[9] *See* Amendment No. 2, dated May 17, 2017, which is being published for notice and comment. *See* Securities Exchange Act Release No. 80720 (May 18, 2017).

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Notice, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80725; File No. SR–PHLX–2017–37]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Section XIV

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2017, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') at Section XIV of the Phlx Pricing Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed the proposed rule change on May 3, 2017 under File No. SR–PHLX–2017–35. The Exchange subsequently withdrew that filing on May 12, 2017 and filed this proposed rule change.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee schedule to establish the fees for Industry Members related to the CAT NMS Plan.

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[4] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[5] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[6] and Rule 608 of Regulation NMS thereunder,[7] the CAT NMS Plan.[8] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[11] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[12] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[13] Accordingly, Phlx submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below[14])

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In

[4] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

[5] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[10] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[11] The Plan also serves as the limited liability company agreement for the Company.

[12] Section 11.1(b) of the CAT NMS Plan.

[13] *Id.*

[14] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. Phlx will issue an information circular (''Circular'') to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [15] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [16]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [17] The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[18]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[19] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[20] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [21]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[22] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[23] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher

[15] Approval Order at 84796.

[16] *Id.* at 84794.

[17] *Id.* at 84795.

[18] *Id.* at 84794.

[19] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[20] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[21] Approval Order at 84796.

[22] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[23] Approval Order at 85005.

tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[24] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[25]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [26] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[27] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[28]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[29] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[30]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [31] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [32]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[33] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.'' [34] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [35]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. Phlx notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry

[24] *Id.*

[25] *Id.*

[26] *Id.* at 84796.

[27] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[28] Section 11.3(b) of the CAT NMS Plan.

[29] Section 11.2(c) of the CAT NMS Plan.

[30] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[31] Section 11.2(e) of the CAT NMS Plan.

[32] Approval Order at 84796.

[33] *Id.* at 84792.

[34] 26 U.S.C. 501(c)(6).

[35] Approval Order at 84793.

Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

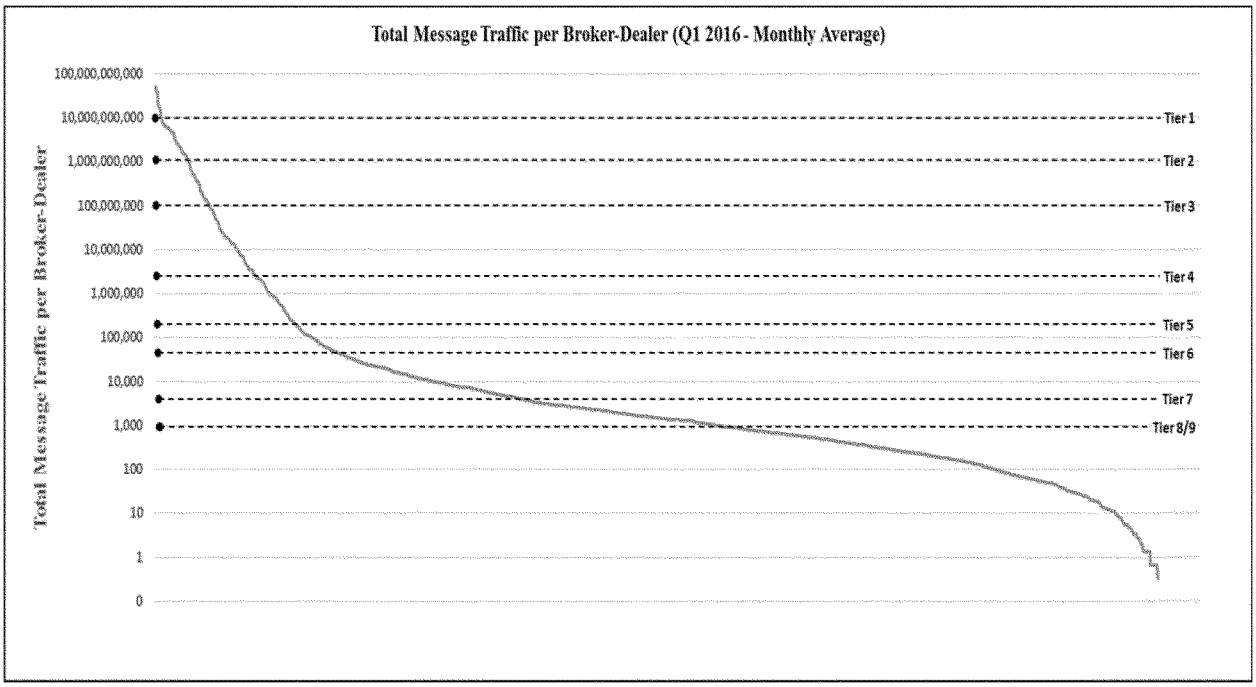
In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned

periodically, as described below in Section 3(a)(1)(H) [sic].



Industry member tier	Monthly average message traffic per industry member (orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and

for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[36] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[37] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[38]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).''[39]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[40]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity

[36] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (March 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[37] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[38] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

[39] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[40] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of

different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires

expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[41]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000

[41] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

Cost category	Cost component	Amount
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[42] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees: [43]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [44]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [45]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

[42] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[43] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[44] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' x 12 months).

[45] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[46] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' x 12 months).

Industry member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{2{,}560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUS ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity execution venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 25\%\ [\%\ \text{of Tier 1 Equity EVs}] = 13\ [\text{Estimated Tier 1 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\text{\% of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$21{,}125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 75\%\ [\%\ \text{of Tier 2 Equity EVs}] = 40\ [\text{Estimated Tier 2 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\text{\% of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$12{,}940}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 75\%\ [\%\ \text{of Tier 1 Options EVs}] = 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 20\%\ [\text{\% of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 25\%\ [\%\ \text{of Tier 2 Options EVs}] = 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 5\%\ [\text{\% of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13{,}204}$$

TRACEABILITY OF TOTAL CAT FEES

Type	Industry Member tier	Estimated number of Members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720
	Tier 9	735	264	194,040
Total		1,631		38,033,484

TRACEABILITY OF TOTAL CAT FEES—Continued

Type	Industry Member tier	Estimated number of Members	CAT fees paid annually	Total recovery
Equity Execution Venues	Tier 1	13	253,500	3,295,500
	Tier 2	40	155,280	6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1	11	230,460	2,535,060
	Tier 2	4	158,448	633,792
Total		15		3,168,852
Total				50,709,036
Excess [47]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [48]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV complex
Execution Venue Complex 1	• Tier 1 (×2) • Tier 2 (×1)	• Tier 1 (×4) • Tier 2 (×2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (×2)	• Tier 1 (×2) • Tier 2 (×1)	1,863,801
Execution Venue Complex 3	• Tier 1 (×2) • Tier 2 (×2)	• Tier 1 (×2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry Member Complex	Listing of Industry Member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (×2)	• Tier 2 (×1)	$963,300
Industry Member Complex 2	• Tier 1 (×1) • Tier 4 (×1)	• Tier 2 (×3)	949,674
Industry Member Complex 3	• Tier 1 (×1) • Tier 2 (×1)	• Tier 2 (×1)	883,888
Industry Member Complex 4	• Tier 1 (×1) • Tier 2 (×1) • Tier 4 (×1)	N/A	808,472
Industry Member Complex 5	• Tier 2 (×1) • Tier 3 (×1) • Tier 4 (×1) • Tier 7 (×1)	• Tier 2 (×1)	796,595

[47] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[48] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. Phlx will issue a Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[49] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[50] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then Phlx will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Phlx notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, Phlx notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1

[49] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[50] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

Phlx proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on Phlx's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 910A (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

Phlx proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[51] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00%	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. Phlx will provide Industry Members with details regarding the manner of payment of CAT Fees by Circular.

Although the exact fee collection system and processes for CAT fees has

[51] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[52]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, Phlx proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[53] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[54] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

Phlx believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [55] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, Phlx believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

Phlx believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, Phlx believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, Phlx believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, Phlx believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [56] requires that SRO rules not impose any burden on competition that is not necessary or appropriate. Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Phlx notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist Phlx in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities

[52] Section 11.4 of the CAT NMS Plan.

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(4) and (5).

[55] Approval Order at 84697.

[56] 15 U.S.C. 78f(b)(8).

exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, Phlx believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, Phlx does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, Phlx believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[57] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2017–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PHLX–2017–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PHLX–2017–37, and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10594 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[57] 15 U.S.C. 78s(b)(3)(A)(ii).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80727; File No. SR–FINRA–2017–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2017, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on June 9, 2017, until December 8, 2017.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the ''Rule'') to extend, until December 8, 2017, the amendments set forth in File No. SR–FINRA–2011–058 (''Tier Size Pilot'' or ''Pilot''), which currently are scheduled to expire on June 9, 2017.[4]

The Tier Size Pilot was filed with the SEC on October 6, 2011,[5] to amend the minimum quotation sizes (or ''tier sizes'') for OTC Equity Securities.[6] The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the Pilot, FINRA collected and provided to the SEC specified data with which to assess the impact of the Pilot tiers on market quality and limit order display.[7] On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.[8] As noted in the 2013 Assessment, FINRA believed that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the Pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.[9] The purpose of this filing is to further extend the operation of the Tier Size Pilot until December 8, 2017, to provide additional time to finalize a permanent proposal with regard to the Tier Size Pilot.[10]

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be June 9, 2017.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[12] Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot until December 8, 2017, is consistent with the Act in that it would provide the Commission and FINRA with additional time to finalize a proposal with regard to the Tier Size Pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

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[4] *See* Securities Exchange Act Release No. 79401 (November 25, 2016), 81 FR 86762 (December 1, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–044).

