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# FEDERAL REGISTER

Vol. 83 Tuesday,
No. 15 January 23, 2018

Pages 3059–3260

OFFICE OF THE FEDERAL REGISTER

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

**RIN 3206–AN09**

## Federal Employees Health Benefits Program: Removal of Eligible and Ineligible Individuals From Existing Enrollments

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a final rule amending Federal Employees Health Benefits (FEHB) Program regulations to provide a process for removal of certain identified individuals who are found not to be eligible as family members from FEHB enrollments. This process would apply to individuals for whom there is a failure to provide adequate documentation of eligibility when requested. This action also amends Federal Employees Health Benefits (FEHB) Program regulations to allow certain eligible family members to be removed from existing self and family or self plus one enrollments.

**DATES:** This rule is effective February 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Martel at *marguerite.martel@opm.gov* or (202) 606–0004.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The Federal Employees Health Benefits (FEHB) Program is administered by the Office of Personnel Management (OPM) in accordance with Title 5, Chapter 89 of the United States Code and our implementing regulations at title 5, part 890 of the Code of Federal Regulations. The statute establishes the basic rules for benefits, enrollment, and participation. OPM contracts with health benefits plans to provide coverage under the statute. OPM is authorized to prescribe regulations to govern the time, manner and conditions under which an employee can enroll in a health benefits plan under the FEHB Program and the beginning and end dates of coverage for annuitants and family members.

### I. Background

The Federal Employees Health Benefits (FEHB) Program provides health insurance to about 8.2 million Federal employees, retirees, and their dependents each year. It is the largest employer-sponsored health insurance program in the country providing more than $53 billion in health care benefits annually. Coverage options available to eligible individuals include self only, self plus one or self and family coverage in an approved health benefits plan. Eligible family members include the spouse of an employee or annuitant and a child under 26 years of age, including adopted children, stepchildren or foster children or a child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 26.

On December 1, 2016, OPM published a proposed rule (81 FR 86902) to 1) provide that proof of family member eligibility may be required for coverage under an FEHB Program self plus one or self and family enrollment and 2) to establish the circumstances under which individuals covered under an existing self plus one or self and family FEHB enrollment will be removed from such enrollment and the processes for removal, where the enrollee does not provide adequate documentation of eligibility. Previously, under 5 CFR 890.302, all eligible family members are covered under a self and family enrollment. The regulations did not address the removal of an erroneously-covered ineligible individual from an existing self plus one or self and family enrollment.

On the same date, the Office of Personnel Management (OPM) published a Notice of Proposed Rulemaking (NPRM) (81 FR 86898) allowing certain eligible family members to be removed from self plus one and self and family enrollments in limited circumstances. This would change the current provision at 5 CFR 890.302, which provides that all family members that are eligible according to the FEHB Act (5 U.S.C. 8901) are automatically covered under a self and family enrollment.

This regulation merges and finalizes these two proposed regulations. The proposed regulations were published separately, but have now been merged for regulatory efficiency as both proposed regulations address title 5, Code of Federal Regulations, §§ 890.302, Coverage of Family Members, and 890.308, Disenrollment.

Both proposed regulations had 60-day comment periods. The regulations concerning ineligible family members received four comments: One from an interested citizen, one from an agency HR employee and one from a trade group representing FEHB Program plans with one duplicate comment. Two of the comments were supportive of the proposed rule and none objected to the proposed regulation. The proposed rule concerning eligible family members received three comments: one from an interested citizen, one from an agency HR employee and one from a trade group representing FEHB Program plans. Two of the comments were supportive of the proposed rules and none objected to the change in policy.

### II. Responses to Comments

*Ineligible Family Member Regulation*

One commenter requested that OPM specify whether a submission of a reconsideration request delays the effective date of the initial removal. The provisions added in § 890.308(e) and (f) mirror the processes outlined in § 890.308(a) for disenrollment of employees. That provision does not provide a delayed effective date for reconsideration and so we are not adding one to this section. If an enrollee or the removed individual seeks reconsideration and the agency or OPM finds the family member to be eligible, the family member will receive retroactive coverage.

One commenter asked whether OPM is now requesting that agencies to track family members. This regulation does not require agencies to track family members, but forthcoming sub-regulatory guidance may require agencies to collect proof of eligibility in certain circumstances. The regulations amend § 890.302 to provide that proof of family member eligibility must be provided upon request by a carrier, employing office, or OPM.

Two commenters asked how an FEHB Program carrier would be aware of an initial determination of ineligibility under proposed § 890.308(f)(1) and requested further guidance on all required methods of notification to FEHB Program carriers. Section 890.308(f)(1) states that the employing office or OPM, as applicable, will direct the carrier to remove the individual if proof of eligibility is not provided by the enrollee. OPM will publish a Benefits Administration Letter (available at *https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/#url=BALs*) and a Carrier Letter (available at *https://www.opm.gov/healthcare-insurance/healthcare/carriers/#url=Carrier-Letters*) following the publication of this regulation to carriers and to agencies providing a specific process to notify carriers and/or employing offices of any coverage changes effectuated under this regulation. One commenter further added that the carrier should receive the reasoning behind the removal of the individual. Accordingly, the final rule provides that the employing office or OPM shall provide a copy of the letter sent to the enrollee concerning removal under § 890.308(f)(1) to the carrier.

One commenter suggested that OPM add an effective date for a removal under § 890.308(f)(3) and (e)(3) where fraud or intentional misrepresentation are found. OPM has updated the final regulation to specify that if fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

One commenter suggested that OPM add examples to § 890.308(g) to clarify how temporary continuation of coverage (TCC), conversion and extension of coverage rules will operate under the regulations. An example has been added to clarify that an individual will not be eligible to receive TCC, conversion or an extension of coverage unless the removal is effectuated within the time limit currently required under existing regulations.

*Removal of Eligible Family Members From Existing Enrollment Regulation*

One commenter asked who will be responsible for collecting documentation and determining proof of eligibility status and whether that information will need to be forwarded to FEHB Program carriers. The proposed rule provided and the final rule maintains that employing offices will be responsible for collecting documentation and determining proof of eligibility status and that the information will be sent to FEHB Program carriers. Two commenters asked that OPM specify how this information should be provided to carriers and how it should be maintained and tracked. OPM plans to publish a Benefits Administration Letter and a Carrier Letter to employing offices and FEHB Program carriers following the publication of this regulation including a process for agencies to inform carriers of changes in covered family members and documentation that needs to be collected to effectuate a change.

One commenter requested that OPM change the proposed effective date of removals. The proposed rule makes the removal effective on the first day of the pay period following a notarized request received from the family member at issue and on the first day of the second pay period following a request to remove a child received from the enrollee. The commenter requested that the effective date be the first day of the third pay period for enrollees who pay premiums bi-weekly and the second pay period for enrollees who pay premiums monthly as the effective date for either type of family member removal. OPM agrees that this avoids unnecessary benefit overpayments and ensures that a family member has sufficient time to obtain replacement health benefits coverage. The final rule makes this change.

We have also made minor, non-substantive editorial changes to the regulation for editorial consistency and to improve clarity. In addition, we have updated the regulation to clarify that either the enrollee or the removed individual can provide proof of eligibility or request reconsideration of the initial decision.

**Expected Impact of Changes Based on the Rule**

The FEHB Program currently has a total of 262 health plan options for employees to choose from for their health benefits coverage. Historically, about 18,000 of FEHB participants switch health care plans in any given year. There are approximately 4 million family members covered under FEHB Program. While this rule may lower costs to the FEHB Program by reducing the number of eligible and ineligible family members, OPM does not have data available to calculate specific rates. However, OPM has found anecdotal evidence which estimates between 1–3 percent of spouses and 4–12 percent of children in commercial health plans are ineligible for coverage. So, we anticipate this rule will not have widespread applicability across the Program.

**Executive Order Requirements**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' under Executive Order 12866.

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

**Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM is not proposing any additional collections in this rule. This rule involves an OMB approved collection of information subject to the PRA—OMB No. 3206–0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM/Central 1 Civil Service Retirement and Insurance Records, available at *https://www.opm.gov/information-management/privacy-policy/sorn/opm-*

*sorn-central-1-civil-service-retirement-and-insurance-records.pdf.*

**List of Subjects on 5 CFR Part 890**

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

For the reasons set forth in the preamble, OPM amends 5 CFR part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of 101, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Revise § 890.302(a)(1) to read as follows:

### § 890.302 Coverage of family members.

(a)(1) *Enrollment.* An enrollment for self plus one includes the enrollee and one eligible family member. An enrollment for self and family includes all family members who are eligible to be covered by the enrollment except as provided in § 890.308(h). Proof of family member eligibility may be required, and must be provided upon request, to the carrier, the employing office or OPM. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is already covered under another person's self plus one or self and family enrollment in the FEHB Program.

* * * * *

■ 3. Amend § 890.308 by:

■ a. Revising the section heading;

■ b. Adding headings to paragraphs (a), (b), (c), and (d); and

■ c. Adding paragraphs (e), (f), (g), and (h).

The revisions and additions read as follows:

### § 890.308 Disenrollment and removal from enrollment.

(a) *Carrier disenrollment: Enrollment reconciliation.* ***

(b) *Carrier disenrollment: Death of enrollee.* ***

(c) *Carrier disenrollment: Child survivor annuitant.* ***

(d) *Carrier disenrollment: Separation from Federal employment.* ***

(e) *Carrier removal from enrollment: Ineligible individuals.* (1) A carrier may request verification of eligibility from the enrollee at any time of an individual who is covered as a family member of the enrollee in accordance with § 890.302. To verify eligibility, the carrier shall send the enrollee a request for appropriate documentation of the individual's relationship to the enrollee with a copy to the enrollee's employing office of record. The request shall contain a written notice that the individual will no longer be covered 60 calendar days after the date of the notice unless the enrollee or the employing office provides appropriate documentation as requested. If the carrier does not receive the requested documentation within the specified time frame or if based on the documentation provided the individual is found not to be eligible, the carrier shall remove the individual from the enrollment and shall provide written notice of removal to the enrollee, with a copy to the employing office, including an explanation of the process for seeking reconsideration. The carrier may extend the time limit to provide appropriate documentation if the enrollee or the removed individual shows to the carrier that he or she was prevented by circumstances beyond his or her control from providing timely documentation.

(2) Appropriate documentation includes, but is not limited to, copies of birth certificates, marriage certificates, and, if applicable, other proof including that the individual lives with the enrollee and the enrollee is the individual's primary source of financial support.

(3) The effective date of a removal shall be prospective unless the record shows that the enrollee or the removed individual has committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan. If fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

(4) A request for reconsideration of the carrier's initial decision must be filed by the enrollee or the removed individual with the enrollee's employing office within 60 calendar days after the date of the carrier's initial decision. The employing office must notify the carrier when a request for reconsideration of the decision to remove the individual from the enrollment is made. The time limit for filing may be extended if the enrollee or the removed shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, individual's name, the name of the enrollee's carrier, reason(s) for the request, and, if applicable, the enrollee's retirement claim number.

(5) The employing office must issue a written notice of its final decision to the enrollee, and notify the carrier of the decision, within 30 days of receipt of the request for reconsideration. The notice must fully set forth the findings and conclusions on which the decision was based.

(6) If an enrollee or the removed individual provides acceptable proof of eligibility of an individual subsequent to removal, coverage under the enrollment shall be reinstated retroactively so that there is no gap in coverage, as appropriate.

(f) *Employing office and OPM removal from enrollment: Ineligible individuals.* (1) An enrollee's employing office or OPM may request verification of eligibility from the enrollee at any time of an individual who is covered as a family member of the enrollee in accordance with § 890.302. To verify eligibility, the employing office or OPM shall send the enrollee a request for appropriate documentation of the individual's relationship to the enrollee. The request shall contain a written notice that the individual will no longer be covered 60 calendar days after the date of the notice unless the enrollee provides appropriate documentation as requested. If the employing office or OPM, as applicable, does not receive the requested documentation within the specified time frame or if based on the documentation provided the individual is found not to be eligible, the employing office or OPM, as applicable, shall direct the carrier to remove the individual from the enrollment and the employing office or OPM, as applicable, shall provide written notice of the removal to the enrollee, with a copy to the carrier, including an explanation of the process for seeking reconsideration. The time limit to provide appropriate documentation may be extended if the enrollee or the removed individual shows to the employing office or OPM, as appropriate, that he or she was

prevented by circumstances beyond his or her control from providing timely documentation.

(2) Appropriate documentation includes, but is not limited to, copies of birth certificates, marriage certificates, and, if applicable, other proof including that the individual lives with the enrollee and that the enrollee is the individual's primary source of financial support.

(3) The effective date of the removal shall be prospective unless the record shows that the enrollee or the removed individual has committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan. If fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

(4) The enrollee or the removed individual may request reconsideration of an employing office or OPM's decision to remove the individual from the enrollment within 60 days of an employing office or OPM's initial decision. The enrollee or the removed individual may request reconsideration of an employing office decision to the employing office or an OPM decision to OPM. The employing office or OPM, as applicable, must notify the carrier when a request for reconsideration of the decision to remove the individual from the enrollment is made. The time limit for filing may be extended if the enrollee or the removed individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, the individual's name, the name of the enrollee's carrier, reason(s) for the request, and, if applicable, the enrollee's retirement claim number.

(5) The employing office or OPM, as applicable, must issue a written notice of its final decision to the enrollee, and notify the carrier of the decision within 30 days of receipt of the request for reconsideration. The notice must fully set forth the findings and conclusions on which the decision was based.

(6) If an enrollee or the removed individual provides acceptable proof of eligibility of an individual subsequent to removal, coverage under the enrollment shall be reinstated retroactively so that there is no gap in coverage, as appropriate.

(g) *Temporary extension of coverage, conversion and/or temporary continuation of coverage.* If an individual is removed from an enrollment pursuant to paragraph (e) or (f) of this section, the individual may be eligible for a 31-day temporary extension of coverage, conversion and/or temporary continuation of coverage in accordance with § 890.401 and subparts H and K of this part. Any opportunity to enroll under § 890.401 and subparts H and K shall not extend beyond the date that opportunity would have ended if the individual had been removed on the date of loss of eligibility.

(1) *Example.* An enrollee and his spouse divorce on May 4, 2017. The enrollee does not remove the former spouse from the enrollee's self and family enrollment, so the former spouse is receiving coverage but is not eligible. In this example, the former spouse is not eligible to receive an annuity listed in § 890.805(2). If the employing office later discovers the divorce, and removes the spouse from the enrollment on June 20, 2018, the former spouse is not eligible for a 31-day extension of coverage, conversion and/or temporary continuation of coverage because the regulatory window for election of 60 days outlined in § 890.805(1) has passed. The sixty-day window began on the final date of the divorce, May 4, 2017 and ended on July 3, 2017.

(2) [Reserved]

(h) *Removal from enrollment: Eligible family members.* (1) An eligible family member may be removed from a self plus one or a self and family enrollment if a request is submitted to the enrollee's employing office for approval at any time during the plan year in the following circumstances:

(i) In the case of a spouse, if the enrollee and his or her spouse provide a notarized request for removal.

(ii) In the case of a child who has reached the age of majority in the child's state of residence (the enrollee's state of residence if the child's is not known), if the enrollee provides proof that the child is no longer his or her dependent as described under § 890.302(b). The enrollee shall also provide the last known contact information for the child.

(iii) In the case of a child who has reached the age of majority in the child's state of residence, if the child provides a notarized request for removal to the employing office.

(2) For removals under paragraph (h)(1) of this section the effective date is the first day of the third pay period following the date the request is approved by the employing office for employees who pay bi-weekly and the second pay period following the date that the request is approved by the employing office for enrollees who pay premiums monthly.

(3) The family member's removal under this paragraph (h) is considered a cancellation under § 890.304(d) and removed family members are not eligible for temporary extension of coverage and conversion under § 890.401 or temporary continuation of coverage under § 809.1103.

(4) If an eligible family member is removed under this paragraph (h), he or she may only regain coverage under the applicable self plus one or self and family enrollment if requested by the enrollee during the annual open season or within 60 days of the family member losing other health insurance coverage. The enrollee must also provide written consent to reinstatement of coverage from the family member and demonstrate eligibility of the spouse or child as a family member to the employing office.

(5) If an employing office approves a request for removal, the employing office must notify the enrollee and the carrier of the removal immediately. For removals under paragraph (h)(1)(ii) of this section, the employing office must also immediately notify the child of the removal using the last known contact provided by the enrollee.

[FR Doc. 2018–01174 Filed 1–22–18; 8:45 am]

**BILLING CODE 6325–63–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2018–0035; Special Conditions No. 25–714–SC]**

## Special Conditions: Preferred Improvements, LLC, Boeing Model DC3C Airplanes; Rechargeable Lithium Batteries

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model DC3C airplanes as modified by Preferred Improvements, LLC. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is rechargeable lithium ion backup battery packs installed on the airplanes. The applicable airworthiness regulations do not contain adequate or appropriate

safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Preferred Improvements, LLC, on January 23, 2018. Send your comments by March 9, 2018.

**ADDRESSES:** Send comments identified by docket number FAA–2018–0035 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, Airplane & Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1320; email *Nazih.Khaouly@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

In addition, the substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. The FAA, therefore, finds it unnecessary to delay the effective date, and finds good cause for making these special conditions effective upon publication in the **Federal Register**.

## Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On February 1, 2017, Preferred Improvements, LLC, applied for a supplemental type certificate to install a Saab Grintek Impi II tracking system on Boeing Model DC3C airplanes. The tracking system sends altitude and speed information to a ground station via a modem, which contains a rechargeable lithium ion battery.

The Boeing Model DC3C airplane is a narrow-body transport category airplane powered by twin-turbine/piston wing-mounted engines. The airplane has a maximum takeoff weight of 26,900 pounds with seating for 2 crewmembers and 32 passengers.

## Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Preferred Improvements, LLC, must show that the Boeing Model DC3C airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A669, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for these airplanes, as modified by Preferred Improvements, LLC, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other models included on the same type certificates to incorporate the same novel or unusual design feature, these special conditions would also apply to the other models under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model DC3C airplanes, as modified by Preferred Improvements, LLC, must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

## Novel or Unusual Design Features

Boeing Model DC3C airplanes, as modified by Preferred Improvements, LLC, will incorporate the following novel or unusual design feature: airplane tracking system with a modem containing a rechargeable lithium ion battery.

The battery system consists of the battery, battery charger, and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and battery system are referred to as a battery.

## Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory.

Special Condition 4 clarifies that the flammable fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas Special Condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have ''automatic'' means due to the fast acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These conditions apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments. These regulations will remain in effect for other battery installations on these airplanes.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

## Applicability

As discussed above, these special conditions are applicable to Boeing Model DC3C airplanes as modified by Preferred Improvements, LLC. Should Preferred Improvements, LLC, apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A699 to incorporate the same novel or unusual design feature, these special conditions would apply to those models as well.

## Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model DC3C airplanes as modified by Preferred Improvements, LLC.

## Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

8. If its function is required for safe operation of the airplane, have a monitoring and warning feature that alerts the flight crew when its charge state falls below acceptable levels.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

**Note:** A battery system consists of the battery, battery charger and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of this special condition, a battery and battery system are referred to as a battery.

Issued in Renton, Washington, on January 17, 2018.

**Victor Wicklund,**

*Manager, Transport Standards Branch, Policy & Innovation Division, Aircraft Certification Service.*

[FR Doc. 2018–01102 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0015; Product Identifier 2017–CE–045–AD; Amendment 39–19158; AD 2018–02–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Piper Aircraft, Inc.

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181,

PA–28–236, PA–28–201T, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T airplanes. This AD requires inspecting the fuel tank selector cover to verify the left and right fuel tank selector placards are located at the proper positions and replacing those that are improperly located with new placards. This AD was prompted by a quality control issue at the manufacturer that resulted in the installation of the fuel tank selector covers with the left and right fuel tank selector placards improperly located. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective February 7, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2018.

We must receive comments on this AD by March 9, 2018.

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

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

For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; telephone: (772) 567–4361; internet: *www.piper.com/technical-publications-documents/.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0015.

## Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0015; or in person at the Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Ronald Segall, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5541; fax: (404) 474–5506; email: *ronald.segall@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We received a report from Piper Aircraft, Inc., that they had a quality control issue that resulted in the installation of fuel tank selector covers with the placement of the left and right fuel tank selector placards installed in reverse on certain Piper Aircraft, Inc. Models PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–236, PA–28–201T, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T airplanes. This condition, if not addressed, could result in fuel management errors resulting in fuel starvation and loss of engine power in flight. We are issuing this AD to address the unsafe condition on these products.

## Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1309, dated October 10, 2017. The service bulletin describes procedures for inspecting the fuel tank selector cover to verify the left and right fuel tank selector placards are located at the 12:00 and 3:00 clock positions, respectively, and replacing those that are improperly located with new placards. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## FAA's Determination

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

## AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

## FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because improper fuel selection could result in fuel starvation and loss of engine power in flight. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0015 and Product Identifier 2017–CE–045–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

## Costs of Compliance

We estimate that this AD affects 17,957 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 |
|---|---|---|---|---|
| Inspect the left and right fuel tank selector placards for proper installation. | .5 work-hour × $85 per hour = $42.50 ..... | Not applicable ..... | $42.50 | $763,172.50 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Install new fuel selector placards on the fuel selector cover. | .5 work-hour × $85 per hour = $42.50 ..... | $9.26 | $51.76 |

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify 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):

**2018–02–05 Piper Aircraft, Inc.:** Amendment 39–19158; Docket No. FAA–2018–0015; Product Identifier 2017–CE–045–AD.

**(a) Effective Date**

This AD is effective February 7, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the following Piper Aircraft, Inc. airplane models and serial numbers (S/Ns) that are certificated in any category:

TABLE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABLE AIRPLANE MODELS AND S/NS

| Model | Serial No. |
|---|---|
| PA–28–140 ..... | 28–20001 through 28–26946; 28–7125001 through 28–7725290. |
| PA–28–150 ..... | 28–03, 28–1 through 28–4377, and 28–1760A. |
| PA–28–151 ..... | 28–741500l through 28–7715314. |
| PA–28–160 ..... | 28–03, 28–1 through 28–4377, and 28–1760A. |
| PA–28–161 ..... | 2841001 through 2841365, 28–7716001 through 28–8216300, 28–8316001 through 28–8616057, 2816001 through 2816109, 2816110 through 2816119, and 2842001 through 2842420. |
| PA–28–180 ..... | 28–03, 28–671 through 28–5859, 28–7105001 through 28–7205318, 28–E13, and 28–7305001 through 28–7505261. |

TABLE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABLE AIRPLANE MODELS AND S/NS—Continued

| Model | Serial No. |
|---|---|
| PA–28–181 | 28–769000l through 28–8690056, 28–8690061, 28–8690062, 289000l through 2890205, 2890206 through 2890231, and 2843001 through 2843879. |
| PA–28–236 | 28–7911001 through 28–8611008 and 2811001 through 2811050. |
| PA–28–201T | 28–7921001 through 28–7921095. |
| PA–28R–180 | 28R–30002 through 28R–31270 and 28R–7130001 through 28R–7130019. |
| PA–28R–200 | 28R–30482, 28R–35001 through 28R–35820, 28R–7135001 through 28R–7135238, and 28R–7235001 through 28R–7635545. |
| PA–28R–201 | 28R–7737002 through 28R–7837317, 2837001 through 2837061, and 2844001 through 2844171. |
| PA–28R–201T | 28R–7703001 through 28R–7803374 and 2803001 through 2803015. |
| PA–28RT–201 | 28R–7918001 through 28R–8218026. |
| PA–28RT–201T | 28R–7931001 through 28R–8631005, and 2831001 through 2831038. |

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 11, Placard and Markings.

**(e) Unsafe Condition**

This AD was prompted by a quality control issue at the manufacturer that resulted in the installation of fuel tank selector covers with the left and right fuel tank selector placards improperly located. We are issuing this AD to prevent fuel management error. The unsafe condition, if not addressed, could result in fuel starvation and loss of engine power in flight.

**(f) Compliance**

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

**(g) Inspect Fuel Selector Cover**

Before further flight after February 7, 2018 (the effective date of this AD), inspect the left and right fuel selector cover placards for proper installation using Part I of Piper Aircraft, Inc. (Piper) Service Bulletin (SB) No. 1309, dated October 10, 2017. If the fuel selectors placards are properly installed, no further action is required.

**(h) Install Temporary Fuel Selector Placards**

If improper (reversed clock positions) installation of the left and right fuel selector placards is found during the inspection required in paragraph (g) of this AD, before further flight, fabricate and install temporary left and right fuel selector placards using Part II of Piper SB No. 1309, dated October 10, 2017. In lieu of installing the temporary placards required by this paragraph, you may install the permanent placards specified in paragraph (i) of this AD.

**(i) Install Permanent Fuel Selector Placards**

Within the next 100 hours time-in-service (TIS) after February 7, 2018 (the effective date of this AD), replace the temporary placard installed in paragraph (h) of this AD with permanent left and right fuel selector placards using Part III of Piper SB No. 1309, dated October 10, 2017, unless already done in lieu of installing the temporary placards specified in paragraph (h) of this AD.

**(j) Special Flight Permit**

A special flight permit is allowed for this AD per 14 CFR 39.23 with the following limitations: Flights are not to exceed a total of 100 hours TIS with temporary placards installed.

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

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information, paragraph (l), of this AD.

(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.

**(l) Related Information**

For more information about this AD, contact Ronald Segall, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5541; fax: (404) 474–5506; email: *ronald.segall@faa.gov.*

**(m) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Piper Aircraft, Inc. Service Bulletin No. 1309, dated October 10, 2017.

(ii) Reserved.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; telephone: (772) 567–4361; internet: *www.piper.com/technical-publications-documents/.*

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 16, 2018.

**Melvin J. Johnson,**

*Deputy Director, Policy & Innovation Division, Aircraft Certification Service.*

[FR Doc. 2018–01059 Filed 1–22–18; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2017–1060; Airspace Docket No. 17–AEA–19]**

## Amendment of Class E Airspace; Kane, PA

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action amends the legal description of the Class E airspace extending upward from 700 feet above the surface at Kane Community Hospital Heliport, Kane, PA, by correcting the geographic coordinates of the heliport and point in space coordinates. This action does not affect the boundaries or operating requirements of the airspace.

**DATES:** Effective 0901 UTC, March 29, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11.B Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington,

DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes a clerical correction to the geographic coordinates of Kane Community Hospital Heliport, Kane, PA.

## History

The FAA Aeronautical Information Services branch found the Class E airspace extending upward from 700 feet above the surface at Kane Community Hospital Heliport, Kane, PA, along with the related point in space coordinates, were incorrect as published in FAA Order 7400.11B, Airspace Designations and Reporting Points. The latitude degree for the heliport and the longitude degree for the point in space coordinates were incorrect in the Order.

A clerical amendment in the legal description also is made to the airspace designation, removing the name of the town listed before the airport name description.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by correcting the geographic coordinates of the heliport reference point and point in space coordinates of Kane Community Hospital Heliport in Class E airspace extending upward from 700 feet above the surface to be in concert with the FAA's aeronautical database.

This is an administrative change and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

## Regulatory Notices and Analyses

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

## Environmental Review

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

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AEA PA E5 Kane, PA [Amended]**

Kane Community Hospital Heliport, Kane, PA
(Lat. 41°40′16″ N, long. 78°49′04″ W)
Point in Space Coordinates
(Lat. 41°39′58″ N, long. 78°52′09″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space coordinates serving Kane Community Hospital Heliport.

Issued in College Park, Georgia, on January 16, 2018.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2018–01172 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–13–P**

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## FEDERAL TRADE COMMISSION

## 16 CFR Part 303

**RIN 3084–AB47**

## Rules and Regulations Under the Textile Fiber Products Identification Act

**AGENCY:** Federal Trade Commission (''FTC'' or ''Commission'').

**ACTION:** Final rule.

**SUMMARY:** The Commission amends the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to delete the

requirement that an owner of a registered word trademark, used as a house mark, furnish the FTC with a copy of the mark's registration with the United States Patent and Trademark Office (''USPTO'') before using the mark on labels.

**DATES:** Effective on February 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jock Chung, (202) 326–2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Textile Fiber Products Identification Act (''Textile Act'') [1] and implementing Textile Rules require marketers to, among other things, attach a label to each covered textile fiber product disclosing: (1) The generic names and percentages by weight of the constituent fibers in the product; (2) the name under which the manufacturer or other responsible company does business, *i.e.,* the product's marketer's name,[2] or other specified identifier in lieu of that name,[3] and (3) the name of the country where the product was processed or manufactured.[4] Section 303.19(a) allows the owners of registered word trademarks who use these trademarks as house marks to disclose such trademarks in lieu of their names. However, before doing so, the company must file a copy of their USPTO registration with the Commission. The Commission imposed this requirement in 1959, presumably to obviate the need for the Commission to obtain paper copies of registrations from the USPTO. However, registered house marks now can be found by searching online or at the USPTO's website (*www.uspto.gov*).