[5] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058).

[6] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420.

[7] FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

[8] The assessment is part of the SEC's comment file for SR–FINRA–2011–058 and also is available on FINRA's Web site at: *http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615* (''Pilot Assessment'').

[9] *See* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–049).

[10] FINRA reviewed the post-June 30, 2013 data, and stated that the impact described in the 2013 Assessment continued to hold (and improved in certain areas). *See* June 2016 Extension [sic].

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(11).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2017–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2017–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2017–014 and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10596 Filed 5–23–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–087, OMB Control No. 3235–0078]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F St. NE., Washington, DC 20549–0213

Extension:
Rule 15c3–3

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 (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–3 (17 CFR 240.15c3–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c3–3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully-paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, broker-dealers that sell securities futures products (''SFP'') to customers must provide certain notifications to customers and make a record of any changes of account type.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3–3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Finally, a broker-dealer that effects transactions in SFPs for customers will also have paperwork burdens to make a record of each change in account type.

The Commission staff estimates a total annual time burden of 555,604 hours and an aggregate cost of $1,848,465 to comply with the rule. These amounts were adjusted after publication of the 60-day notice to reflect the addition of a previously-omitted information collection and higher postage costs.

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 Web site, *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: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 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: May 19, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10617 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Date and Time Change

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 25, 2017 2:00 p.m.

[18] 17 CFR 200.30–3(a)(12).

CHANGES IN THE MEETING: The Closed Commission Meeting scheduled for May 25, 2017 at 2:00 p.m. has been changed to Wednesday, May 24, 2017 at 3:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 19, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–10694 Filed 5–22–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80713; File No. SR–GEMX–2017–17]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Section VI of the GEMX Fee Schedule

May 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') at Section VI of the GEMX Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed the proposed rule change on May 3, 2017 under File No. SR–GEMX–2017–11. The Exchange subsequently withdrew that filing on May 12, 2017 and filed this proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee schedule to establish the fees for Industry Members related to the CAT NMS Plan.

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[4] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[5] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[6] and Rule 608 of Regulation NMS thereunder,[7] the CAT NMS Plan.[8] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[11] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[12] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[13] Accordingly, the Exchange submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all

[4] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

[5] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[10] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[11] The Plan also serves as the limited liability company agreement for the Company.

[12] Section 11.1(b) of the CAT NMS Plan.

[13] *Id.*

CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below [14])

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. GEMX will issue an information circular (''Circular'') to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [15] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [16]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [17] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[18]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating

[14] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

[15] Approval Order at 84796.

[16] *Id.* at 84794.

[17] *Id.* at 84795.

[18] *Id.* at 84794.

Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[19] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[20] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [21]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[22] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[23] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[24] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[25]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [26] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[27] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[28]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[29] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[30]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [31] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [32]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[33] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a

[19] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[20] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.*, an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[21] Approval Order at 84796.

[22] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[23] Approval Order at 85005.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 84796.

[27] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[28] Section 11.3(b) of the CAT NMS Plan.

[29] Section 11.2(c) of the CAT NMS Plan.

[30] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[31] Section 11.2(e) of the CAT NMS Plan.

[32] Approval Order at 84796.

[33] *Id.* at 84792.

business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [34] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [35]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. GEMX notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms

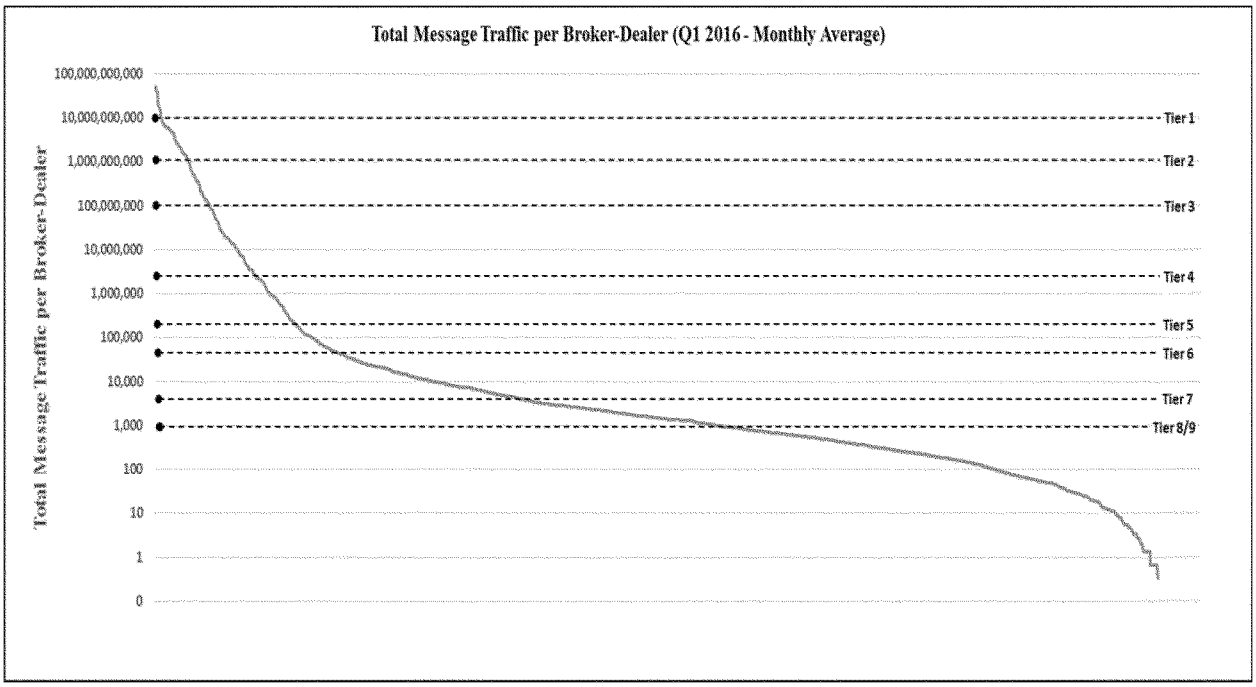
[34] 26 U.S.C. 501(c)(6).

[35] Approval Order at 84793.

with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry member tier	Monthly average message traffic per industry member (orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000

Industry member tier	Monthly average message traffic per industry member (orders, quotes and cancels)
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[36] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[37] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[38]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in

[36] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (March 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[37] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[38] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' [39]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[40]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability

[39] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[40] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume %
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues

and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[41]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[42] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:[43]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually[44]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

[41] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

[42] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[43] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[44] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [45]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry member tier	Percentage of industry members	Percentage of industry member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry member tier	Estimated number of industry members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

[45] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

[46] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{2{,}560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div 12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}] \times 25\%\ [\%\ \text{of Tier 1 Equity EVs}] = 13\ [\text{Estimated Tier 1 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\%\ \text{of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$21{,}125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}] \times 75\%\ [\%\ \text{of Tier 2 Equity EVs}] = 40\ [\text{Estimated Tier 2 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\%\ \text{of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$12{,}940}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}] \times 75\%\ [\%\ \text{of Tier 1 Options EVs}] = 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 20\%\ [\%\ \text{of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}] \times 25\%\ [\%\ \text{of Tier 2 Options EVs}] = 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 5\%\ [\%\ \text{of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13{,}204}$$

Traceability of Total CAT Fees

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1 Tier 2	13 40	253,500 155,280	3,295,500 6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1 Tier 2	11 4	230,460 158,448	2,535,060 633,792
Total		15		3,168,852
Total				50,709,036
Excess [47]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [48]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV complex
Execution Venue Complex 1	• Tier 1 (×2) • Tier 2 (×1)	• Tier 1 (×4) • Tier 2 (×2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (×2)	• Tier 1 (×2) • Tier 2 (×1)	1,863,801
Execution Venue Complex 3	• Tier 1 (×2) • Tier 2 (×2)	• Tier 1 (×2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry Member complex	Listing of Industry Member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (×2)	• Tier 2 (×1)	$963,300
Industry Member Complex 2	• Tier 1 (×1) • Tier 4 (×1)	• Tier 2 (×3)	949,674
Industry Member Complex 3	• Tier 1 (×1) • Tier 2 (×1)	• Tier 2 (×1)	883,888
Industry Member Complex 4	• Tier 1 (×1) • Tier 2 (×1) • Tier 4 (×1)	N/A	808,472
Industry Member Complex 5	• Tier 2 (×1) • Tier 3 (×1) • Tier 4 (×1) • Tier 7 (×1)	• Tier 2 (×1)	796,595

[47] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[48] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. GEMX will issue a Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[49] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[50] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then GEMX will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. GEMX notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, GEMX notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1

[49] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[50] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

GEMX proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on GEMX's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 900 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

GEMX proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of industry members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[51] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of equity execution venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. GEMX will provide Industry Members with details regarding the manner of payment of CAT Fees by Circular.

Although the exact fee collection system and processes for CAT fees has

[51] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[52]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, GEMX proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[53] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[54] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

GEMX believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [55] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, GEMX believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

GEMX believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, GEMX believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, GEMX believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, GEMX believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [56] requires that SRO rules not impose any burden on competition that is not necessary or appropriate. GEMX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. GEMX notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist GEMX in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities

[52] Section 11.4 of the CAT NMS Plan.

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(4) and (5).

[55] Approval Order at 84697.

[56] 15 U.S.C. 78f(b)(8).

exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, GEMX believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, GEMX does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, GEMX believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[57] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–17, and should be submitted on or before June 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–10581 Filed 5–23–17; 8:45 am]

BILLING CODE 8011–01–P

[57] 15 U.S.C. 78s(b)(3)(A)(ii).

[58] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10003]

Notification of the Next Cafta-Dr Environmental Affairs Council Meeting

AGENCY: Department of State.

ACTION: Notice of the CAFTA-DR Environmental Affairs Council meeting and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative are providing notice that the parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) intend to hold the eleventh meeting of the Environmental Affairs Council (the Council) established under Chapter 17 (Environment) of that agreement in San José, Costa Rica, on June 21 and 22, 2017.

DATES: The public session of the Council will be held on June 22, 2017, from 10:00 a.m.–1:00 p.m. at the Costa Rica Marriott Hotel in San José, Costa Rica. We request comments and suggestions in writing no later than June 8, 2017.

ADDRESSES: Written comments or suggestions should be submitted to both:

(1) Neal Morris, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues by email to *MorrisND@state.gov* with the subject line ''CAFTA-DR EAC Meeting'' or by fax to (202) 647–5947; and

(2) Laura Buffo, Director for Environment and Natural Resources, Office of the United States Trade Representative by email to *Laura_Buffo@ustr.eop.gov* with the subject line ''CAFTA-DR EAC Meeting'' or by fax to (202) 395–9517.

If you have access to the Internet you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching for docket number DOS–2017–0025.

FOR FURTHER INFORMATION CONTACT: Neal Morris, (202) 647–9312, or Laura Buffo, (202) 395–9424

SUPPLEMENTARY INFORMATION: Article 17.5 of the CAFTA-DR establishes an Environmental Affairs Council (the Council) and, unless the CAFTA-DR parties otherwise agree, requires it to meet annually to oversee the implementation of, and review progress under, Chapter 17. Article 17.5 further requires, unless the parties otherwise agree, that each meeting of the Council includes a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of Chapter 17.

On June 21, the Council will meet in a government-to-government session to (1) review any challenges parties are facing in meeting their environment chapter obligations, (2) highlight environmental achievements in the past year and share related lessons learned and best practices; (3) review ongoing work under the environmental cooperation program; and (4) hear a report from the CAFTA-DR Secretariat for Environmental Matters on the status of the public submissions process.

On June 22, the Council invites all interested persons to attend a public session about Chapter 17 implementation, beginning at 10:00 a.m. at the Costa Rica Marriott Hotel. At the session, the Council will welcome questions, input, and information about challenges and achievements in implementation of the Chapter and the related Environmental Cooperation Agreement (ECA). Environmental Cooperation Program implementers also will be on site to answer questions and provide more information about their particular projects and programs. If you would like to attend the public session, please notify Neal Morris and Laura Buffo at the email addresses listed under the heading **ADDRESSES**. Please include your full name and identify any organization or group you represent. The Department of State and Office of the United States Trade Representative also invite written comments or suggestions to be submitted before June 8, 2017, regarding topics to be discussed at the Council meeting. In preparing comments, we encourage submitters to refer to Chapter 17 of the CAFTA-DR and the CAFTA-DR Environmental Cooperation Agreement *(documents available at http://www.state.gov/e/oes/eqt/trade/caftadr/index.htm and https://ustr.gov/issue-areas/environment/bilateral-and-regional-trade-agreements*). Instructions on how to submit comments are under the heading **ADDRESSES**.

In preparing comments, we encourage submitters to refer to:

- Chapter 17 of the CAFTA-DR and
- The ECA

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/caftadr/index.htm and https://ustr.gov/issue-areas/environment/bilateral-and-regional-trade-agreements.* Visit *http://www.state.gov* and the USTR Web site at *www.ustr.gov* for more information.

Dated: May 18, 2017.

Barton Putney,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2017–10659 Filed 5–23–17; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36118]

Ellis & Eastern Company—Acquisition and Operation Exemption—E&ER Company

Ellis & Eastern Company (Ellis), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from E&ER Company (E&ER) and operate approximately 7.6 miles of rail line, between approximately milepost 41.4, near Manley, Minn., and milepost 49.0, in or near Brandon, S.D., in Rock County, Minn., and Minnehaha County, S.D. (the Line).[1] According to Ellis, the Line is in poor repair and in need of rehabilitation, and has not been operated over since at least 1994, when E&ER acquired the Line.

According to Ellis, it has reached an agreement with E&ER to acquire the trackage, right-of-way, and real property interests of the line owned by E&ER. Ellis also states that the proposed transaction does not involve any provision that may limit future interchange of traffic with any third-party carrier.

Ellis certifies that the projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million.

The transaction may be consummated on June 7, 2017, the effective date of the exemption (30 days after the exemption was filed).

According to Ellis, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic review under 49 CFR 1105.8(b).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than May 31, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36118, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John E. Taylor, Taylor Law Firm, LLC, 4820 East 57th St., Suite B, Sioux Falls, SD 57108.

Board decisions and notices are available on our Web site at *WWW.STB.GOV*.

Decided: May 19, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–10653 Filed 5–23–17; 8:45 am]

BILLING CODE 4915–01–P

[1] This transaction is related to a concurrently filed verified notice of exemption in *Ellis & Eastern Co.—Operation Exemption—Buffalo Ridge Regional Railroad Authority,* Docket No. FD 36119, wherein Ellis seeks to lease and operate approximately 41.44 miles of Buffalo Ridge Regional Railroad's rail line between approximately milepost 0.0 at Agate, Minn., and milepost 41.44 near Manley, Minn.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36119]

Ellis & Eastern Company—Operation Exemption—Buffalo Ridge Regional Railroad Authority

Ellis & Eastern Company (Ellis), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 41.44 miles of rail line from Buffalo Ridge Regional Railroad Authority (BRRRA). The rail line extends from approximately milepost 0.0, at the intersection with the main line of Union Pacific Railroad Company, at Agate, Minn., and milepost 41.44, at the intersection with the center line of the main track of BNSF Railway Company, near Manley, Minn., in Nobles and Rock Counties, Minn. (the Line).[1]

[1] This transaction is related to a concurrently filed verified notice of exemption in *Ellis & Eastern Co.—Acquisition & Operation Exemption—E & ER Co.,* Docket No. FD 36118, wherein Ellis seeks to

According to Ellis, Ellis and BRRRA have reached an agreement whereby Ellis will lease, operate, and maintain the trackage, right-of-way, and real property interests of the Line.

Ellis certifies that the projected annual revenues as a result of this transaction will not exceed $5 million and will not result in its becoming a Class I or Class II rail carrier. Ellis states that the proposed transaction does not include any provision that may limit Ellis' ability to interchange with a third-party carrier.

The proposed transaction may be consummated on or after June 7, 2017, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 31, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36119, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John E. Taylor, Taylor Law Firm, LLC, 4820 East 57th St., Suite B, Sioux Falls, SD 57108.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV*.''

Decided: May 19, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–10652 Filed 5–23–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0035]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 26, 2016, Grenada Railroad, LLC (GRYR), the operator of trackage owned by North Central Mississippi Regional Railroad Authority (NCMRRA) requested that the Federal Railroad Administration (FRA) grant temporary relief from the requirements of 49 CFR 234.247, *Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements,* to allow GRYR to operate over non-functioning highway-rail grade crossings (HRGC) without making the inspections and tests required in 49 CFR 234.249 through 234.271. FRA assigned the petition Docket Number FRA–2017–0035.

The reason for relief from the requirements is that prior to the purchase of the railroad by NCMRRA, the previous owner removed major components from the HRGC warning systems, bungalows, signals, and gates. As part of GRYR's commitment to provide rail services to those that require it, GRYR must access areas of the railroad previously deemed out of service. GRYR proposes to operate over affected HRGCs by the following alternative method:

- Making all movements over HRGC in daylight hours.
- Working with local authorities to obtain permission to close the roadway at a HRGC requiring occupation by a train.
- Stationing an employee at each crossing to provide warning to approaching highway traffic and communicate with motorists as needed.