## II. Amendments to the Textile Rules

In a Notice of Proposed Rulemaking published on June 28, 2017,[5] the Commission proposed amending Section 303.19 to: (1) Delete the requirement that an owner of a registered word trademark used as a house mark furnish the FTC with a copy of the mark's registration with the USPTO before using the mark on labels, and (2) no longer restrict the use of such trademarks to only those employed as house marks. The Commission received three comments in response.[6]

As discussed below, based on the record, the Commission has determined to amend the Textile Rules to delete the requirement trademark owners furnish the FTC with a copy of the mark's USPTO registration before using the mark on labels. Based on the comments received, however, the Commission declines to eliminate the provision allowing only trademarks used as house marks.

### *A. Deleting the Registration Submission Requirement*

*Comments:* The AAFA and Appelbaum comments supported the Commission's proposal to eliminate the requirement that businesses provide the Commission with a copy of a word trademark's USPTO registration prior to using these marks. AAFA asserted that simplifying the Textile Rules would ''eliminate confusion, both for the business community and for consumers.'' [7] De La Cruz, however, opposed this proposed amendment, arguing that the current Section 303.19(a) ''keeps trade in order'' and ''discourages trademark infringement,'' [8] but did not offer support for these contentions.

*Discussion:* Based on the record, the Commission amends Section 303.19(a) of the Textile Rules to delete the requirement that an owner of a registered word trademark furnish the FTC with a copy of the mark's registration with the USPTO prior to using the mark in lieu of a marketer's name. Commenters and the Commission's experience indicate that eliminating the submission requirement will reduce compliance costs for marketers without reducing protections for consumers. Specifically, the Commission and consumers can readily identify a registrant by searching for a marketer's house mark on the USPTO's online database or other online resources.[9] Moreover, Commission staff has not consulted the files of house marks submitted to the Commission for many years, if ever, nor has it received requests from the public to do so. The Commission therefore concludes that the current submission requirement is neither necessary nor useful to enable the Commission or consumers to identify marketers of textile fiber products.

### *B. Word Trademarks Other Than House Marks as Marketer Identifiers*

*Comments:* Commenters Appelbaum and De La Cruz opposed the Commission's proposal to eliminate the provision allowing only trademarks used as house marks to be used in lieu of marketers' names. Appelbaum asserted that the proposed amendment was premised on an assumption a word trademark is ''unique,'' when, in fact, word trademarks may be ''very similar,'' preventing consumers from effectively searching online for business owners.[10] Appelbaum further noted that, in contrast, house marks did not present this problem because ''a house mark is more uniquely associated with a business and less likely to be imitated.'' [11] De La Cruz stated without further analysis that the current Section 303.19(a) ''keeps trade in order'' and ''discourages trademark infringement.'' [12] The AAFA supported this proposed amendment without explanation.[13]

*Discussion:* The Commission declines to amend Section 303.19(a) of the Textile Rules to permit the use of word trademarks other than house marks in lieu of marketers' names. The comments and staff research indicate that such an amendment would impose new burdens and additional costs on consumers and others to identify marketers of textile fiber products.

In particular, the record indicates that it can be difficult to find the identity of a specific registrant using a word trademark, rather than a house mark. Word trademarks that are not house marks can be registered for specific goods or services, and identical word trademarks can be registered numerous times for different goods or services.[14] Consequently, simple searches on the USPTO's online database can produce

[1] 15 U.S.C. 70 *et seq.*

[2] 15 U.S.C. 70b(b)(3).

[3] 16 CFR 303.19.

[4] *See* 15 U.S.C. 70b(b).

[5] 82 FR 29251 (June 28, 2017).

[6] American Apparel & Footwear Association (AAFA) (#00005); Jonathan Appelbaum (#00003); and De La Cruz (#00002). *See https://www.ftc.gov/policy/public-comments/2017/07/initiative-708.*

[7] AAFA, *https://www.ftc.gov/system/files/documents/public_comments/2017/07/00005-141123.pdf,* p. 1; Appelbaum, *https://www.ftc.gov/system/files/documents/public_comments/2017/07/00003-141029.pdf,* p. 1.

[8] De La Cruz, *https://www.ftc.gov/policy/public-comments/2017/07/06/comment-00002,* p. 1.

[9] As discussed below, however, although simple searches can determine registrants for house marks, it is far more difficult to determine relevant registrations for some word trademarks.

[10] Appelbaum, p. 1.

[11] *Id.*

[12] De La Cruz, p. 1.

[13] AAFA, p. 1.

[14] For example, the USPTO has 148 registrations for the trademark ''Acme'' for different types of goods, including boat propellers (AMG Operations), beer (North Coast Brewing Co., Inc.), and firearm targets (Clifford J. Brown). Three of these registrations are for products covered by the Textile Rules: T-shirts (Acme Anvils, LLC), T-shirts (Time Warner Entertainment Company, L.P.), and quilts (Pillowtex Corp.).

hundreds or thousands of responses.[15] Although sophisticated searches produce far fewer responses, such searches may require more training and expertise than many consumers are likely to possess.[16] In contrast, to register a house mark as a trademark, the USPTO requires that an applicant indicate that it will use that house mark ''for a full line of products'' so that consumers can identify a manufacturer or seller from that house mark.[17] Therefore, it is significantly easier to identify a house mark owner from a USPTO search.[18]

Accordingly, the Commission will continue to allow only owners of registered word trademarks who use these trademarks as house marks to disclose such trademarks in lieu of their names.

## III. Paperwork Reduction Act

The Textile Rules contain various ''collection of information'' (*e.g.,* disclosure and recordkeeping) requirements for which the Commission has obtained clearance from the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (''PRA'').[19] The amended Textile Rules do not impose any additional collection of information requirements.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[20]

The Commission anticipates that the final amendment will not have a significant economic impact on a substantial number of small entities. In the Commission's view, the amendment should not increase the costs of small entities that manufacture or import textile fiber products, but may reduce costs associated with furnishing a copy of a registered word trademark used as a house mark to the FTC. Therefore, based on available information, the Commission certifies that amending the Textile Rules will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the amendment will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish a Final Regulatory Flexibility Analysis to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

Although the Commission has certified under the RFA that the amendments would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

### *A. Description of the Reasons That Action by the Agency Is Being Taken*

The Commission is amending the Rules to provide greater flexibility in complying with the Rules' disclosure requirements by permitting textile fiber product marketers to use registered house marks to identify themselves without sending registration copies to the Commission.

### *B. Issues Raised by Comments in Response to the IRFA*

The Commission did not receive any comments specifically related to the impact of the final amendment on small businesses. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

### *C. Estimate of Number of Small Entities To Which the Amendments Will Apply*

Under the Small Business Size Standards issued by the Small Business Administration, textile apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing wholesalers qualify as small business if they have 100 or fewer employees. The Commission's staff has estimated that approximately 22,642 textile fiber product manufacturers and importers are covered by the Textile Rules' disclosure requirements.[21] A substantial number of these entities likely qualify as small businesses. The Commission estimates that the amendment will not have a significant impact on small businesses because it does not impose any new obligations on them, but may reduce filing costs associated with the Textile Rules.

### *D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The amendment deletes a filing requirement, thus providing greater flexibility to companies covered by the Textile Rules. The amendment is not expected to increase any reporting, recordkeeping, or other requirements associated with the Textile Rules, and is expected to decrease reporting requirements.

### *E. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives*

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendment is expected to decrease reporting requirements and will not impose any new requirements or compliance costs. No comments identified any new compliance costs, and several comments argued the amendment will reduce compliance costs.

## List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

For the reasons discussed in the preamble, the Commission amends part

[15] For instance, a simple search for ''Acme'' on the USPTO's website currently produces 527 registrations; a simplesearch for ''Cotton'' produces 2,761 registrations. Similarly, searches on standard search engines for common word trademarks can produce enormous numbers of responses. Searching for ''Acme'' on Google returns almost 57 million results, with the first results referencing supermarkets, cartoons, packaging-supplies, pies, and furniture.

[16] For example, to search on the USPTO website for only ''Acme,'' and exclude the 379 registrations for terms that include Acme, such as ''Pro Acme,'' a user must conduct a ''structured' search on the USPTO database and specify that the search is on the ''FULL MARK'' field.

[17] USPTO ''Trademark Manual of Examining Procedure April 2017'' 1402.03(b) House Marks, available at *https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1400d1e2208.html.*

[18] For example, a simple search on the USPTO for the house mark ''Kirkland Signature'' returns 138 registrations, all owned by Costco Wholesale Corporation. Therefore, consumers can review any of the registrations and determine the house mark owner, even though only one of the registrations is for clothing. Online searches for ''Kirkland Signature'' also readily return references to Costco Wholesale Corporation.

RN numbers also already provide a free, convenient alternative to names for marketers that do not own house marks. The Commission has recently revised the RN Database at *https://rn.ftc.gov/Account/BasicSearch,* so consumers can easily identify companies from RN numbers.

[19] 44 U.S.C. 3501 *et seq.* In 2015, the Commission published its PRA burden estimates for the current information collection requirements under the Rules. *See* 80 FR 1411, 1413 (Jan. 9, 2015) and 80 FR 14387, 14388 (Mar. 19, 2015). In April 2015, OMB granted clearance through April 30, 2018, for these requirements and the associated PRA burden estimates. The OMB control number is 3084–0101.

[20] 5 U.S.C. 603–605.

[21] 80 FR 1411, 1413 (Jan. 9, 2015).

303 of title 16, Code of Federal Regulations, as follows:

## PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

■ 1. The authority citation for part 303 continues to read:

**Authority:** 15 U.S.C. 70 *et seq.*

■ 2. Amend § 303.19 by revising paragraph (a) to read as follows:

**§ 303.19 Name or other identification required to appear on labels.**

(a) The name required by the Act to be used on labels shall be the name under which the person is doing business. Where a person has a word trademark, used as a house mark, registered in the United States Patent Office, such word trademark may be used on labels in lieu of the name otherwise required. No trademark, trade names, or other names except those provided for above shall be used for required identification purposes.

* * * * *

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2018–01202 Filed 1–22–18; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1301

**[Docket No. DEA–450]**

**RIN 1117–AB42**

## Implementation of the Provision of the Comprehensive Addiction and Recovery Act of 2016 Relating to the Dispensing of Narcotic Drugs for Opioid Use Disorder

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Addiction and Recovery Act (CARA) of 2016, which became law on July 22, 2016, amended the Controlled Substances Act (CSA) to expand the categories of practitioners who may, under certain conditions on a temporary basis, dispense a narcotic drug in Schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. Separately, the Department of Health and Human Services, by final rule effective August 8, 2016, increased to 275 the maximum number of patients that a practitioner may treat for opioid use disorder without being separately registered under the CSA for that purpose. The Drug Enforcement Administration (DEA) is hereby amending its regulations to incorporate these statutory and regulatory changes.

**DATES:** *Effective:* January 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

**SUPPLEMENTARY INFORMATION:** It has been determined this is a major rule within the meaning of the Congressional Review Act (CRA). 5 U.S.C. 804(2). Major rules generally cannot take effect until 60 days after the date on which the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). However, the CRA provides that ''any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.'' 5 U.S.C. 808. As is discussed below, DEA finds there is good cause to issue these amendments as a final rule without notice and comment, because these amendments merely conform the implementing regulations with recent amendments to the CSA contained in CARA that have already taken effect. Accordingly, DEA has determined this rule will take effect January 22, 2018.

### Background and Legal Authority

*Pertinent Provisions of the CARA*

On July 22, 2016, the President signed the Comprehensive Addiction and Recovery Act (CARA) into law as Public Law 114–198. Section 303 of the CARA amended certain provisions of 21 U.S.C. 823(g)(2), which is the subsection of the Controlled Substance Act (CSA) that sets forth the conditions under which a practitioner may, without being separately registered under subsection 823(g)(1), dispense a narcotic drug in Schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. Maintenance treatment is the dispensing of a narcotic drug, in excess of twenty-one days, for the treatment of dependence upon heroin or other morphine-like drugs (21 U.S.C. 802(29)). A detoxification treatment is the term given when a narcotic drug is dispensed in decreasing doses, not exceeding one hundred and eighty days, ''to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug,'' with the ultimate goal of bringing a patient to a narcotic drug-free state (21 U.S.C. 802(30)).

Specifically, section 303 of the CARA temporarily expands the types of practitioners who may dispense a narcotic drug in Schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment without being separately registered as a narcotic treatment program. Whereas prior to the CARA, only qualified *physicians* were permitted to dispense narcotic drugs in this manner, the CARA now temporarily permits certain nurse practitioners and physician assistants to qualify to do so. The CARA achieves this result by (1) inserting the term ''qualifying practitioner'' in place of ''qualifying physician'' in 21 U.S.C. 823(g)(2)(B)(i) and (2) defining ''qualifying practitioner'' to include not only a physician, but also (until October 1, 2021) a ''qualifying other practitioner,'' which includes a nurse practitioner or physician assistant who meets certain qualifications set forth in paragraph 823(g)(2)(G)(iv). More precisely, section 303 of the CARA defines ''qualifying other practitioner'' as a nurse practitioner or physician assistant who satisfies each of the following criteria:

(I) The nurse practitioner or physician assistant is licensed under State law to prescribe schedule III, IV, or V medications for the treatment of pain;

(II) The nurse practitioner or physician assistant must complete not fewer than 24 hours of initial training.

(III) The nurse practitioner or physician assistant is supervised by, or works in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by State law to prescribe medications for the treatment of opioid use disorder in collaboration with or under the supervision of a physician; and

The Secretary determines in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is supervised by, or works in collaboration with, a qualifying physician, if the nurse practitioner can treat and manage opiate-dependent patients. The Secretary may, by regulation, revise the requirements for being qualifying other practitioner.

This section of the CARA further provides that the Secretary of Health and Human Services (HHS) may, by regulation, revise the foregoing

requirements for being a qualifying other practitioner.

The CARA also makes some technical revisions to 21 U.S.C. 823(g)(2) that do not materially alter the meaning of this subsection. Nonetheless, because the DEA regulations currently contain the older statutory language, DEA is hereby revising this part of the regulations to reflect the new statutory language.

*HHS Final Rule Increasing the Patient Limit for Purposes of 21 U.S.C. 823(g)(2)*

Under the CSA, the Secretary of HHS may, by regulation, increase the maximum number of patients that a practitioner may treat pursuant to 21 U.S.C. 823(g)(2). 21 U.S.C. 823(g)(2)(B)(iii)(III). On July 8, 2016, the Secretary issued a final rule increasing this number to 275. 81 FR 44712. As stated therein, to be eligible for the patient limit of 275, the practitioner must possess a current waiver to treat up to 100 patients under 21 U.S.C. 823(g)(2) and meet additional criteria set forth in 42 CFR 8.610–8.625.[1] DEA is hereby amending its regulations to reflect these new limits.