GRYR requests to use the proposed method of alternative protection on the GRYR Subdivision, between milepost (MP) 629 near Duck Hill, MS, and MP 686 south of Durant, MS, for a period not to extend beyond December 31, 2017. During this time period, GRYR plans to acquire and install the equipment necessary to bring the HRGC warning systems into compliance.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 10, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2017–10644 Filed 5–23–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0108]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides public notice that on April 26, 2017, the Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) to modify an existing waiver of compliance from certain provisions of the Federal railroad safety regulations in 49 CFR part 236. FRA assigned the petition docket number FRA–2016–0108.

UP seeks a modification to its existing waiver from compliance with cab signal

acquire a 7.6-mile line of railroad from E & ER between Brandon, S.D., and Manley, Minn.

system requirements found in 49 CFR 236.566, *Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.* Specifically, UP requests that FRA add more lines to the waiver. The lines listed in this request are those where UP will install and operate Positive Train Control (PTC) in lieu of automatic cab signal (ACS), Automatic Train Control (ATC), or Automatic Train Stop (ATS) to support its plan for PTC implementation. The list of the lines is in the table below:

Subdivision	Cab signal system	From MP	From station	To MP	To station
Blair	ATC	326.2	East Missouri Valley, IA	329.5	Missouri Valley, IA.
Boone	ATC	202.2	Boone, IA	326.2	East Missouri Valley, IA.
Clinton	ATC	2.1	Clinton, IA	202.2	Boone, IA.
Columbus	ACS	39.2	Fremont, NE	144.5	East Grand Island, NE.
Evanston	ACS	817.3	Green River, WY	977.5	Strawberry, UT.
Geneva	ATC	0.8	Halsted, IL	138.9	Clinton, IA.
Harvard	ATS	0.9	Erie, IL	63.0	Harvard, IL.
Hiawatha	ACS	43.1	Hiawatha, KS	143.0	Upland, KS.
Joliet	ACS	72.8	Dwight, IL	92.5	Pontiac, IL.
Kansas	ACS	72.9	Menoken, KS	143.0	Upland, KS.
Kearney	ACS	144.5	East Grand Island, NE	282.0	Platte River, NE.
Kenosha	ACS [1]	30.2	Lake Bluff, IL	52.8	Hold Signal 53 (Kenosha), WI.
Kenosha	ATS	2.7	CY (Clybourn), IL	52.8	Hold Signal 53 (Kenosha), WI.
Laramie	ACS	510.8	Cheyenne, WY	682.8	Rawlins, WY.
Laramie	ACS	519.1	Borie, WY	C519.7	West Speer, WY.
Marysville	ACS	143.0	Upland, KS	146.7	McLaughlin, KS.
Marysville	ACS	149.0	West Marysville, KS	288.4	Gibbon, NE.
North Platte Terminal	ACS	282.0	Platte River, NE	283.4	Bryan Ave., NE.
North Platte Terminal	ACS	291.0	Birdwood, NE	291.9	Hinman, NE.
Omaha	ATC	329.1	Missouri Valley, IA	348.5	North Council Bluffs, IA.
Omaha	ACS	7.5	Omaha 57th Street, NE	39.2	Fremont, NE.
Rawlins	ACS	682.8	Rawlins, WY	815.1	Green River, WY.
Sidney	ACS	291.9	Hinman, NE	509.3	Cheyenne, WY.
South Morrill	ACS	300.4	O'Fallons, NE	157.0	Pelton, NE.

In its original petition, UP noted its Positive Train Control Implementation Plan identifies its ultimate goal of supplanting cab signals with PTC technology. Justification for relief was provided in that petition, as well as in supplements to that petition added to the waiver docket. UP also indicated its intent to petition for relief on the balance of its cab signal territories, all of which are slated for the implementation of PTC.

The relief requested would only apply within the UP subdivisions listed on which a PTC system is installed and operative; the PTC system is successfully initialized; and a locomotive engineer trained and qualified in the operation of PTC is present for the operation of the train with ACS, ATC, or ATS cut out. The PTC system to be utilized is UP's implementation of the Interoperable Electronic Train Management System.

If the PTC system fails and/or is cut-out en route as a result of same, the train crew will cut-in the ACS, ATC, or ATS onboard system, perform a departure test, and if successful, continue the trip under ACS, ATC, or ATS operation. If the ACS, ATC, or ATS onboard system cut-in and/or departure tests are not completed successfully, the train will continue to operate under the provisions of 49 CFR 236.567, *Restrictions imposed when device fails and/or is cut out en route.*

UP notes that the ACS, ATC, or ATS and PTC systems are not integrated on the locomotive and its concurrent use would be potentially confusing and distracting to the train crew due to differences in the content of its displays, audible and visual alerts provided, and required acknowledgement protocols.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 23, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at

https://www.transportation.gov/privacy. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–10643 Filed 5–23–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0030]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on April 20, 2017, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2017–0030.

Applicant: Norfolk Southern Corporation, Mr. B.L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street SE., Atlanta, GA 30309.

NS seeks to discontinue the traffic control system (TCS) on the Buffalo Line between Lock Haven, PA, milepost (MP) B-end, right side/corner (BR) 194.3 and control point (CP) North Driftwood, MP BR 139.8. This includes the CPs at North Driftwood, Driftwood, South Driftwood, North Keating, Keating, South Keating, North Drury, Drury, North Baker, and South Baker and 10 automatic signals.

NS will place a new operative approach signal at BR 192.8 in approach to CP Lock Haven. All slide fences located at BR 139.8, 143.5,153.3, 173.8, 177.0, 179.6, and 188.8 will be maintained and provide protection through the use of dual-tone multi-frequency radio operation. The main track between BR 134.5 and CP Lock Haven will be converted to NS Rule 171 operation. The signaled sidings within the application limits at Baker, Drury, Keating, and Driftwood will be made non-controlled, other than main track. The reason for the discontinuance is that operations no longer require a TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov/* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 10, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–10645 Filed 5–23–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Funding Opportunity for Small Shipyard Grant Program; Application Deadline

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of funding opportunity.

SUMMARY: Under the Small Shipyard Grant Program, there is currently $9,800,000 available for grants for capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. This notice announces the intention of the Maritime Administration to provide grants to small shipyards. Catalog of Federal Domestic Assistance Number: 20.814. Potential applicants are advised that it is expected, based on past experience, that the number of applications will far exceed the funds available and that only a small percentage of applications will be funded. It is anticipated that about 5–12 applications will be selected for funding with an average grant amount of about $1 million.

DATES: The period for submitting grant applications commenced with the enactment of the Consolidated Appropriations Act, 2017, on May 5, 2017. Applications must be received by the Maritime Administration by 5 p.m. EDT on July 5, 2017. Applications received later than this time will not be considered. The Maritime Administration intends to award grants no later than September 5, 2017.

ADDRESSES: Grant Applications should be sent to the Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Only applicants who comply with all submission requirements described in this Notice will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318,1200 New Jersey Ave. SE., Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988.

SUPPLEMENTARY INFORMATION: Grants under the Maritime Administration's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved

by the Maritime Administration as being consistent with, and supplemental to, capital and related infrastructure improvements. Grant funds may also be used for maritime training programs to foster technical skills and operational productivity in communities, the economies of which are related to or dependent upon the maritime industry. Grants for such training programs may only be awarded to ''Eligible Applicants'' as described below, but training programs can be established through vendors to such applicants.

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A. Program Description

The Small Shipyard Grant Program was established under Section 3508(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), codified at 46 U.S.C. 54101. The statute authorizes the Maritime Administrator to provide assistance in the form of grants to make capital and related improvements in small shipyards located in or near maritime communities and to provide training for workers in communities whose economies are related to the maritime industry. The Consolidated Appropriations Act, 2017, appropriated $10,000,000 to the Small Shipyard Grant Program to include administrative expenses. The purpose of the Program is to foster efficiency, competitive operations, and quality ship construction, repair, and reconfiguration in small shipyards across the United States. The Program also seeks to foster projects that would be effective in fostering employee skills and enhancing productivity in communities whose economies are related to or dependent upon the maritime industry.

B. Federal Award Information

Under the Small Shipyard Grant Program, there is currently $9,800,000 available for grants for capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration and for training projects that would be effective in fostering employee skills and enhancing productivity. The Maritime Administration intends to award the full amount of the available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. The Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants to as many of the most worthy projects as possible. The Maritime Administration may partially fund applications by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

C. Eligibility Information

To be selected for a Small Shipyard Grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Section 54101, Title 46, United States Code, provides that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographical location, located in or near a maritime community, and may not have more than 1,200 production employees. The applicant must be the operating company of the shipyard facility. The shipyard facility must construct, repair, or reconfigure vessels 40 feet in length or greater for commercial or government use, or construct, repair, or reconfigure vessels 100 feet in length or greater for non-commercial vessels.

2. Cost Sharing or Matching

The Federal funds for any eligible project will not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the recipient. The applicant is required to submit detailed financial statements and supporting documentation demonstrating how and when such matching requirement is proposed to be funded as described below. The recipient's entire matching requirement must be paid prior to payment of any Federal funds for the project. However, for good cause shown, the Maritime Administrator may waive the matching requirement in whole or in part, if the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance.