*Good Cause for Issuing This Rule as a Final Rule Without Notice and Comment*

As indicated, this final rule amends the DEA regulations only to the extent necessary to be consistent with current federal law (as modified by the CARA) and current federal regulations issued by HHS. The qualifying practitioner amendments in the CARA alter the provisions of the CSA that DEA previously implemented in its regulations, and DEA is therefore obligated to update those regulations. With respect to the HHS regulations, the CSA gives sole authority to HHS to change the maximum number of patients per practitioner under 21 U.S.C. 823(g)(2), and where HHS does so, DEA is obligated to apply that number. As a result, DEA has no discretion not to amend its regulations as is being done in this final rule. Indeed, the new provisions issued under this final rule are already in effect by virtue of the CARA and the HHS final rule regarding patient limits. This final rule simply updates the DEA regulations to reflect these new provisions. Public comment on these amendments to the DEA regulations would therefore serve no purpose. Because notice and public comment are unnecessary, DEA finds there is good cause within the meaning of the Administrative Procedure Act (APA) to issue these amendments as a final rule without notice and comment, because these amendments merely conform the implementing regulations with recent amendments to the CSA contained in CARA that have already taken effect (*see* 5 U.S.C. 553(b)(B), relating to notice and comment procedures). ''[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary''. *Gray Panthers Advocacy Committee* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also Komjathy* v. *Nat. Trans. Safety Bd.,* 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule ''does no more than repeat, virtually verbatim, the statutory grant of authority'' notice-and-comment procedures are not required). Therefore, we are issuing these amendments as a final rule, effective upon publication in the **Federal Register**. This rule constitutes final action on these changes under the APA (5 U.S.C. 553).

**Regulatory Analysis**

As explained above, DEA is obligated to issue this final rule to revise its regulations so that they are consistent with the provisions of the CSA that were amended by the CARA and the HHS final rule increasing the patient limit under 21 U.S.C. 823(g)(2). In issuing this final rule, DEA has not gone beyond the statutory text enacted by Congress or the final rule issued by HHS. Thus, DEA would have to issue this final rule regardless of the outcome of the agency's regulatory analysis. Nonetheless, DEA conducted this analysis as discussed below.

*Executive Orders 12866 (Regulatory Planning and Review) and 13563, (Improving Regulation and Regulatory Review)*

This final rule was developed in accordance with the principles of Executive Orders 12866 and 13563. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

1. The DEA expects that this final rule will have an annual effect on the economy of $100 million or more in at least one year and therefore is an economically significant regulatory action. The analysis of benefits and costs is below.

2. This regulatory action is not likely to result in a rule that may create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This final rule amends the DEA regulations only to the extent necessary to be consistent with current federal law (as modified by the CARA) and current federal regulations issued by HHS. The qualifying practitioner amendments in the CARA alter the provisions of the CSA that DEA previously implemented in its regulations, and DEA is therefore obligated to update those regulations. With respect to the HHS regulations, the CSA gives sole authority to HHS to change the maximum number of patients per practitioner under 21 U.S.C. 823(g)(2), and where HHS does so, DEA is obligated to apply that number.

3. This regulatory action is not likely to result in a rule that may materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The Diversion Control Fee Account, which the DEA administers and which involves registration fees, is not directly affected. This regulatory action temporarily expanding the types of practitioners and increasing the maximum number of patients that a practitioner may treat as described in detail above represents a minor modification to the registration procedures within the Diversion Control Program and does not necessitate a change in registration fees.

4. This regulatory action is not likely to result in a rule that may raise novel

[1] The HHS final rule further provides that the approval by HHS to treat up to 275 patients is for a term of three years and that the practitioner must submit a renewal request with HHS every three years to continue to treat up to 275 patients. 42 CFR 8.625–8.655.

legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This final rule amends the DEA regulations only to the extent necessary to be consistent with current federal law (as modified by the CARA) and current federal regulations issued by HHS. The qualifying practitioner amendments in the CARA alter the provisions of the CSA that DEA previously implemented in its regulations, and DEA is therefore obligated to update those regulations. With respect to the HHS regulations, the CSA gives sole authority to HHS to change the maximum number of patients per practitioner under 21 U.S.C. 823(g)(2), and where HHS does so, DEA is obligated to apply that number. This regulatory action therefore does not raise novel legal or policy issues.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866, and therefore, has been submitted to the OMB for review.

I. Need for the Rule

On July 22, 2016, the Comprehensive Addiction and Recovery Act of 2016 (CARA) became law. One section of the CARA amended the Controlled Substances Act (CSA) to expand the categories of practitioners who may, under certain conditions on a temporary basis, dispense a narcotic drug in Schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. Separately, the Department of Health and Human Services (HHS), by final rule effective August 8, 2016, increased to 275 the maximum number of patients that a practitioner may treat for opioid use disorder without being separately registered under the CSA for that purpose. The DEA is amending its regulations to incorporate these statutory and regulatory changes.

In addition to the legal requirement to implement the statute, this rule also implements one of the objectives of the statute; expand availability of medication-assisted treatment (MAT) for opioid addiction. As supported by research, there is a gap between those who need treatment for opioid addition and treatment providers (''treatment gap''). An increase in treatment availability is expected to result in more patients treated.

Substance Abuse and Mental Health Services Administration (SAMHSA) independently researched the issue of the treatment gap in its recent rule: Medication Assisted Treatment for Opioid Use Disorders, 81 FR 44712, 44729 (July 8, 2016). SAMHSA found that ''. . . there is significant unmet need for MAT treatment among individuals with opioid use disorders . . . Evidence suggests that utilization of buprenorphine is limited directly by the existence of treatment limits.'' A research article in American Journal of Public Health concluded that there are significant gaps between treatment need and capacity at the state and national levels, with 96% of states and District of Columbia having opioid abuse or dependence rates higher than their buprenorphine treatment capacity rates.[2] According to research by The Pew Charitable Trust, ''[i]n the U.S. only 49 percent of people with an opioid dependence can potentially receive treatment because too few doctors prescribe the medicine, and those that do can serve only a limited number of patients because of federal restrictions.'' [3] Also, patients located in rural areas are negatively impacted by the limits because there are fewer doctors certified to prescribe buprenorphine.[4] One research article examined the availability of MAT by U.S. counties and determined that more than 30 million persons live in counties without access to buprenorphine treatment.[5]

II. Alternative Approaches

This final rule amends the DEA regulations only to the extent necessary to be consistent with current federal law (as modified by the CARA) and current federal regulations issued by HHS. The qualifying practitioner amendments in the CARA alter the provisions of the CSA that DEA previously implemented in its regulations, and DEA is therefore obligated to update those regulations. With respect to the HHS regulations, the CSA gives sole authority to HHS to change the maximum number of patients per practitioner under 21 U.S.C. 823(g)(2), and where HHS does so, DEA is obligated to apply that number. As a result, DEA has no discretion not to amend its regulations as is being done in this final rule. Indeed, the new provisions issued under this final rule are already in effect by virtue of the CARA and the HHS final rule regarding patient limits. This final rule simply updates the DEA regulations to reflect these new provisions; thus, no alternative approaches are possible.

III. Analysis of Benefits and Costs

This analysis is limited to the provisions associated with the section of the CARA that amended the CSA to expand the categories of practitioners who may, under certain conditions on a temporary basis, dispense a narcotic drug in schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. The HHS rule that increased to 275 the maximum number of patients that a practitioner may treat for opioid use disorder without being separately registered under the CSA was promulgated under HHS' authority; therefore, that section of the CARA was excluded from this analysis. This is a summary; a detailed economic analysis of the proposed rule can be found in the rulemaking docket at *http://www.regulations.gov.*

Benefits, in the form of economic burden (health care costs, criminal justice costs, and lost productivity costs) reductions, are expected to be generated from the expansion of the categories of practitioners who may dispense a narcotic drug in schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. The DEA anticipates the expansion of the categories of practitioners will lead to an increase in the number of treatment providers, which will lead to an increase in the number of patients (who did not have access to treatment prior to this rule) treated, resulting in the reduction in the economic burden due to opioid abuse.

Cost of the rule is associated with treatment cost and the cost to practitioners of obtaining authority to dispense a narcotic drug in schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment. While these costs are not directly attributable to this rule, obtaining dispensing authority and treating patients are required to generate the benefits of the rule, and thus, included in this analysis. Although the new treatment providers in the expanded category, qualifying other practitioners, will also need to comply with treatment-specific recordkeeping requirements, the cost of compliance is included in the estimated cost of treatment. Finally, there is potential for added risk of diversion from more

[2] Christopher M. Jones, PharmD, MPH, Melinda Campopiano, MD, Grant Baldwin, Ph.D., MPH, and Elinore McCance-Katz, MD, Ph.D., ''National and State Treatment Need and Capacity for Opioid Agonist Medication-Assisted Treatment,'' Am J Public Health, August 2015. Vol 105. No. 8.

[3] Christine Vestal, ''Few Doctors Are Willing, Able to Prescribe Powerful Anti-Addiction Drugs,'' January 15, 2016.

[4] *The Coming Economic Bonanza In Addiction Treatment,* Anson, Pat, (May 25, 2016), *https://www.painnewsnetwork.org/stories/2016/5/25/the-coming-economic-bonanza-in-addiction-treatment.*

[5] Roger A. Rosenblatt, MD, MPH, MFR1, C. Holly A. Andrilla, MS, Mary Catlin, BSN, MPH, Eric H. Larson, Ph.D. ''Geographic and Specialty Distribution of U.S. Physicians Trained to Treat Opioid Use Disorder,'' Annals of Family Medicine, Vol. 13, No. 1, January/February 2015.

practitioners having the authority to dispense narcotic drug in schedule III, IV, or V for the purpose of maintenance treatment or detoxification treatment.

The DEA estimates the total benefit (economic burden reduction) is $208 million, $374 million, $467 million, $560 million, and $654 million in years 1, 2, 3, 4, and 5, respectively; the total cost of treatment is $133 million, $238 million, $298 million, $358 million, and $417 million in years 1, 2, 3, 4, and 5, respectively; and the total cost of obtaining DATA-waived status is $7 million and $4 million in years 1 and 2, respectively; resulting in a net benefit of $68 million, $132 million, $169 million, $202 million, and $237 million in years 1, 2, 3, 4, and 5, respectively. The table below contains the summary of benefits and costs.

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|---|---|---|---|---|
| Total economic burden reduction ($MM) | 208 | 374 | 467 | 560 | 654 |
| Cost of treatment ($MM) | 133 | 238 | 298 | 358 | 417 |
| Cost of obtaining DATA-waived status ($MM) | 7 | 4 | ..... | ..... | ..... |
| Total cost ($MM) | 140 | 242 | 298 | 358 | 417 |
| Annual net benefit ($MM) | 68 | 132 | 169 | 202 | 237 |

Figures are rounded.

At 3% discount rate, the present value of benefits is $2,044 million, the present value of costs is $1,315 million and the net present value (NPV) is $729 million. At 7% discount rate, the present value of benefits is $1,796 million, the present value of costs is $1,156 million and the NPV is $640 million.[6] The net benefits in years 1 to 5 equate to an annualized net benefit of $159 million at 3% and $156 million at 7% over five years. The table below summarizes the present value and annualized benefit calculations.

| | 3% | 7% |
|---|---|---|
| Present value of benefits ($MM) | 2,044 | 1,796 |
| Present value of costs ($MM) | 1,315 | 1,156 |
| Net present value ($MM) | 729 | 640 |
| Annualized net benefit—5 years ($MM) | 159 | 156 |

Figures are rounded.

*Executive Order 12988, Civil Justice Reform*

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

*Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

This final rule is considered an E.O. 13771 deregulatory action. The rule is an enabling rule which expands the options for opioid treatment. Details on the expected economic effects of this rule can be found in the rule's economic impact analysis.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As explained above, the DEA determined that there was good cause to exempt this final rule from notice and comment. Consequently, the RFA does not apply to this final rule.

*Unfunded Mandates Reform Act of 1995*

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

*Congressional Review Act*

This rule is a major rule as defined by the Congressional Review Act. 5 U.S.C. 804. This rule will result in an annual effect on the economy of $100 million or more as a result of economic burden reductions. However, it will not cause a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign based companies in domestic and export markets. The DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521

**List of Subjects in 21 CFR Part 1301**

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

For the reasons set out above, the DEA amends 21 CFR part 1301 as follows:

## PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1301 is revised to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 2. In § 1301.28, revise paragraphs (b)(1)(i), (ii), and (iii) to read as follows:

**§ 1301.28 Exemption from separate registration for practitioners dispensing or prescribing Schedule III, IV, or V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment.**

* * * * *

(b)(1) * * *

(i) The individual practitioner is registered under § 1301.13 as an individual practitioner and is a ''qualifying physician'' as defined in section 303(g)(2)(G)(ii) of the Act (21

[6] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–4, Regulatory Analysis (2003).

U.S.C. 823(g)(2)(G)(ii)), or during the period beginning on July 22, 2016 and ending on October 1, 2021, a ''qualifying other practitioner'' as defined in section 303(g)(2)(G)(iv) of Act (21 U.S.C. 823(g)(2)(G)(iv)). The Secretary of Health and Human Services may, by regulation, revise the requirements for being a qualifying other practitioner.

(ii) With respect to patients to whom the practitioner will provide such drugs or combinations of drugs, the individual practitioner has the capacity to provide directly, by referral, or in such other manner as determined by the Secretary of Health and Human Services:

(A) All drugs approved by the Food and Drug Administration for the treatment of opioid use disorder, including for maintenance, detoxification, overdose reversal, and relapse prevention; and

(B) Appropriate counseling and other appropriate ancillary services.

(iii)(A) The total number of patients to whom the individual practitioner will provide narcotic drugs or combinations of narcotic drugs under this section at any one time will not exceed the applicable number. Except as provided in paragraphs (b)(1)(iii)(B) and (C) of this section, the applicable number is 30.

(B) The applicable number is 100 if, not sooner than 1 year after the date on which the practitioner submitted the initial notification, the practitioner submits a second notification to the Secretary of Health and Human Services of the need and intent of the practitioner to treat up to 100 patients.

(C) The applicable number is 275 for a practitioner who has been approved by the Secretary of Health and Human Services under 42 CFR part 8 to treat up to 275 patients at any one time, and provided further that the practitioner has renewed such approval to the extent such renewal is required under this part of the HHS regulations.