3. Eligible Projects

Eligible projects include: (1) Capital and related improvement projects that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that will be effective in fostering employee skills and enhancing productivity. For capital improvement projects, all items proposed for funding must be new and to be owned by the applicant. For both capital improvement and training projects, all project costs, including the recipient's share, must be incurred after the date of the grant agreement.

D. Application and Submission Information

1. Address for Application

Applications must be filed on standard form SF–424, which is available on the Maritime Administration's Web site at *www.marad.dot.gov.*

2. Content and Form of Application Submission

Although the form is available electronically, the application must be filed in hard copy as indicated below due to the amount of information requested. Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two CDs each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. A shipyard facility in a single geographic location applying for multiple projects must do so in a single application. The application for a grant must include all of the following information as an addendum to form SF–424. The information should be organized in sections as described below:

Section 1: A description of the shipyard including (a) location of the shipyard; (b) a description of the shipyard facilities; (c) years in operation; (d) ownership; (e) customer base; (f) current order book including type of work; (g) vessels delivered (or major projects) over last 5 years; and (h) Web site address, if any.

Section 2: For each project proposed for funding the following must be included:

(a) A comprehensive detailed description of the project, including a statement of whether the project will replace existing equipment, and if so, the disposition of the replaced equipment.

(b) A description of the need for the project in relation to shipyard operations and business plan and an

explanation of how the project will fulfill this need.

(c) A quantitative analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration (for capital improvement projects) or how the project will be effective in fostering employee skills and enhancing productivity (for training projects). The analysis should quantify the benefits of the projects in terms of man-hours saved, dollars saved, percentages, or other meaningful metrics. The methodology of the analysis should be explained with assumptions used identified and justified.

(d) A detailed methodology and timeline for implementing the project.

(e) A detailed itemization of the cost of the project together with supporting documentation, including current vendor quotes and estimates of installation costs.

(f) A statement explaining if any elements of the project require action under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) or require any licenses or permits.

(g) A statement describing whether the project will be located in, or will affect, a floodplain. If so, the statement should explain whether a practicable alternate siting location exists which would not be located in, or affect, the floodplain. If alternate siting locations for the project are not practicable, the statement should describe the factors that prevent alternate siting and identify, as appropriate, ways in which the project may be modified to mitigate the long- and short-term adverse impacts associated with the occupancy and modification of a floodplain or the direct or indirect support of floodplain development.

Items 2(a) thru 2(g) should be repeated, in order, for each separate project included in the application.

Section 3: A table with a prioritized list of projects and total cost and Government portion (in dollars) for each.

Section 4: A description of any existing programs or arrangements, if any, which will be used to supplement or leverage the federal grant assistance.

Section 5: Special economic circumstances and conditions, if any, of the maritime community in which the shipyard is located (beyond that which is reflected in the unemployment rate of the county in which the shipyard is located and whether that county is in an economically distressed area, as defined by 42 U.S.C. 3161).

Section 6: Shipyard company officer's certification of each of the following requirements:

(a) That the shipyard facility for which a grant is sought is located in a single geographical location in or near a maritime community and (i) the shipyard facility has no more than 600 production employees, or (ii) the shipyard facility has more than 600 production employees, but less than 1200 production employees (the shipyard officer must certify to one or the other of (i) or (ii));

(b) That the applicant has the authority to carry out the proposed project; and

(c) In accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant. Certifications are not required to be notarized.

Section 7: Unique identifier of shipyard's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).

Section 8: The most recent year-end audited, reviewed or compiled financial statements, prepared by a certified public accountant (CPA), according to U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.

Section 9: Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.

Section 10: Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.) and in the times outlined in 2(d) above.

Section 11: Pro-forma financial statements reflecting (a) financial condition period; (b) effect on balance sheet of grant and matching funds (*e.g.* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and (c) impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

Section 12: Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

3. Unique Entity Identifier and System for Award Management (SAM)

The Maritime Administration may not make a Small Shipyard Grant Award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. Each applicant must be registered in SAM before submitting its application, provide a valid unique entity identifier number in its application, and maintain an active SAM registration with current information throughout the period of the award. Applicants may register with the SAM at *www.SAM.gov.* If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered.

4. Submission Dates and Times

The period for submitting grant applications commenced with the enactment of the Consolidated Appropriations Act, 2017, on May 5, 2017. Applications must be received by the Maritime Administration by 5 p.m. EDT on July 5, 2017. Applications received later than this time will not be considered. The Maritime Administration encourages applicants to submit applications using a carrier and method that will provide proof and time of delivery. The Maritime Administration intends to award grants no later than September 5, 2017.

5. Funding Restrictions

Grants under the Maritime Administration's Small Shipyard Grants Program may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Maritime Administration as being consistent with, and supplemental to, capital and related infrastructure improvements.

6. Other Submission Requirements

Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two compact discs

(CDs) each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

E. Application Review

1. Selection Criteria

This section specifies the criteria that the Maritime Administration will use to evaluate and award applications for Small Shipyard grants. The criteria incorporate the statutory eligibility requirements for this Program, which are specified in this notice as relevant. Applicants are encouraged to present in measurable terms how the Small Shipyard Grant will lead to transformative change(s) in their maritime community.

Consistent with the requirements of 46 U.S.C. 54101(b)(1), the Maritime Administration will evaluate the applications on the basis of the economic circumstances and conditions of the maritime community in which the shipyard is located including consideration of whether the shipyard is in a rural area, how effective the project will be in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration (for capital improvement projects) or how effective the project will be in fostering employee skills and enhancing productivity (for training projects).

2. Review and Selection Process

The Maritime Administration reviews all eligible applications received before the deadline. The Small Shipyard Grant review and selection process consists of three phases: Technical Review, Senior Review, and Final Selection. In the Technical Review phase, a Review Panel made up of technical experts, including naval architects and engineers from the Maritime Administration's Office of Shipyards and Marine Engineering will review all timely applications. Additional input may be provided to the Review Panel on economic issues by the Office of Financial Approvals, on environmental issues by the Office of Environment, and on legal issues by the Office of Chief Counsel. The Review Panel will assign a rating of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended'' based on how well the applications align with the selection criteria.

In the second review phase, the Senior Review Team, which is led by the Maritime Administrator, will consider all applications that were rated as Recommended or Highly Recommended, based upon the input of the Review Panel. The Senior Review Team will determine which projects to advance to the Secretary as Highly Rated. In the third phase, the Secretary selects from the Highly Rated projects for final award.

F. Federal Award Administration

1. Federal Award Notices

Following the evaluation outlined in Section E, the Maritime Administration will announce awarded projects by posting a list of selected projects at *www.marad.dot.gov/ships-and-shipping/small-shipyard-grants.* Following the announcement, the Maritime Administration will contact the point of contact listed in the SF–424 to initiate development of the grant agreement.

2. Administrative and National Policy Requirements

All awards must be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by the Department of Transportation at 2 CFR part 1201. Additionally, applicable Federal laws, rules, and regulations of the Maritime Administration will apply to the projects that receive Small Shipyard Grant Awards.

Federal wage rate requirements included in Subchapter IV of Chapter 31 of Title 40, United States Code, apply to all projects receiving funds under this Program, and apply to all parts of the project, whether funded with Small Shipyard Grant funds, other Federal funds, or non-Federal funds.

3. Reporting

Each applicant selected for a Small Shipyard capital or training grant will be required to work with the Maritime Administration on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through the capital project or training. Performance indicators will not include formal goals or targets, but will require analysis of post-project outcomes, which will inform the Small Shipyard Grant Program in working towards best practices, programmatic performance measures, and future decision-making guidelines.

4. Requirements for Products Produced in the United States

Consistent with the requirements of Section 410 of Division K—Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2017, of the Consolidated Appropriations Act of 2017 (Pub. L. 115–XXX), the Buy American requirements of 41 U.S.C. 8303 apply to funds made available under this Notice of Funding Opportunity.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Ave. SE., Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988. To ensure applicants receive accurate information about eligibility or the Program, you are encouraged to contact the Maritime Administration directly, rather than through intermediaries or third parties, with questions.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, you should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. The Maritime Administration protects such information from disclosure to the extent allowed under applicable law. In the event the Maritime Administration receives a Freedom of Information Act (FOIA) request for the information, the Maritime Administration will follow the procedures described in the Department of Transportation FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(Authority: 46 U.S.C. 54101 and the Consolidated Appropriations Act, 2017)

By Order of the Executive Director in lieu of the Maritime Administrator.

Dated: May 19, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–10612 Filed 5–23–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Automatic Enrollment Individual Retirement Accounts (Auto-IRAs)

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Automatic Enrollment Individual Retirement Accounts (Auto-IRAs).

DATES: Written comments should be received on or before July 24, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Automatic Enrollment Individual Retirement Accounts (Auto-IRAs).

OMB Number: 1530–0068.