* * * * *

Dated: January 18, 2018.

**Robert W. Patterson,**

*Acting Administrator.*

[FR Doc. 2018–01173 Filed 1–22–18; 8:45 am]

BILLING CODE 4410–09–P

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**30 CFR Part 1218**

**[Docket No. ONRR–2016–0003; DS63644000 DR2PS0000.CH7000 178D0102R2]**

**RIN 1012–AA22**

## Repeal of Regulatory Amendment and Restoration of Former Regulatory Language Governing Service of Official Correspondence

**AGENCY:** Office of the Secretary, Office of Natural Resources Revenue, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) is publishing this rule to repeal a 2013 direct final rule and restore the former regulatory language governing service of official correspondence.

**DATES:** This rule is effective January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** For questions on procedural issues, contact Luis Aguilar, Regulatory Specialist, at (303) 231–3418 or by email to *luis.aguilar@onrr.gov.* For questions on technical issues, contact Bonnie Robson, Program Manager, Appeals & Regulations, by email to *bonnie.robson@onrr.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Explanation of Amendments
III. Procedural Matters

### I. Background

ONRR's ''official correspondence'' includes significant documents we send to industry, such as invoices, notices of audit, orders, and notices of enforcement. Historically, Department of the Interior (Department) regulations authorized ONRR to serve official correspondence by conventional means—U.S. mail, personal delivery, or private mailing service, such as FedEx or U.P.S. On August 23, 2013, ONRR published in the **Federal Register** a direct final rule amending its regulations on service of official correspondence (78 FR 52431). The 2013 direct final rule augmented the authorized methods of service to include electronic service, as long as the electronic service was secure and provided for a receipt.

The 2013 direct final rule provided for a 30-day public comment period. In the 2013 direct final rule, we stated that if we received significant adverse comment during that period, we would withdraw the rule. During the public comment period, we received significant adverse comments. We attempted to withdraw the 2013 direct final rule before it went into effect on October 22, but had insufficient time to do so due to the October 2013 government shutdown. Because the rule should have been withdrawn, we consider the rule legally defective, and we have not enforced it. We would withdraw the 2013 direct final rule now, but the time limit for withdrawal has expired. Instead, we are publishing this rule to repeal the defective 2013 direct final rule and restore the former regulatory language governing service of official correspondence.

Because this rule makes no changes to the legal obligations or rights of non-governmental entities, the Department finds that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register** rather than 30 days after publication.

This is a final rulemaking with no request for comments. Under section 553(b), ONRR generally publishes a rule in a proposed form and solicits public comment on it before issuing the final rule. However, section 553(b)(3)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is ''impracticable, unnecessary, or contrary to the public interest.'' We find that in this case, because we are simply restoring the former noncontroversial regulatory language, public comment is unnecessary.

### II. Explanation of Amendments

This rule repeals the direct final rule (78 FR 52431) and restores the former regulatory language governing service of official correspondence in sections 1218.540(a) and (d) of title 30 of the *Code of Federal Regulations* (CFR). This rule removes the language that currently appears in section 1218.540(a) allowing ONRR to serve official correspondence using any electronic method of delivery that provides for a receipt of delivery, or, if there is no receipt, the date of delivery otherwise documented. This rule also removes mention of electronic service from section 1218.540(d), which pertains to constructive service. This rule does not make any substantive changes to the regulations or requirements in section 1218.540(a) or (d). It simply restores the original procedures for ONRR's service of official correspondence—removing the amendments made in the previously published direct final rule.

## III. Procedural Matters

*1. Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has determined that this rule is not significant. Also, this rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

*2. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). This rule will impact large and small entities but will not have a significant economic effect on either because this is a technical rule restoring the original service of official correspondence regulation language. Thus, the RFA does not apply to this rulemaking.

*3. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

This is only a technical rule restoring the original service of official correspondence regulation language.

*4. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires because this is a technical rule.

*5. Takings (E.O. 12630)*

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. Therefore, this rule does not require a takings implication assessment.

*6. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Therefore, as a technical rule, it does not require a Federalism summary impact statement.

*7. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

*8. Consultation With Indian Tribal Governments (E.O. 13175)*

The Department strives to strengthen its government-to-government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this technical rule and determined that it will have no substantial direct effects on Federally-recognized Indian Tribes and does not require consultation.

*9. Paperwork Reduction Act*

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

*10. National Environmental Policy Act of 1969 (NEPA)*

This rule does not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is ''. . . *of an administrative, financial, legal, technical, or procedural nature.* . . .'' We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

*11. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211 and, therefore, does not require a Statement of Energy Effects.

**List of Subjects in 30 CFR Part 1218**

Continental shelf, Electronic funds transfers, Geothermal energy, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Service of official correspondence.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

**Authority and Issuance**

For the reasons discussed in the preamble, ONRR amends 30 CFR part 1218 as set forth below:

## PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 1. The authority citation for part 1218 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 2. Amend § 1218.540 by:
■ a. Revising paragraphs (a)(2) and (3);
■ b. Removing paragraph (a)(4); and
■ c. Revising paragraph (d).

The revisions read as follows:

**§ 1218.540 How does ONRR serve official correspondence?**

* * * * *

(a) * * *

(2) Personal delivery made pursuant to the law of the State in which the service is effected; or

(3) Private mailing service (such as the United Parcel Service or Federal Express), with signature and date upon delivery acknowledging the addressee of record's receipt of the official correspondence document.

* * * * *

(d) *Constructive service.* If we cannot make delivery to the addressee of record after making a reasonable effort, we deem official correspondence as constructively served seven days after the date when we mail the document. This provision covers situations such as those where no delivery occurs because:

(1) The addressee of record has moved without filing a forwarding address;

(2) The forwarding order has expired;

(3) Delivery was expressly refused; or

(4) The document was unclaimed and the attempt to deliver it is substantiated by:

(i) The U.S. Postal Service;

(ii) A private mailing service, as described in this section; or

(iii) The person who attempted to make delivery using some other method of service.

[FR Doc. 2018–01068 Filed 1–22–18; 8:45 am]

BILLING CODE 4335–30–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 269

**[Docket ID: DOD–2016–OS–0045]**

**RIN 0790–AK09**

## Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Under Secretary of Defense (Comptroller), Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

**DATES:** This rule is effective January 23, 2018 and is applicable beginning on January 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** Brian Banal, 703–571–1652.

**SUPPLEMENTARY INFORMATION:**

### Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114–74, November 2, 2015, required agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act required that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of $1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment (January 15), exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the Department of Defense's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389–33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629–62631), effective that date. The revised methodology for agencies for 2018 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Effective 2018, agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Defense is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2018 of 1.02041 prescribed in OMB Memorandum M–18–03, ''Implementation of Penalty Inflation Adjustments for 2018, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' dated December 15, 2017. The Department of Defense's 2018 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Defense after the effective date of the new CMP level.

### Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Defense is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

**Regulatory Procedures**

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' because it does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

*Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''*

Executive Order 13771 requires that for every significant regulation promulgated, an agency must identify two for elimination and offset its costs. This rule is exempt from these requirements because it has been deemed not significant by the Office of Management and Budget.

*Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)*

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

The Department of Defense determined that provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

*Executive Order 13132, ''Federalism''*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

**List of Subjects in 32 CFR Part 269**

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

## PART 269—[AMENDED]

■ 1. The authority citation for 32 CFR part 269 continues to read as follows:

**Authority:** 28 U.S.C. 2461 note.

■ 2. Revise § 269.4(d) to read as follows:

**§ 269.4 Cost of living adjustments of civil monetary penalties.**

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

| United States Code | Civil monetary penalty description | Maximum penalty amount as of 01/15/17 | New adjusted maximum penalty amount |
|---|---|---|---|
| National Defense Authorization Act for FY 2005, 10 U.S.C. 113, note. | Unauthorized Activities Directed at or Possession of Sunken Military Craft. | $126,626 | $129,211 |
| 10 U.S.C. 1094(c)(1) | Unlawful Provision of Health Care | 11,119 | 11,346 |
| 10 U.S.C. 1102(k) | Wrongful Disclosure—Medical Records: | | |
| | First Offense | 6,575 | 6,709 |
| | Subsequent Offense | 43,832 | 44,726 |
| 10 U.S.C. 2674(c)(2) | Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations. | 1,811 | 1,848 |
| 31 U.S.C. 3802(a)(1) | Violation Involving False Claim | 10,957 | 11,181 |
| 31 U.S.C. 3802(a)(2) | Violation Involving False Statement | 10,957 | 11,181 |

Dated: January 18, 2018.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–01168 Filed 1–22–18; 8:45 am]

**BILLING CODE 5001–06–P**

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**[Docket No. FWS–R7–SM–2015–0003; FXFR13350700640–167–FF07J00000; FBMS#4500096963]**

**RIN 1018–BA76**

## Subsistence Management Regulations for Public Lands in Alaska—2017–18 and 2018–19 Subsistence Taking of Fish Regulations

**AGENCY:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2017–2018 and 2018–2019 regulatory years. The Federal Subsistence Board (Board) completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. This rule also revises fish customary and traditional use determinations.

**DATES:** This rule is effective January 23, 2018.

**ADDRESSES:** The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (*https://www.doi.gov/subsistence*). The comments received in response to the proposed rule are available on *www.regulations.gov* in Docket No. FWS–R7–SM–2015–0003.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *twhitford@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:**

### Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program managers have subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, USDA Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The Board addresses customary and traditional use determinations during the applicable biennial cycle. Section ____.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. . . .'' Since 1992, the Board has made a number of customary and traditional use determinations at the request of affected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § ____.24

| **Federal Register** citation | Date of publication | Rule made changes to the following provisions of ____.24 |
|---|---|---|
| 59 FR 27462 | May 27, 1994 | Wildlife and Fish/Shellfish. |
| 59 FR 51855 | October 13, 1994 | Wildlife and Fish/Shellfish. |
| 60 FR 10317 | February 24, 1995 | Wildlife and Fish/Shellfish. |

MODIFICATIONS TO § ____.24—Continued

| Federal Register citation | Date of publication | Rule made changes to the following provisions of ____.24 |
|---|---|---|
| 61 FR 39698 | July 30, 1996 | Wildlife and Fish/Shellfish. |
| 62 FR 29016 | May 29, 1997 | Wildlife and Fish/Shellfish. |
| 63 FR 35332 | June 29, 1998 | Wildlife and Fish/Shellfish. |
| 63 FR 46148 | August 28, 1998 | Wildlife and Fish/Shellfish. |
| 64 FR 1276 | January 8, 1999 | Fish/Shellfish. |
| 64 FR 35776 | July 1, 1999 | Wildlife. |
| 65 FR 40730 | June 30, 2000 | Wildlife. |
| 66 FR 10142 | February 13, 2001 | Fish/Shellfish. |
| 66 FR 33744 | June 25, 2001 | Wildlife. |
| 67 FR 5890 | February 7, 2002 | Fish/Shellfish. |
| 67 FR 43710 | June 28, 2002 | Wildlife. |
| 68 FR 7276 | February 12, 2003 | Fish/Shellfish. |
| 69 FR 5018 | February 3, 2004 | Fish/Shellfish. |
| 69 FR 40174 | July 1, 2004 | Wildlife. |
| 70 FR 13377 | March 21, 2005 | Fish/Shellfish. |
| 70 FR 36268 | June 22, 2005 | Wildlife. |
| 71 FR 15569 | March 29, 2006 | Fish/Shellfish. |
| 71 FR 37642 | June 30, 2006 | Wildlife. |
| 72 FR 12676 | March 16, 2007 | Fish/Shellfish. |
| 72 FR 73426 | December 27, 2007 | Wildlife/Fish. |
| 73 FR 35726 | June 26, 2008 | Wildlife. |
| 74 FR 14049 | March 30, 2009 | Fish/Shellfish. |
| 75 FR 37918 | June 30, 2010 | Wildlife. |
| 76 FR 12564 | March 8, 2011 | Fish/Shellfish. |
| 77 FR 35482 | June 13, 2012 | Wildlife. |
| 79 FR 35232 | June 19, 2014 | Wildlife. |
| 81 FR 52528 | August 8, 2016 | Wildlife. |

**Current Rule**

The Departments published a proposed rule on February 22, 2016 (81 FR 8675), to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a comment period, which closed on April 1, 2016. The Departments advertised the proposed rule by mail, email, web page, social media, radio, and newspaper, and comments were submitted via *www.regulations.gov* to Docket No. FWS–R7–SM–2015–0003. During that period, the Councils met and, in addition to other Council business, received suggestions for proposals from the public. The Board received a total of 15 proposals for changes to subparts C and D; this included 1 proposal that was deemed invalid because it was beyond the scope of the Board's authority. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. The public then had an additional 45 days in which to comment on the proposals for changes to the regulations.

The 10 Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public meeting of January 10–12, 2017. These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native corporation consultations, and public comments. The public received extensive opportunity to review and comment on all changes.

Of the 14 valid proposals, 10 were on the Board's regular agenda and 4 were on the consensus agenda. The consensus agenda is made up of proposals for which there is agreement among the affected Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes en masse on the consensus agenda after deliberation and action on all other proposals.

Of the proposals on the consensus agenda, the Board adopted one; adopted two with modification; and rejected one. Analysis and justification for the action taken on each proposal on the consensus agenda are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (*https://www.doi.gov/subsistence*). Of the proposals on the regular (non-consensus) agenda, the Board adopted one; adopted three with modification; rejected one; deferred one; withdrew three at the requests of the proponents; and took no action on one.

**Summary of Non-Consensus Proposals Not Adopted by the Board**

The Board rejected, deferred, or took no action on three non-consensus proposals. The rejected proposals were recommended for rejection by one or more of the Councils unless noted below.

*Yukon-Northern Area*

The Board rejected a proposal to allow for the harvest of early-run Chinook Salmon in sub-district 5D of the Yukon River based on conservation concerns and treaty obligations. This action was supported by three Councils and contrary to the recommendation of one Council.

*Kuskokwim Area*

The Board deferred action on one proposal to restructure the management plans, fishing schedules, and methods and means and allow for independent action to be taken by the in-season

manager on the Kuskokwim River. Action on this proposal was deferred until the next fish cycle, until the affected entities come to a conclusion, or a request to readdress this proposal is submitted.

*Cook Inlet Area*

The Board took no action on one proposal for the Kenai River. This decision was based on its earlier action on a similar proposal addressing a community gillnet.

**Summary of Non-Consensus Proposals Adopted by the Board**

The Board adopted or adopted with modification four non-consensus proposals. Modifications were suggested by the affected Council(s), developed during the analysis process, or developed during the Board's public deliberations. All of the adopted proposals were recommended for adoption by at least one of the Councils unless noted below.

*Yukon-Northern Area*

The Board adopted a proposal to revise harvest limits to allow harvest once the mid-range of the interim management escapement goal and the total allowable catch goal are projected to be achieved on the Yukon River.

The Board adopted a proposal with modification to revise the methods and means for the use of gillnets in Racetrack Slough of the Koyukuk River and the sloughs of the Huslia River drainage.

*Cook Inlet Area*

The Board adopted a proposal with modification to revise the season dates for the experimental community gillnet fishery on the Kasilof River for the residents of Ninilchik.

The Board adopted a proposal to revise the season dates, reporting requirements, and household harvest limits, require the live release of Rainbow Trout and Dolly Varden, remove the requirement of an operational plan, and revise permit conditions for the community gillnet fishery on the Kenai River for the residents of Ninilchik.

These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native corporation consultations, and public comments. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

**Conformance With Statutory and Regulatory Authorities**

*Administrative Procedure Act Compliance*

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change (36 CFR 242.20 and 50 CFR 100.20). Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding Board decisions.

In the more than 25 years that the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

*National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: **Federal Register** DOCUMENTS PERTAINING TO THE FINAL RULE

| **Federal Register** citation | Date of publication | Category of document | Details |
|---|---|---|---|
| 57 FR 22940 | May 29, 1992 | Final Rule | "Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register**. |
| 64 FR 1276 | January 8, 1999 | Final Rule | Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority. |
| 66 FR 31533 | June 12, 2001 | Interim Rule | Expanded the authority that the Federal Subsistence Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings. |

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: **Federal Register** DOCUMENTS PERTAINING TO THE FINAL RULE—Continued

| **Federal Register** citation | Date of publication | Category of document | Details |
|---|---|---|---|
| 67 FR 30559 | May 7, 2002 | Final Rule | Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules. |
| 68 FR 7703 | February 18, 2003 | Direct Final Rule | Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Advisory Councils must have an odd number of members. |
| 68 FR 23035 | April 30, 2003 | Affirmation of Direct Final Rule. | Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted. |
| 69 FR 60957 | October 14, 2004 | Final Rule | Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations. |
| 70 FR 76400 | December 27, 2005 | Final Rule | Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands. |
| 71 FR 49997 | August 24, 2006 | Final Rule | Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations. |
| 72 FR 25688 | May 7, 2007 | Final Rule | Revised nonrural determinations. |
| 75 FR 63088 | October 14, 2010 | Final Rule | Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process. |
| 76 FR 56109 | September 12, 2011 | Final Rule | Revised the composition of the Federal Subsistence Board by expanding the Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska. |
| 77 FR 12477 | March 1, 2012 | Final Rule | Extended the compliance date for the final rule (72 FR 25688, May 7, 2007) that revised nonrural determinations until the Secretarial program review is complete or in 5 years, whichever comes first. |
| 80 FR 68249 | November 4, 2015 | Final Rule | Revised the nonrural determination process and allowed the Federal Subsistence Board to define which communities and areas are nonrural. |

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

*Section 810 of ANILCA*

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

*Paperwork Reduction Act of 1995 (PRA)*

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075, which expires June 30, 2019.

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

*Small Business Regulatory Enforcement Fairness Act*

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Executive Order 12630*

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

*Unfunded Mandates Reform Act*

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or tribal governments.

*Executive Order 12988*

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

*Executive Order 13132*

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

*Executive Order 13175*

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

On April 12, 2016, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule prior to the start of its public regulatory meeting. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

*Executive Order 13211*

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

**Drafting Information**

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Carol Damberg, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, USDA Forest Service.

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

**Regulation Promulgation**

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

## PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

### Subpart C—Board Determinations

■ 2. Amend § ____.24(a)(2) in the table by revising the seventh entry under ''PRINCE WILLIAM SOUND AREA:'' to read as follows:

**§ ____.24 Customary and traditional use determinations.**

(a) * * *

(2) * * *

| Area | Species | Determination |
|---|---|---|
| * * * | * * * | * * * |
| **Prince William Sound Area** | | |
| * * * | * * * | * * * |
| Glennallen Subdistrict of the Upper Copper River District. | Salmon ..... | Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Dry Creek, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. |
| * * * | * * * | * * * |

* * * * *

## Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. Amend § ____.27 by:
■ a. Adding paragraph (e)(3)(xiii)(B);
■ b. Revising paragraphs (e)(3)(xv)(A) and (B);
■ c. Adding paragraph (e)(3)(xvi)(F);
■ d. Revising paragraph (e)(10)(iv)(I) introductory text, and paragraph (e)(10)(iv)(J); and
■ f. Revising paragraph (e)(13)(ix).

The additions and revisions read as follows:

**§ ____.27 Subsistence taking of fish.**

* * * * *

(e) * * *

(3) * * *

(xiii) * * *

(B) In Subdistrict 5D you may take salmon once the mid-range of the Canadian interim management escapement goal and the total allowable catch goal are projected to be achieved.

* * * * *

(xv) * * *

(A) In Subdistrict 4A upstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2; unless closed by the Federal In-season Manager; from June 10 through August 2, the Federal In-season Manager may open fishing periods during which chum salmon may be taken by drift gillnets.

(B) In Subdistrict 4A downstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14; unless closed by the Federal In-season Manager; from June 10 through August 2, the Federal In-season Manager may open fishing periods during which chum salmon may be taken by drift gillnets.

* * * * *

(xvi) * * *

(F) In Racetrack Slough on the Koyukuk River and in the sloughs of the Huslia River drainage, from when each river is free of ice through June 15, the offshore end of the set gillnet may not be closer than 20 feet from the opposite bank except that sloughs 40 feet or less in width may have ¾ width coverage with set gillnet, unless closed by Federal special action.

* * * * *

(10) * * *

(iv) * * *

(I) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch June 16–August 15. The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.

* * * * *

(J) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon in the Federal public waters of the Kenai River with a single gillnet to be managed and operated by the Ninilchik Traditional Council. Ninilchik residents may retain other species incidentally caught in the Kenai River except for rainbow trout and Dolly Varden; all rainbow trout and Dolly Varden must be released.

*(1)* Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length, must be no larger than 5.25-inch mesh, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

*(2)* One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager. The registration permit will be issued to the Ninilchik Traditional Council.

*(i)* As the community gillnet owner, the Ninilchik Traditional Council will be responsible for its use and removal in consultation with the Federal fishery manager.

*(ii)* As part of the permit, after the season, the Ninilchik Traditional Council must provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

*(3)* The Ninilchik Traditional Council may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

*(i)* Identifies a person who will be responsible for fishing the gillnet;

*(ii)* Includes provisions for recording daily catches within 72 hours, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

*(4)* Fishing will be allowed from July 1 through August 15 and September 10–30 on the Kenai River unless closed or otherwise restricted by Federal special action.

*(5)* Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel household annual limits for the Kenai River of participating households.

*(6)* Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

* * * * *

(13) * * *

(ix) Nets are prohibited in streams flowing across or adjacent to the roads on Wrangell and Mitkof islands, and in streams flowing across or adjacent to the road systems connected to the community of Sitka.

* * * * *

Dated: December 5, 2017.

**Eugene R. Peltola, Jr.,**

*Assistant Regional Director, U.S. Fish and Wildlife Service Acting Chair, Federal Subsistence Board.*

Dated: December 6, 2017.

**Thomas Whitford,**

*Subsistence Program Leader, USDA—Forest Service.*

[FR Doc. 2018–00461 Filed 1–22–18; 8:45 am]

BILLING CODE 3410–11–P; 4333–15–P

## POSTAL SERVICE

### 39 CFR Part 266

### Privacy of Information; Adding Clarifying Language Concerning the Purpose of a Contract or Interagency Agreement

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is adding language for clarification purposes to ensure that the purpose of a contract or interagency agreement complies with the Postal Reorganization Act and the Privacy Act of 1974.

**DATES:** *Effective date:* January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Natalie A. Bonanno, Chief Counsel, Federal Compliance, *natalie.a.bonanno@usps.gov,* 202–268–2944.

**SUPPLEMENTARY INFORMATION:** On October 11, 2017 (82 FR 47115), the Postal Service published its revised privacy regulations to implement numerous non-substantive editorial changes effective on the same date. These changes included renaming certain offices with privacy-related duties, modification of the roles of employees tasked with implementing aspects of the privacy regulations, and minor editorial changes to postal privacy policy to improve its consistency and clarity. The Postal Service is now adding clarifying language to ensure the purpose of a contract or interagency agreement complies with the Postal Reorganization Act and the Privacy Act of 1974.

**List of Subjects in 39 CFR Part 266**

Privacy.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

### PART 266—[AMENDED]

■ 1. The authority citation for 39 CFR part 266 continues to read as follows:

**Authority:** 5 U.S.C. 552a; 39 U.S.C. 401.

■ 2. Revise § 266.3(b)(3) to read as follows:

**§ 266.3 Collection and disclosure of information about individuals.**

* * * * *

(b) * * *

(3) Under 39 U.S.C. 412(a), the Postal Service shall not make a mailing or other list of names or addresses (past or present) of postal patrons or other persons available to the public, unless such action is authorized by law. Consistent with this provision, the Postal Service may make such a list available as follows:

(i) In accordance with 39 U.S.C. 412(b), to the Secretary of Commerce for use by the Bureau of the Census;

(ii) As required by the terms of a legally enforceable contract entered into by the Postal Service under its authority contained in 39 U.S.C. 401(3) and when subject to a valid non-disclosure agreement. The purpose of the contract must comply with 5 U.S.C. 552a(n), which prohibits the sale or rental of an individual's name and address;

(iii) As required by the terms of a legally enforceable interagency agreement entered into by the Postal Service under its authority contained in 39 U.S.C. 411 and when subject to a valid non-disclosure agreement. The purpose of the interagency agreement must comply with 5 U.S.C. 552a(n), which prohibits the sale or rental of an individual's name and address;

(iv) In accordance with 5 U.S.C. 552a(b), the Postal Service may disclose a list of names and addresses of individuals pursuant to a written request by, or with the prior written consent of, each individual whose name and address is contained in such list, provided that such names and addresses are derived from records maintained by the Postal Service in a system of records as defined by 5 U.S.C. 552a(a); or

(v) As otherwise expressly authorized by federal law.

* * * * *

**Tracy A. Quinlan,**

*Attorney, Federal Compliance.*

[FR Doc. 2018–01084 Filed 1–22–18; 8:45 am]

BILLING CODE 7710–12–P

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1611

### Income Level for Individuals Eligible for Assistance

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Legal Services Corporation (LSC) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services (HHS).

**DATES:** Effective January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; (202) 295–1563; *sdavis@lsc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(2) of the Legal Services Corporation Act (Act), 42 U.S.C. 2996f(a)(2), requires LSC to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(c) of LSC's regulations establishes a maximum income level equivalent to 125% of the Federal Poverty Guidelines (Guidelines), which HHS is responsible for updating and issuing. 45 CFR 1611.3(c).

Each year, LSC updates Appendix A to 45 CFR part 1611 to provide client income eligibility standards based on the most recent Guidelines. The figures for 2018, set out below, are equivalent to 125% of the Guidelines published by HHS on January 18, 2018, 83 FR 2642.

In addition, LSC is publishing a chart listing income levels that are 200% of the Guidelines. This chart is for reference purposes only as an aid to recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Guidelines amount, but less than 200% of the applicable Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with 45 CFR 1611.3, 1611.4, and 1611.5).

Except where there are minor variances due to rounding, the amount by which the guideline increases for each additional member of the household is a consistent amount.

**List of Subjects in 45 CFR Part 1611**

Grant Programs—Law, Legal services.

For reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1611 as follows:

## PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

**Authority:** 42 U.S.C. 2996g(e).

■ 2. Revise appendix A to part 1611 to read as follows:

### Appendix A to Part 1611— Income Level for Individuals Eligible for Assistance

LEGAL SERVICES CORPORATION 2018 INCOME GUIDELINES *

| Size of household | 48 Contiguous States and the District of Columbia | Alaska | Hawaii |
|---|---|---|---|
| 1 | $15,175 | $18,975 | $17,450 |
| 2 | 20,575 | 25,725 | 23,663 |
| 3 | 25,975 | 32,475 | 29,875 |
| 4 | 31,375 | 39,225 | 36,088 |
| 5 | 36,775 | 45,975 | 42,300 |
| 6 | 42,175 | 52,725 | 48,513 |
| 7 | 47,575 | 59,475 | 54,725 |
| 8 | 52,975 | 66,225 | 60,938 |
| For each additional member of the household in excess of 8, add: | 5,400 | 6,750 | 6,213 |

* The figures in this table represent 125% of the Federal Poverty Guidelines by household size as determined by HHS.

REFERENCE CHART—200% OF FEDERAL POVERTY GUIDELINES

| Size of household | 48 Contiguous States and the District of Columbia | Alaska | Hawaii |
|---|---|---|---|
| 1 | $24,280 | $30,360 | $27,920 |
| 2 | 32,920 | 41,160 | 37,860 |
| 3 | 41,560 | 51,960 | 47,800 |
| 4 | 50,200 | 62,760 | 57,740 |
| 5 | 58,840 | 73,560 | 67,680 |
| 6 | 67,480 | 84,360 | 77,620 |
| 7 | 76,120 | 95,160 | 87,560 |
| 8 | 84,760 | 105,960 | 97,500 |
| For each additional member of the household in excess of 8, add: | 8,640 | 10,800 | 9,940 |

Dated: January 18, 2018.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2018–01138 Filed 1–22–18; 8:45 am]

BILLING CODE 7050–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R5–ES–2015–0001; 50120–1113–000]**

**RIN 1018–AY05**

## Endangered and Threatened Wildlife and Plants; Removing the Eastern Puma (=Cougar) From the Federal List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine the eastern puma (=cougar) (*Puma* (=*Felis*) *concolor couguar*) to be extinct, based on the best available scientific and commercial information. This information shows no evidence of the existence of either an extant reproducing population or any individuals of the eastern puma subspecies; it also is highly unlikely that an eastern puma population could remain undetected since the last confirmed sighting in 1938. Therefore, under the authority of the Endangered Species Act of 1973 (Act), as amended, we remove this subspecies from the Federal List of Endangered and Threatened Wildlife.