Abstract: Approximately one-third of private-sector employees in the United States lack access to retirement savings plans through their employers. To fill this gap, several states (or their political subdivisions) are establishing or considering programs that will encourage employees to save for their retirement, including through automatic enrollment individual retirement accounts and other approaches (collectively referred to here as Auto-IRAs). Under an Auto-IRA program, employee contributions are deposited into an IRA and invested in accordance with the design of the Auto-IRA program and the wishes of the participant. In order to assist states in offering risk-averse savers a principal-protected investment, the Department of the Treasury, Fiscal Service (Fiscal Service) will offer retirement savings bonds to certain state Auto-IRA retirement savings programs. To help the Fiscal Service determine whether it should offer or continue to offer the bonds for a given state Auto-IRA program, that program must provide documentation to Fiscal Service annually, in a form and manner acceptable to Fiscal Service, addressing topics such as administration; account monitoring; ability to transfer; withdrawals; consumer protection; consumer education; costs of administration borne by consumers; oversight; pooling; and any proposed use of the bond as a default investment.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 5.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 40.

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.

Dated: May 19, 2017.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2017–10639 Filed 5–23–17; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 2 individuals whose property and interests in property are blocked pursuant to executive order of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: OFAC's actions described in this notice were effective on May 19, 2017.

FOR FURTHER INFORMATION CONTACT: 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, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On May 19, 2017, OFAC blocked the property and interests in property of the following 2 individuals pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individuals

1. AL–ARADAH, Khalid Ali Mabkhut (a.k.a. AL–ARADAH, Khalid Ali; a.k.a. AL–ARADEH, Khalid; a.k.a. AL–ARRADAH, Khalid; a.k.a. ARADA, Khalid), Marib, Marib Governorate, Yemen; DOB 01 Jan 1965; alt. DOB 01 Aug 1957; alt. DOB 01 Jan 1957; nationality Yemen; Gender Male (individual) [SDGT] (Linked To: AL–QA'IDA IN THE ARABIAN PENINSULA).

2. AL–HAMID, Hashim Muhsin Aydarus (a.k.a. AL HAMID, Hashim; a.k.a. AL–AIDAROOS, Hashim Mohsen; a.k.a. ALHAMAD, Hashem Mohssein Idroos; a.k.a. ALHAMED, Hossin Mohsen; a.k.a. ALHAMID, Hashim; a.k.a. AL–HAMID, Mohsan; a.k.a. AL–HAMSHI, Hashim al-Hamid; a.k.a. ALHMAID, Housin Mohsein; a.k.a. IDAROOS, Hashim Mohsen; a.k.a. ''ABU TAHIR''), Al Ghaydah, al-Mahrah Governorate, Yemen; Shabwah Governorate, Yemen; Mansoura, Aden, Yemen; Mukalla, Hadramawt Governorate, Yemen; Abyan Governorate, Yemen; Marib Governorate, Yemen; DOB 12 Dec 1985; POB Yemen; nationality Yemen; Gender Male; National ID No. 16010003042 (Yemen) (individual) [SDGT] (Linked To: AL–QA'IDA IN THE ARABIAN PENINSULA).

Dated: May 19, 2017.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–10635 Filed 5–23–17; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela''

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property are blocked pursuant to the executive order of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela.''

DATES: OFAC's actions described in this notice were effective on May 18, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's Web site at *http://www.treasury.gov/ofac.*

Notice of OFAC Actions

On May 18, 2017, OFAC's Acting Director determined that the property and interests in property of the following persons are blocked pursuant to Executive Order 13692, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela.''

1. DAMIANI BUSTILLOS, Luis Fernando, Caracas, Capital District, Venezuela; DOB 27 Apr 1946; POB Caracas, Capital District, Venezuela; citizen Venezuela; Gender Male; Cedula No. 2940803 (Venezuela); Passport 103679620 (Venezuela); Magistrate of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

2. DELGADO ROSALES, Arcadio de Jesus (Latin: DELGADO ROSALES, Arcadio de Jesús), Caracas, Capital District, Venezuela; DOB 23 Sep 1954; POB Maracaibo, Zulia, Venezuela; citizen Venezuela; Gender Male; Cedula No. 4159158 (Venezuela); Passport 001875223 (Venezuela); Vice President of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

3. GUTIERREZ ALVARADO, Gladys Maria (Latin: GUTIÉRREZ ALVARADO, Gladys María), Caracas, Capital District, Venezuela; DOB 16 Apr 1962; POB Punto Fijo, Falcon, Venezuela; citizen Venezuela; Gender Female; Cedula No. 7525777 (Venezuela); Passport 1122011 (Venezuela); alt. Passport 4532006 (Venezuela); Magistrate of the Constitutional Chamber of Venezuela's Supreme Court of Justice; Former President of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

4. MENDOZA JOVER, Juan Jose (Latin: MENDOZA JOVER, Juan José), Valera, Trujillo, Venezuela; DOB 11 Mar 1969; POB Trujillo, Venezuela; citizen Venezuela; Gender Male; Cedula No. 9499372 (Venezuela); Second Vice President of Venezuela's Supreme Court of Justice; President of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

5. MORENO PEREZ, Maikel Jose (Latin: MORENO PÉREZ, Maikel José), Caracas, Capital District, Venezuela; DOB 31 Dec 1965; POB Tigre, Anzoategui, Venezuela; citizen Venezuela; Gender Male; Cedula No. 6652632 (Venezuela); Passport 104063109 (Venezuela); alt. Passport 040471125 (Venezuela); President of Venezuela's Supreme Court of Justice; President of the Criminal Appellate Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

6. ORTEGA RIOS, Calixto Antonio (Latin: ORTEGA RÍOS, Calixto Antonio), Maracaibo, Zulia, Venezuela; DOB 12 Oct 1950; POB San Rafael del Mojan, Zulia, Venezuela; citizen Venezuela; Gender Male; Cedula No. 3264031 (Venezuela); Magistrate of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

7. SUAREZ ANDERSON, Lourdes Benicia (Latin: SUÁREZ ANDERSON, Lourdes Benicia), Caracas, Capital District, Venezuela; DOB 07 Mar 1965; citizen Venezuela; Gender Female; Cedula No. 6726793 (Venezuela); Magistrate of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

8. ZULETA DE MERCHAN, Carmen Auxiliadora (Latin: ZULETA DE MERCHÁN, Carmen Auxiliadora), Sucre, Miranda, Venezuela; DOB 13 Dec 1947; POB Zulia, Venezuela; citizen Venezuela; Gender Female; Cedula No. 3507807 (Venezuela); Passport 045729072 (Venezuela); Magistrate of the Constitutional Chamber of Venezuela's Supreme Court of Justice (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692, for being a current or former official of the Government of Venezuela.

Dated: May 18, 2017.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–10614 Filed 5–23–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Advisory Committee on Risk-Sharing Mechanisms (''Committee'') will convene a meeting on Friday, June 9, 2017, in the Cash Room, Room 2121, 1500 Pennsylvania Ave. NW., Washington, DC 20220, from 10:00 a.m.–1:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Friday, June 9, 2017, from 10:00 a.m.–1:00 p.m. Eastern Time.

ADDRESSES: The Advisory Committee on Risk-Sharing Mechanisms meeting will be held in Room 2121 (Cash Room), Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/c5qs44* and fill out a secure online registration form. A valid email address will be required to complete online registration.

(*Note:* Online registration will close at 5:00 p.m. Eastern Time on Friday, June 2, 2017.)

2. Contact the Federal Insurance Office at (202) 622–3220, by 5:00 p.m. Eastern Time on Friday, June 2, 2017, and provide registration information.

Requests for reasonable accommodations under Section 504 of

the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0316, or *mariam.harvey@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, Department of the Treasury, 1500 Pennsylvania Ave. NW., Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Advisory Committee on Risk-Sharing Mechanisms are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *ACRSM@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Advisory Committee on Risk-Sharing Mechanisms, Department of the Treasury, 1500 Pennsylvania Ave. NW., Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *https://www.treasury.gov/initiatives/fio/acrsm/Pages/default.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW., Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is the fifth periodic meeting of the Advisory Committee on Risk-Sharing Mechanisms. In this meeting, the Committee will address topics related to terrorism risk mechanisms in other countries and risk management of other catastrophic risks. The meeting will include presentations by representatives from Pool Re (the terrorism risk reinsurance pool in the United Kingdom), the Wharton Risk Management and Decision Processes Center, and the National Flood Insurance Program.

Brian J. Peretti,

Director, Office of Critical Infrastructure Protection.

[FR Doc. 2017–10647 Filed 5–23–17; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: The Department of Veterans Affairs (VA) announces the availability of 1-year renewal funding for the 16 currently-operational fiscal year (FY) 2016 VA Homeless Providers Grant and Per Diem (GPD) Program Special Need Grant recipients and their collaborative VA Special Need partners (as applicable), to enable them to submit renewal applications for assistance under the Special Need Grant component of VA's Homeless Providers GPD Program. The focus of this NOFA is to encourage applicants to continue to deliver services to the homeless special-need Veteran population. This NOFA contains information concerning the program, application process, and amount of funding available.