**DATES:** This rule is effective February 22, 2018.

**ADDRESSES:** This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001. Comments and materials received, as well as supporting documentation used in rule preparation, will be available for public inspection, by appointment, during normal business hours at the Service's Maine Fish and Wildlife Service Complex, Ecological Services Maine Field Office, 306 Hatchery Road, East Orland, Maine 04431, and on the Eastern Cougar website at: *http://www.fws.gov/northeast/ecougar.*

**FOR FURTHER INFORMATION CONTACT:** Martin Miller, Northeast Regional Office, telephone 413–253–8615, or Mark McCollough, Maine Field Office, telephone 207–902–1570. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance. General information regarding the eastern puma and the delisting process may also be accessed at: *http://www.fws.gov/northeast/ecougar.*

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule*—Under the Act, a species warrants protection through listing if it is endangered or threatened. Conversely, a species may be removed from the Federal List of Endangered and Threatened Wildlife (List) if the Act's protections are determined to be no

longer required based on recovery, original data error, or extinction. Removing a species from the List can be completed only by issuing a rule. This rule finalizes the removal of the eastern puma (=cougar) (*Puma* (=*Felis*) *concolor couguar*) from the List due to extinction, as proposed on June 17, 2015 (80 FR 34595).

*The basis for our action*—Our decision to remove the eastern puma from the List due to extinction is based on information and analysis showing that the eastern puma likely has been extinct for many decades, long before its listing under the Act. Eastern puma sightings have not been confirmed since the 1930s, and genetic and forensic testing has confirmed that recent validated puma sightings in the East, outside Florida, were animals released or escaped from captivity, or wild pumas dispersing eastward from western North America.

*Peer review and public comment*—During two comment periods on the proposed rule (June 17 through August 17, 2015 [80 FR 34595, June 15, 2015]; and June 28 through July 28, 2016 [81 FR 41925, June 28, 2016]), we sought review from the public and from independent scientific experts to ensure that our final determination responds to public concerns and is based on scientifically sound data, assumptions, and analyses. We received comments from the public on several substantive issues, including the basis for delisting, the likelihood that any undetected population of eastern puma continues to exist, the potential for restoring pumas to Eastern North America, and protection of nonlisted pumas occurring within the eastern puma's historical range. We also received peer review comments from scientists with expertise in puma population ecology, management, demographics, conservation, and population genetics. Expert comments focused primarily on the likelihood of eastern puma extinction and on North American puma taxonomy. In preparing the final rule, we considered all comments and information received during both comment periods. The proposed rule and other materials relating to this final rule can be accessed at: *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001.

**Previous Federal Actions**

The eastern puma (=cougar) was originally listed as an endangered species on June 4, 1973 (38 FR 14678). On June 17, 2015, the Service published a proposed rule (80 FR 34595) to remove the eastern puma from the List, with a comment period extending through August 17, 2015. The comment period for the proposed rule was subsequently reopened on June 28, 2016 (81 FR 41925). For more information on previous Federal actions concerning the eastern puma, refer to the proposed rule available at: *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001.

**Species Information**

Here we summarize the biological and legal basis for delisting the eastern puma. For more detailed information, refer to the proposed rule and supplemental documents available at: *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001.

The eastern puma (*Puma* (=*Felis*) *concolor couguar*) is federally listed as a subspecies of puma. The puma is the most widely distributed native wild land mammal in the New World. At the time of European contact, it occurred through most of North, Central, and South America. In North America, breeding populations still occupy approximately one-third of their historical range but are now absent from eastern regions outside of Florida. The puma was documented historically in a variety of eastern habitats from the Everglades in the Southeast to temperate forests in the Northeast. Aside from presence reports, few historical records exist regarding the natural history of the eastern puma subspecies.

*Taxonomy*

The eastern puma has a long and varied taxonomic history, as described in the Service's 5-year status review of this subspecies (USFWS 2011, pp. 29–35). Until recently, standard practice was to refer to the puma species as *Puma concolor* (Linnaeus 1771) and the eastern puma subspecies as *Puma concolor couguar.* The taxonomic assignment of puma subspecies is now under question; at issue is whether North American pumas constitute a single subspecies or multiple subspecies. As discussed in detail in our response to comment 4 (see Summary of Comments and Responses, below), the Service acknowledges the broad acceptance within the scientific community of a single North American subspecies, identified as *Puma concolor couguar* (applying the scientific nomenclature that has been used to refer to the eastern puma subspecies to all North American pumas), based on genetic analysis. However, the Service has not yet conducted a comprehensive assessment of all available scientific information pertinent to North American puma taxonomy, including any potential subspecies. We will undertake a comprehensive assessment of North American puma taxonomy in our status assessment for the Florida panther, and will determine whether to accept a single North American subspecies taxonomy. Since determining whether an entity is listable is relevant only to *extant* species, such a comprehensive treatment is unnecessary for the eastern puma, but will be necessary for completing the status assessment for the Florida panther. In the absence of a comprehensive analysis concluding that the Young and Goldman (1946) taxonomy is no longer the best available information on taxonomy, we evaluate for purposes of this rule the status of the listed entity—the eastern puma subspecies—and whether or not it has become extinct.

*Biology and Life History*

There is little basis for believing that the ecology of eastern pumas was significantly different from puma ecology elsewhere on the continent. Therefore, in lieu of information specific to eastern pumas, our biological understanding of this subspecies relies on puma studies conducted in various regions of North America and, to the extent possible, from eastern puma historical records and museum specimens. This information is detailed in the 2011 status review for the eastern puma (USFWS 2011, pp. 6–8).

*Historical Range, Abundance, and Distribution*

Details regarding historical eastern puma abundance and distribution are provided in USFWS 2011 (pp. 8–29, 36–56). Although records indicate that the eastern puma was formerly wide-ranging and apparently abundant at the time of European settlement, only 26 historical specimens from seven eastern States and one Canadian province reside in museums or other collections. Based on this evidence, Young and Goldman (1946) and the 1982 recovery plan for the eastern cougar (USFWS 1982, pp. 1–2) generally described the eastern puma's historical range as southeastern Ontario, southern Quebec, and New Brunswick in Canada, and a region bounded from Maine to Michigan, Illinois, Kentucky, and South Carolina in the Eastern United States. The most recently published assessment of the eastern puma in Canada, conducted by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), described the subspecies' range as Ontario, Quebec, and eastern Canada (Scott 1998, pp. v, 10, 29–30). Scott (1998, p. v, 29) indicated that ''Manitoba is the easternmost part of

Canada for which there is objective evidence of the virtually uninterrupted survival of a cougar population from European settlement to the present. Genetically, this population must have been closely related to, if not identical with, the original eastern cougars in western Ontario, and less closely related to the original cougars in Quebec and the Maritimes.'' Note, however, our response to comment 11 (see Summary of Comments and Responses), which indicates that despite the persistent presence of pumas in Manitoba, we cannot infer from the available evidence that puma occurrence there represents an extant puma population.

The historical literature indicates that puma populations were considered largely extirpated in Eastern North America (except for Florida and perhaps the Smoky Mountains) by the 1870s and in the Midwest by 1900. Their disappearance was attributed primarily to persecution stemming from fear of large predators, competition with game species, and occasional depredation of livestock. Other causes of eastern puma losses during the late 1800s included declining habitat conditions and the near-extirpation of their primary prey base, white-tailed deer. By 1929, eastern pumas were believed to be ''virtually extinct,'' and Young and Goldman (1946) concurred that ''they became extinct many years ago.''

Conversely, puma records from New Brunswick in 1932 and Maine in 1938 suggest that a population may have persisted in northernmost New England and eastern Canada. In the Service's 1976 status review (Nowak 1976), R.M. Nowak professed his belief that the large number of unverified sightings of pumas constituted evidence that some populations had either survived or become reestablished in the central and eastern parts of the continent and may have increased in number since the 1940s. Similarly, R.L. Downing, as stated in the Eastern Cougar Recovery Plan (USFWS 1982, pp. 4, 7), had thought it possible that a small population may have persisted in the southern Appalachians into the 1920s; however, his investigations during preparation of the recovery plan led him to conclude that ''no breeding cougar populations have been substantiated within the former range of *F.c. couguar* since the 1920s'' (USFWS 1982, p. 6). This analysis and conclusion were shared by F. Scott in his COSEWIC review (Scott 1998, entire).

Thus, the most recent confirmed eastern puma sightings date from the mid-1800s to around 1930. Confirmed reports of pumas in Eastern North America (outside Florida) since then have been shown to be either western puma dispersers, as in Missouri, or released or escaped animals, as in Newfoundland.

Although habitat conditions now appear to be suitable for puma presence in various portions of the historical range described for the eastern puma, the many decades of both habitat and prey losses belie the sustained survival and reproduction of this subspecies over that time. A more detailed discussion of the historical status, current confirmed and unconfirmed puma sightings, potential habitat, and legal protection of the eastern puma in the States and provinces is provided in the 5-year status review (USFWS 2011, pp. 8–26).

## Summary of Changes From the Proposed Rule

We have not made substantive changes from the proposed rule (80 FR 34595, June 17, 2015). In this final rule, we have added or corrected text to clarify information and respond to input received during the public and peer review comment periods regarding the proposal. These changes have been incorporated into this final rule as presented below.

## Summary of Comments and Responses

In the proposed rule (80 FR 34595, June 15, 2015), we requested that all interested parties submit written comments on the proposal by August 17, 2015. We also solicited peer review of the scientific basis for the proposal by reopening the comment period on June 28, 2016 (81 FR 41925). As appropriate, Federal and State agencies, tribes, scientific organizations, and other interested parties were contacted directly and invited to comment on the proposal. Press releases inviting general public comment were widely distributed, and notices were placed on Service websites.

We did not receive any requests for a public hearing. During the two public comment periods, a total of 75 letters submitted from organizations or individuals addressed the proposed delisting of the eastern puma. Attached to one letter was an appeal containing 2,730 names and addresses of individuals opposed to removing the eastern puma from the List. Many letters contained applicable information, which has been incorporated into this final rule as appropriate. Substantive public comments and peer review comments, with our responses, are summarized below.

### *Comments From the States*

*(1) Comment:* The North Carolina Wildlife Resources Commission (NCWRC) concurred with our finding that pumas are extirpated from the State of North Carolina. Based on that finding and its consideration of the Service's 2011 status review, the NCWRC indicated there is sufficient evidence to remove the eastern puma from the List.

*Our response:* We agree with the NCWRC.

*(2) Comment:* The Commonwealth of Virginia Department of Game and Inland Fisheries (VDGIF) supports delisting of the eastern puma consistent with our 2011 finding (USFWS 2011) that all known populations have been extirpated from their former range. The VDGIF believes that any wild pumas which may appear in the future will prove to be dispersers from western populations.

*Our response:* We agree with the VDGIF.

### *Public Comments*

*(3) Comment:* Several commenters expressed concern that delisting would prevent the Service from reestablishing or reintroducing pumas in Eastern North America where suitable habitat and prey populations now occur. As a top-level carnivore, pumas are needed to restore balance to ecosystems in Eastern North America, where this role in biotic communities has been missing for over a century. Some commenters cited Cardoza and Langlois (2002) and Maehr et al. (2003), who encouraged proactive leadership on the part of government agencies to assess the possibility of reintroducing pumas to Eastern North America.

In commenting on the ecological importance of pumas as apex predators, several reviewers noted that ungulate populations (like white-tailed deer) have overpopulated in their absence. Ungulate overpopulation may cause overbrowsing, ''trophic cascades,'' and reduced biodiversity (Goetch et al. 2011). It may also lead to declines in mast production (McShea et al. 2007), understory recruitment of certain tree species, and reduced ground-nesting bird habitat (Rawinsky 2008) across the eastern deciduous forest. In addition to maintaining biodiversity and ecosystem functioning (Ripple et al. 2014), restoring pumas would reduce risk to the public from vehicle collisions with deer and other large ungulates (Gilbert et al. 2016) and would reduce human health issues associated with deer ticks as a vector for Lyme disease (Kilpatrick et al. 2014). Some commenters noted that restoring pumas to unoccupied portions of their historical range would be similar to the Service's restoration of wolves to unoccupied portions of their historical range.

Finally, some commenters argued that the reestablishment or reintroduction of other puma subspecies into the historical range of the eastern puma should not be considered until the status of the eastern puma as extinct is officially recognized through removal of the subspecies from the List. They indicated that delisting the eastern puma could eliminate complications associated with Federal listing and open the door for State restoration projects.

*Our response:* The Service acknowledges the science concerning the important ecological role that pumas and other large carnivores serve as apex predators (*e.g.,* Kunkel et al. 2013, Ripple et al. 2014, Wallach et al. 2015) as well as the ecological consequences of high populations of ungulates (*e.g.,* Russell et al. 2001, Ripple and Beschta 2006, McShea et al. 2007, Rossell et al. 2007, Baiser et al. 2008, Rawinsky 2008, Beschta and Ripple 2009, Goetsch et al. 2011, Brousseau et al. 2013, Cardinal et al. 2012a, Cardinal et al. 2012b). We agree that ecological science supports the contention that healthy populations of large carnivores can maintain balance in ecosystems and ameliorate adverse effects such as damage to native vegetation from grazing ungulates (*e.g.,* Ripple et al. 2010) and population increases of small carnivores (*e.g.,* LaPoint et al. 2015). We also acknowledge the potential value of puma recolonization associated with reducing vehicle-deer collisions (Gilbert et al. 2016).

The Service recognizes that within the historical range of the eastern puma there are large, intact areas of habitat with suitable prey resources and little human disturbance that could support puma populations (USFWS 2011, pp. 8, 11–25). Scientific articles published before and after our 2011 review conclude that potential habitat for pumas occurs in the Southeast (Keddy 2009), Georgia (Anco 2011), the Midwest (Smith et al. 2015), the Adirondack region of New York (Laundre 2013), numerous locations in New England (Glick 2014), and the Great Lakes region (O'Neil et al. 2014). Some authors predict that pumas will continue to expand their range eastward and naturally recolonize some areas of Eastern North America (LaRue and Nielsen 2014).

Despite the apparent opportunities for puma recolonizations or reintroductions, the Service does not have the authority under the Act to pursue establishment of other puma subspecies within the historical range of the eastern puma. Furthermore, while the purpose of the Act is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, the Act gives the Service the authority to pursue ecosystem conservation only to the extent necessary to recover listed species. Thus, the Service cannot maintain the extinct eastern puma subspecies on the List for the purpose of facilitating restoration of other, nonlisted puma subspecies, whether to address overpopulation of deer and other ungulates or to achieve any other objective.

Delisting the eastern puma subspecies, in and of itself, would not foreclose future opportunities to reestablish pumas in Eastern North America. Although extinction of the eastern puma obviously precludes reintroduction of this particular subspecies, we concur that officially recognizing the eastern puma as extinct by removing it from the List could eliminate any perceived complications associated with the establishment of other, nonlisted puma populations into the historical range of the eastern puma. We note that authority over the establishment of nonlisted puma populations resides with the States.