DATES: An original, completed, signed, and dated renewal application and associated documents for assistance under VA's GPD Program must be received by the GPD Program Office by 4:00 p.m. Eastern Daylight Time on June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Jeffery L. Quarles, Director, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617, (877) 332–0334 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This NOFA announces the availability of funds to provide 1-year funding assistance in FY 2018 under VA's Homeless Providers GPD Program for the 16 operational GPD Special Need recipients and their collaborative VA partners (as applicable). Eligible applicants may obtain grant assistance to cover additional operational costs that would not otherwise be incurred, but for the fact that the recipient is providing supportive housing beds and services for the following homeless special-needs Veteran population groups: Women, Frail Elderly, Chronically Mentally Ill, or Individuals Who Have Care of Minor Dependents. Funding applied for under this NOFA may be used for the provision of services and operational costs to facilitate the following for each targeted group:

1. Women:

a. Ensure transportation for women, especially for health care and educational needs; and

b. Address safety and security issues including segregation from other program participants if deemed appropriate.

2. Frail Elderly:

a. Ensure the safety of the residents in the facility, including preventing harm and exploitation;

b. Ensure opportunities to keep residents mentally and physically agile to the fullest extent through incorporation of structured activities, physical activity, and social engagement within the program and in the community;

c. Provide opportunities for participants to address life transitional, separation, and/or loss issues;

d. Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;

e. Ensure adequate supervision including monitoring of medication and oversight of medication compliance; and

f. Provide opportunities for participants, either directly or through referral, for other services particularly relevant for the Frail Elderly population group, including services or programs addressing emotional, social, spiritual, and generative needs.

3. Chronically Mentally Ill:

a. Help participants join in and engage with the community;

b. Facilitate reintegration with the community and provide services that may optimize reintegration, such as life-skills education, recreational activities, and follow-up case management;

c. Ensure that participants have opportunities and services for re-establishing relationships with family;

d. Ensure adequate supervision, including monitoring of medication and oversight of medication compliance; and

e. Provide opportunities for participants, either directly or through

referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

4. Individuals Who Have Care of Minor Dependents:

a. Ensure transportation for individuals and their minor dependents, especially for health care and educational needs;

b. Provide directly or offer referrals for adequate and safe child care;

c. Ensure children's health care needs are met, especially age-appropriate wellness visits and immunizations; and

d. Address safety and security issues, including segregation from other program participants if deemed appropriate.

Authority: Homeless Veterans Comprehensive Assistance Act of 2001, Public Law 107–95, 5, codified as amended by Public Law 112–154, at 38 U.S.C. 2011, 2012, 2061, and in regulation at 38 CFR 61. A full copy of the regulations governing the GPD Program is available at the GPD Web site at *http://www.va.gov/homeless/gpd.asp.*

Definitions: Definitions of key terms relating to these populations are contained in 38 CFR 61.1 Definitions. Eligible applicants should review these definitions to ensure their proposed populations meet the specific requirements.

Funding Priorities: None.

Allocation Of Funds: Approximately $5 million is available for the current Special Need grant component of VA's Homeless Providers GPD Program. Special Need payment will be the lesser of:

1. One hundred percent of the daily cost of care estimated by the Special Need recipient for furnishing services to homeless Veterans with special needs that the Special Need recipient certifies to be correct, minus any other sources of income; or

2. Two times the current VA State Home Program per diem rate for domiciliary care.

Special Need awards are subject to FY 2018 funds availability, the recipient meeting the performance goals as stated in the grant application, statutory and regulatory requirements, and annual inspections. Applicants should ensure their funding requests and operational costs are based on the 12-month period above and should be approximately in line with prior-year expenditures. Requests cannot exceed the amount obligated under the FY 2016 award. Applicants should note in their application that unexpended funding from FY 2016 will be de-obligated.

Funding Actions: Conditionally-selected applicants may be asked to submit additional information under to confirm or clarify information provided in the application, and will be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other Special Need applicants. Following receipt and confirmation that all information is accurate and in acceptable form, applicants will execute an agreement with VA in accordance with 38 CFR 61.61.

Grant Award Period: Awardees will have a maximum award of one year beginning on October 1, 2017, and ending on September 30, 2018, to utilize the Special Need funding. Funds unexpended after the September 30, 2018, deadline will be de-obligated.

Funding Restrictions: No part of a Special Need grant may be used for any purpose that would significantly change the scope of the specific GPD project for which a capital GPD was awarded. As a part of the review process, VA will review the original project and subsequent approved program changes of the previous FY 2016 Special Need applications to ensure significant scope changes have not occurred and that other homeless Veteran populations have not been displaced. Additionally, Special Need funding may not be used for capital improvements or to purchase vehicles or real property. However, the leasing of vehicles or real property may be acceptable, and questions regarding acceptability should be directed to VA's National GPD Program Office at the number listed above in **CONTACT INFORMATION**. Changes to the Special Need population the applicant currently serves will not be allowed, and applicants may not receive Special Need funding to replace funds provided by any Federal, state or local Government agency or program to assist homeless persons.

Eligibility Information: Eligible applicants must be a currently-operational FY 2016 VA Homeless Providers GPD Program Special Need Grant recipient with or without a collaborative VA Special Need partner. Applicants that were not funded under the VA Homeless Providers GPD Program NOFA as published in the **Federal Register** on December 23, 2016, 81 FR 94487–94494, are ineligible for an award under this NOFA as the applicant must have an operational VA Homeless Providers GPD grant on October 1, 2017, in order to receive Special Need funding under this availability. Furthermore, if the applicant currently has a collaborative project and its VA partner no longer wishes to continue, the applicant is not eligible for an award under this NOFA.

Cost Sharing or Matching: None.

Application Requirements and Submission Information

Content and Form of Application

Applicants should ensure they include all required documents in their application and carefully follow the format described below. Submission of an incorrect, incomplete, or incorrectly formatted application package will result in the application being rejected at the beginning of the process.

Application Documentation Required

Applicants must submit a letter on their organization's letterhead stating their intent to apply for renewal funding and agreement for VA to evaluate their previously awarded FY 2016 Special Need application for scoring purposes. In addition, the letter must state the model (see listing below) to which that application will be linked and that the applicant agrees, as a condition of funding under this NOFA, that they will provide the services as outlined in that application, along with any VA-approved changes in scope, and that the applicant's FY 2016 required forms and certifications still apply for the period of this award. The models include Bridge Housing, Low Demand, Clinical Treatment, Hospital to Housing, or Service Intensive Transitional Housing.

Performance Goals

Applicants must submit documentation, as evidenced by their last VA project inspection, of meeting the performance goals stated in their FY 2016 original grant Special Need application.

Letter from VA Collaborative Partner (If Applicable)

If the FY 2016 Special Need grant was a collaborative grant, the applicant must submit an updated letter of commitment or an updated Memorandum of Agreement (MOA) from the VA collaborative partner stating that VA will continue to meet its objectives or provide its duties as outlined in the original MOA in FY 2016.

Other Submission Requirements: None.

Submission Deadline and Delivery: An original signed and dated application package, including all required documents, must be received in the GPD Program Office, VA

Homeless Providers GPD Program Office, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; by 4:00 p.m. Eastern Daylight Time on June 29, 2017. Applications must be physically delivered (*e.g.,* in person or via United States Postal Service, FedEx, United Parcel Service, or any other type of courier). The VA GPD Program Office staff will accept the application and will date stamp it immediately at the time of arrival. This is the date and time that will determine if the deadline is met for those types of delivery. Applications may not be sent by facsimile. In the interest of fairness to all competing applicants, this deadline is firm as to date and time, and VA will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this firm deadline into account and make early submission of their materials to avoid any risk of loss of eligibility as a result of unanticipated delays or other delivery-related problems. Applications must arrive as a complete package (see Application Requirements above). Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

Rating Criteria for Special Need Grants: Rating criteria may be found at 38 CFR 61.13 & 61.32.

Review and Selection Process: The VA review and selection process may be found at 38 CFR 61.44. Selections will be made based on criteria described in the FY 2016 application and additional information as specified in this NOFA.

Award Notice: Although subject to change, the GPD Program Office expects to announce grant awards during the late fourth quarter of FY 2017 (September). The initial announcement will be made via news release which will be posted on VA's National GPD Program Web site at *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Office will mail notification letters to grant recipients. Applicants who are not selected will be mailed a declination letter within two weeks of the initial announcement.

Administrative and National Policy: VA places great emphasis on responsibility and accountability, and has procedures in place to monitor services provided to homeless Veterans and outcomes associated with the services provided in grant- and per diem-funded programs. Applicants should be aware of the following:

- Awardees will be required to support their request for payments with adequate fiscal documentation as to project income and expenses and in the case of per diem payments, income and expenses.
- All awardees that are selected in response to this NOFA must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code. Applicants should consider this when submitting their grant applications, as no additional funds will be made available for capital improvements under this NOFA.
- Each program receiving Special Need funding will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless Veterans in the program.
- Monitoring will include, at a minimum, a quarterly review of each per diem program's progress toward meeting performance goals, including the applicant's internal goals and objectives in helping Veterans attain housing stability, adequate income support, and self-sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure payment is accurate.

Each funded program will participate in VA's national program monitoring and evaluation as these monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on May 18, 2017, for publication.

Approved: May 18, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–10657 Filed 5–23–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Wednesday,

No. 99 May 24, 2017

Part II

The President

Proclamation 9612—Emergency Medical Services Week, 2017
Proclamation 9613—National Safe Boating Week, 2017
Proclamation 9614—World Trade Week, 2017
Proclamation 9615—Armed Forces Day, 2017
Proclamation 9616—National Maritime Day, 2017

Federal Register
Vol. 82, No. 99
Wednesday, May 24, 2017

Presidential Documents

Title 3—

The President

Proclamation 9612 of May 19, 2017

Emergency Medical Services Week, 2017

By the President of the United States of America

A Proclamation

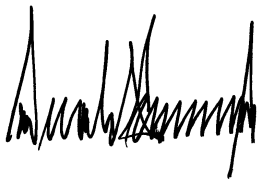
During Emergency Medical Services (EMS) Week, we express our gratitude for the hundreds of thousands of skilled personnel who help save lives in communities across the United States each year. Through the hard work and dedication of these career and volunteer first responders, Americans receive the finest emergency medical treatment in their most vulnerable moments. We also honor those EMS providers who have made the ultimate sacrifice and given their lives in the line of duty.

Day or night, in every city, suburb, rural community, or wilderness area, our Nation relies upon EMS providers to respond to every kind of emergency situation to save lives and reduce suffering. In January, when more than 70 tornadoes touched down in Georgia and Mississippi, injuring many, EMS responders were there to help. In March, when wildfires threatened Kansas, Colorado, Oklahoma, and Texas, taking lives and forcing thousands from their homes, our EMS personnel were there providing urgent medical care and patient transportation. Last month, when flooding and tornadoes ravaged Missouri, Arkansas, and Texas, EMS personnel once more came to their neighbors' aid. Whether they are assisting during natural disasters or providing lifesaving care after car accidents, heart attacks, sports injuries, or violent crime, EMS personnel respond to tens of millions of requests for help each year in our country. We rest easier knowing that they stand ready to answer the call.

Over the past 50 years, our Nation's EMS system has evolved with ever-developing medical, transportation, and communications technologies to meet the changing needs of our communities. The *EMS Agenda 2050* project—a joint effort by the National Highway Traffic Safety Administration, the Department of Health and Human Services, the Department of Homeland Security, and the EMS community—will help develop a vision for meeting our communities' future emergency medical services needs and improve the health of all Americans. We commend these efforts to develop innovative new treatments, advance and adapt medical skills, establish stronger professional standards, and promote public education and health. This week, we thank our EMS professionals for their sustained commitment to excellence and dedication to service, and share our hopes for a bright future that will make us all safer and healthier.

NOW, THEREFORE, I, Donald J. Trump, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 21 through May 27, 2017, as Emergency Medical Services Week. I encourage all Americans to observe this occasion by showing their support for local EMS professionals through appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–10845
Filed 5–23–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9613 of May 19, 2017

National Safe Boating Week, 2017

By the President of the United States of America

A Proclamation

As Memorial Day approaches and our summer season arrives, it is important for Americans of all ages to learn about safety on the water. During National Safe Boating Week, the U.S. Coast Guard and its Federal, State, and local safe boating partners encourage all boaters to explore and enjoy America's beautiful waters responsibly.

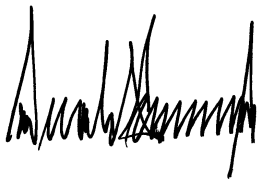
Safe boating begins with preparation. The Coast Guard estimates that human error accounts for 70 percent of all boating accidents and that life jackets could prevent more than 80 percent of boating fatalities. Through basic boating safety procedures—carrying lifesaving emergency distress and communications equipment, wearing life jackets, attending safe boating courses, participating in free boat safety checks, and staying sober when navigating—we can help ensure boaters on America's coastal, inland, and offshore waters stay safe throughout the season.

America's diverse waterways are waiting to be explored. But before enjoying a day on the water, Americans should take time this week to familiarize themselves with safe boating practices so that everyone makes it home unharmed.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period before Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 21 through May 27, 2017, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and taking advantage of boating safety education opportunities. I also encourage the Governors of the States and Territories, and appropriate officials of all units of government, to join me in encouraging boating safety through events and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–10847
Filed 5–23–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9614 of May 19, 2017

World Trade Week, 2017

By the President of the United States of America

A Proclamation

Robust trade is critical to the economic strength of our country. During World Trade Week, we recognize the power of open markets around the world and celebrate the many benefits that fair international commerce can bring to our Nation. We also highlight the importance of expanded trade to our economic growth, and we commit to breaking down trade barriers and opening new markets for American exports.

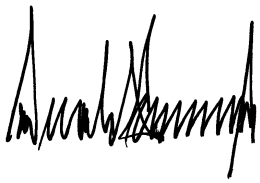
Open, fair, and competitive markets increase opportunities for American workers and employers and contribute to a higher standard of living. Job creation with increased wages is a top priority of my Administration, and increasing trade—while reducing our trade deficit—is a key component of that mission. We will promote our economic growth by strengthening our manufacturing base and expanding exports in manufacturing, agriculture, and the service industries. We will also challenge unfair trade practices that leave American workers, farmers, and businesses competing in global markets at a disadvantage.

Trade has a large role in the United States economy today, but it can be even greater. Our exports contribute $2.2 trillion, or 12 percent, to our national income, supporting 11.5 million private-sector jobs. Manufacturing exports total $1.265 trillion, behind only China and Germany. The United States leads the world in both agricultural exports, which currently total $139 billion, and services exports, at $750 billion today. The United States, however, has a large and persistent trade deficit in manufacturing, overall as well as with certain trading partners. Through an increased commitment to opening markets, reducing barriers to our goods, and firmly addressing unfair trade practices, we can do far better for American workers and manufacturers.

My Administration will negotiate future trade agreements that ensure that all Americans reap the benefits of global commerce. This includes small businesses, which are the backbone of our economy. While past agreements have not always accounted for the consequential effects of trade on small businesses and the American workforce, future agreements will.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 21 through May 27, 2017, as World Trade Week. I encourage Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–10848
Filed 5–23–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9615 of May 19, 2017

Armed Forces Day, 2017

By the President of the United States of America

A Proclamation

For almost 70 years, our Nation has set aside one day to recognize the great debt we owe to the men and women who serve in the Army, Navy, Air Force, Marine Corps, and Coast Guard. On Armed Forces Day, we salute the bravery of those who defend our Nation's peace and security. Their service defends for Americans the freedom that all people deserve.

This year, we also reflect on the 100th anniversary of our Nation's entry into World War I. More than 4.7 million Americans would ultimately serve in the United States Armed Forces during that terrible conflict. Their sacrifice has not been forgotten. One hundred years later, we face different threats and challenges. But our safety and security, and the defense of our way of life, rest in the same able hands of our Armed Forces.

Because our Armed Forces must constantly adapt to new threats, our Nation is committed to ensuring they have the tools and resources they need as they train, deploy, and fight in defense of our country and defending our values. This is why my budget calls for a $54 billion increase in national defense spending.

Today, we salute our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen for their dedication as they carry out the extraordinary duty of protecting our country. We also pay tribute to the families who serve alongside them, lending their steadfast love and support.

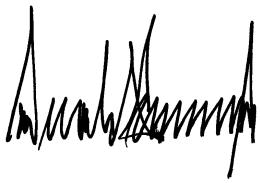
NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the tradition of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I invite the Governors of the States and Territories and other areas subject to the jurisdiction of the United States to provide for the observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States. I also invite veterans, civic, and other organizations to join in the observance of Armed Forces Day each year.

Finally, I call upon all Americans to display the flag of the United States at their homes and businesses on Armed Forces Day, and I urge citizens to learn more about military service by attending and participating in the local observances of the day.

Proclamation 9452 of May 20, 2016, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–10850
Filed 5–23–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9616 of May 19, 2017

National Maritime Day, 2017

By the President of the United States of America

A Proclamation

On National Maritime Day, we recognize the important role the United States Merchant Marine plays in supporting our commerce and national security. We honor the proud history of our merchant mariners and their important contributions in strengthening our economy.

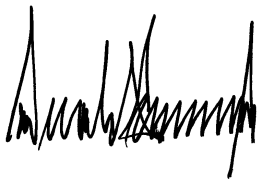
Americans have long looked to the sea as a source of safety and well-being. Bounded by two oceans and the Gulf of Mexico, and crisscrossed by inland waterways, America was destined to be a maritime nation. Our fledgling Republic expanded and became stronger, as our Nation's growing Merchant Marine connected the States and cemented ties among our new allies.

Today, the men and women who crew ships remain essential to our Nation's prosperity and security. Those in the maritime industry, including merchant mariners, promote our economic growth, facilitating the export of more than $475 billion in goods just last year and sustaining our critical defense industrial base. Merchant mariners also actively protect our homeland, serving as our eyes and ears on the seas. They serve with distinction and courage, heading into war zones, and too often sacrificing their own lives for our protection.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day,'' to commemorate the first transoceanic voyage by a steamship, in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, Donald J. Trump, President of the United States of America, do hereby proclaim May 22, 2017, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–10851
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