*(4) Comment:* Several commenters questioned the conclusions in the Service's 2011 status review (pp. 29–35) regarding the taxonomy of the eastern puma subspecies. One individual asked why the Service concluded that ''Young and Goldman's (1946) taxonomy of cougars was inadequate, even by the standards of their time . . .'' yet incorporated this flawed taxonomy into its delisting recommendation. Several reviewers indicated that the published range maps of the subspecies were vague and poorly defined, and that the locations of specimens used to determine these ranges were not depicted on the maps. In addition, several reviewers commented that the best available science includes the genetic data indicating that all North American pumas should be classified as a single subspecies (Culver et al. 2000). Some commenters suggested that recent evidence of pumas dispersing far from the Dakotas supports the hypothesis that the North American puma functions as one extensive population with no restrictions to mating.

A few commenters asserted that, based on the widespread acceptance of genetic information leading to the recommendation to revise the taxonomy to recognize all pumas in North America as a single subspecies, the Service should delist the eastern puma subspecies on the basis of original data error rather than extinction. They also stated that, were the Service to determine that delisting is called for due to data error, we must withdraw the proposed rule and publish a new proposal explaining our rationale.

Finally, some commenters suggested that, to resolve these taxonomic questions, the Service should conduct a complete taxonomic review and analysis of the subspecies status of North American pumas, including genetic, morphological, ecological, and behavioral considerations, prior to making a listing determination.

*Our response:* The 5-year review in 2011 recommended that the Service propose delisting the eastern puma, and that recommendation was based on extinction (p. 57) and not on taxonomy. We note that delisting the eastern puma based on either extinction or original data error would lead to the same outcome, that is, the eastern puma's removal from the Federal List of Endangered and Threatened Wildlife.

The 2011 status review recognized that more-recent genetic information introduced ''significant ambiguities'' in the species taxonomy that Young and Goldman had outlined in 1946. However, rather than recommending delisting as a result of those ambiguities, the status review recommended that a full taxonomic analysis be conducted to determine whether the taxonomy should be revised (p. 35). Since completion of our eastern puma status review in 2011, there appears to have been increasing acceptance of scientific nomenclature indicating a single subspecies, *Puma concolor couguar* (Kerr 1792), in North America. For example:

- The Smithsonian Institution's Museum of Natural History documents current taxonomy (*http://vertebrates.si.edu/msw/mswcfapp/msw/taxon_browser*) and recognizes a single North American subspecies of puma, *P.c. couguar,* citing W.C. Wozencraft (Wilson and Reeder 2005).
- The Federal government's Interagency Taxonomic Information System (ITIS, *http://www.itis.gov/*), with the Department of the Interior and the Service as partners, aims to set governmental taxonomic standards and ''to incorporate classifications that have gained broad acceptance in the taxonomic literature and by professionals who work with the taxa concerned.'' It is important to note, however, that the Service does not consider ITIS to be a legal authority for statutory or regulatory purposes. The ITIS acknowledges a single North American subspecies, *P.c. couguar,* and calls all separate North American subspecies (=synonyms) invalid taxa, based on expert input from A.L. Gardner (Curator of North American Mammals

and Chief of Mammal Section, National Biological Services, Smithsonian Institution), W.C. Wozencraft (Wilson and Reeder 2005), and prior references (Hall 1981, Currier 1983, Wilson and Reeder 1993, and Wilson and Ruff 1999).

• In 2009, the Convention for the International Trade of Endangered Species of Wild Flora and Fauna (CITES) received a proposal from Canada to review the taxonomy and classification of the genus *Puma* (*https://cites.org/sites/default/files/eng/com/ac/24/E24-18-02.pdf*). CITES reviewed the standard nomenclatural procedures, and reviewers recommended accepting a single North American subspecies, *P.c. couguar.* The Convention referred this ''technical issue'' to the Animals Committee for review. As of February 5, 2015, the CITES Appendices (*https://www.cites.org/eng/app/appendices.php*) continued to list the subspecies *P.c. couguar* and *P.c. coryi* as separate subspecies. The Animals Committee next reviewed the status of North American pumas on September 3, 2015 (*https://cites.org/sites/default/files/eng/com/ac/28/E-AC28-20-03-02.pdf*), when Canada and the United States proposed that the eastern puma (*P.c. couguar*) and the Florida panther (*P.c. coryi*) subspecies be transferred to Appendix II, because ''*P.c. couguar* is considered extinct . . .'' and there is ample protection under the Act for the Florida panther. Concerning taxonomy, ''There is uncertainty regarding the traditional subspecies classification of *Puma concolor.* Recent genetic work suggests that most traditionally described subspecies are poorly differentiated (Culver et al. 2000), and the new proposed taxonomy has been adopted by the most recent version of Wilson and Reeder (2005) and by the International Union for the Conservation of Nature (IUCN, 2008). CITES continues to acknowledge the subspecies *coryi* and *couguar* based on Wilson and Reeder (2nd Edition 1993).'' On October 5, 2016, CITES considered a formal proposal to move all North American pumas to Appendix II (*https://cites.org/sites/default/files/eng/cop/17/prop/CA_puma.pdf*), which concluded that the eastern puma subspecies was extinct by 1900. The CITES Committee accepted the proposal by consensus and also agreed that the taxonomic reference for *Puma concolor* would henceforth be Wilson and Reader (2005), with all North American cougars belonging to a single subspecies, *P.c. couguar* (*https://cites.org/sites/default/files/eng/cop/17/CITES_CoP17_DECISIONS.pdf,* last accessed June 5, 2017).

• The IUCN now recognizes one subspecies of cougar (*Puma concolor*) in North America: *P.c. couguar.* Concerning its most recent taxonomic decisions, ''A more recent study of mtDNA in pumas throughout their range, although with lower sample sizes, supports only two main geographical groupings of North America populations having colonized since circa. 8,000 years before present (Caragiulo et al. 2013) . . . On this basis, we tentatively recognize two subspecies within *Puma concolor: Puma concolor concolor* . . . [and] *Puma concolor couguar* (Kerr 1792)'' (Kitchener et al. 2017, p. 33).

• The Global Biodiversity Information Facility (GBIF, *http://www.gbif.org/*) recognizes one subspecies of cougar in North America, *P.c. couguar.* All other subspecies are considered synonyms for *P.c. couguar* based on the conclusions of ITIS, January 3, 2011.

• NatureServe currently acknowledges several subspecies, including *P.c. couguar* and *P.c. coryi,* but notes, ''. . . mtDNA analysis by Culver et al. (2000) indicated that *Puma concolor* was genetically homogeneous in overall variation across North America, relative to Central and South American populations'' (*http://explorer.natureserve.org/servlet/NatureServe?searchSpeciesUid=ELEMENT_GLOBAL.2.101183,* last accessed June 5, 2017).

Although some authorities indicate acceptance of a taxonomy identifying a single North American puma subspecies (USFWS 2011, pp. 29–35), others continue to recognize the eastern puma as a separate subspecies. This has created an ambiguous situation that does not clearly replace Young and Goldman as the best scientific and commercial data available on puma taxonomy. We conclude that, despite its deficiencies, Young and Goldman (1946) remains the best available taxonomic information for the puma. We anticipate that in our status assessment for the Florida panther, now underway, we will complete a comprehensive taxonomic treatment that considers all other available scientific information—including morphological, ecological, and behavioral factors, in addition to genetics.

Notwithstanding the commenters' questions about the taxonomy of the species, we continue to base the delisting of the eastern puma on extinction for several reasons. First, although the Act and its implementing regulations at 50 CFR 424.11(d) allow for species to be delisted for reasons of recovery, extinction, or error in the original data for classification, neither the Act nor the implementing regulations compel the Service to choose one basis for delisting over another when more than one basis is available.

Second, the eastern puma's existence has been questioned for decades—long before its listing as an endangered species under the Act. We therefore place importance on officially acknowledging our finding, through this rulemaking, that the listed entity is extinct. Clear recognition of this finding should also forestall any speculation that we have discovered evidence of the existence of eastern pumas, a perception that could be triggered by changing the basis for delisting from extinction to original data error.

Third, because the eastern puma has likely been extinct since the early to mid-1900s, and because its existence had not been confirmed at the time of listing, delisting due to extinction in this case could be considered a delisting due to original data error that is more precisely described as ''prior extinction.'' And because the eastern puma's existence was questioned long before listing, while new information bringing its taxonomy into doubt did not appear until well after listing, original data error based on prior extinction reasonably has precedence over original data error based on a more-recent taxonomic understanding.

Fourth, although delisting the eastern puma due to taxonomic error would have no immediate effect on the listed status of the Florida panther, it could presuppose the taxonomic status of *P.c. coryi* and thus cause confusion regarding the current protections afforded the Florida panther under the Act.

Finally, accepting that all pumas in North America are a single subspecies would not fully address the question as to whether the eastern puma is a listable entity. When a vertebrate animal is found not to be a valid species or subspecies, a determination that it is not a listable entity requires that it further be found not to be a ''distinct population segment'' (DPS) of a vertebrate species as defined in the Act and in the 1996 Interagency Distinct Population Segment policy (61 FR 4722, February 7, 1996). The eastern puma does not qualify as a DPS because it is extinct (see also our response to comment 5). Extinction, therefore, is the most fundamental basis for delisting, because it is justified whether or not the eastern puma ever constituted a taxonomically listable entity.

In sum, while the best available scientific information provides some evidence that North American pumas constitute a single subspecies, taxonomic revision awaits full resolution and does not constitute the most fundamental basis for delisting the eastern puma. The best available information also indicates that the entity described as the eastern puma was extirpated throughout its historical range long before its listing, and that this is a primary and sufficiently proven basis for delisting.

We note that the consequences of delisting the eastern puma with regard to Federal protection of dispersing western pumas are the same whether delisting were to be based on extinction or taxonomic error (see our response to comment 3, above). Western pumas dispersing into the historical range of the eastern puma subspecies currently lack protection under the Act and would not receive protection under either delisting scenario. Dispersing western pumas receive, and will continue to receive, those protections afforded by individual States.

*(5) Comment:* We received comments that the eastern puma should be re-listed as a DPS so that dispersing pumas from western populations could be protected from take under the Act. One person commented that the eastern puma should be re-listed under the significant portion of the range (SPR) provision of the Act.

*Our response:* Our DPS policy (61 FR 4722, February 7, 1996) requires that, for a population to be determined to be a DPS, it must be discrete, significant, and endangered or threatened. Because we have determined that the eastern puma subspecies no longer exists, it cannot be considered to be currently discrete, significant, and endangered or threatened, and so cannot be a DPS.

The Service's 2014 SPR policy (79 FR 37577, July 1, 2014) states that listing considerations are based solely on the status of the species in its current range. Regardless of the status of our 2014 SPR policy, the Service maintains this position. Because we have determined that the eastern puma subspecies is extinct—that is, that it does not exist in any part of its range and, therefore, has no current range—it cannot be considered endangered or threatened throughout all of its range or in any portion of its range. Therefore, a continued listing of the eastern puma based on endangered or threatened status within a significant portion of its range is not possible.

*(6) Comment:* Several reviewers pointed to scientific evidence that populations of eastern pumas still exist, primarily in Canada. Some commented that pumas are nearly impossible to detect and can live in suboptimal habitats (citing Stoner et al. 2006, Stoner et al. 2013a, and Stoner et al. 2013b), and others noted the tens of thousands of eyewitness reports (Glick 2014). Some commented that it is impossible to prove extinction and provided examples of species that have gone undetected for many decades or were thought to be extinct before being rediscovered.

*Our response:* We addressed many of these points in our 2011 status review. The Service continues to conclude that the best available scientific information, including information published since 2011, supports our finding that breeding populations of pumas no longer exist in Eastern North America outside of Florida. Although there is evidence of individual pumas (not breeding populations), there is no proof whatsoever that any pumas discovered since the 1930s within the eastern puma's historical range are members of the listed eastern puma subspecies.

Commenters cited Cumberland and Demsey (1994), Cardoza and Langlois (2002), Maehr et al. (2003), Bertrand et al. (2006), Rosatte (2011), Mallory et al. (2012), Lang et al. (2013), and Glick (2014) as corroborating documentation for the occurrence of extant puma populations in eastern Canada. Our review of these sources found that Cumberland and Demsey (1994) documented a single puma (from tracks) in New Brunswick in 1992, concluding that ''these data lend little support to the existence of a remnant Eastern Cougar population. It is possible that the animal responsible for the tracks could have been an escaped or released animal.'' Bertrand et al. (2006) documented hair samples from two pumas in Fundy National Park in New Brunswick in 2003. One of these was from South America, indicative of an escaped or released pet, and there has been no further evidence confirming the existence of pumas in New Brunswick since 2003. Lang et al. (2013) collected 19 confirmed puma hair samples in eastern Canada from scratching post stations from 2001 to 2012. Several of these samples likely were from the same animal. Two samples were shown to be from the same pumas reported by Bertrand et al. (2006), while six were Central and South American haplotypes (assumed to be released pets), and 10 were of North American origin (whether captive or wild was undetermined). They also evaluated the origin of three known mortalities from 1992 to 2002. One was of South American origin, one was of North American origin (uncertain whether captive origin or wild), and one was of unknown origin. From these data, Lang et al. (2013) concluded that pumas have been present in eastern Canada but provide no confirmation of the existence of the eastern puma or evidence of any breeding population of pumas. Rosatte (2011) documented 21 puma occurrences with a high degree of certainty in Ontario from 1998 to 2010, including 15 confirmed tracks, 1 hair sample consistent with pumas, genetic confirmation of 2 scats, and 3 photographs ''consistent with a cougar.'' Mallory et al. (2012) collected eight ''potential'' puma hairs (Sudbury, Ontario) identified by hair scale pattern, and reanalyzed a scat collected in 2004 from Wainfleet, Ontario, and reported in Rosatte (2011). Mallory et al. (2012) reported that trapping records from 1919 to 1984 contained no information on puma pelts sold in Ontario or in eastern Canada except for eight animals sold in Quebec from 1919 to 1920; the origin of these animals (Quebec or western Canada) cannot be confirmed. Finally, Rosatte et al. (2015) documented six additional occurrences in Ontario from 2012 to 2014, including one scat sample (North or South America haplotype not reported), three photographs, one set of tracks, one pregnant female shot (captive origin), and one young male captured (believed to be of captive origin).

Most of these authors (*e.g.,* Cumberland and Demsey 1994, Bertrand et al. 2006, Rosatte 2011, Lang et al. 2013) acknowledge that the pumas reported recently in eastern Canada were most likely escaped or released pets or dispersers from areas supporting extant populations, as we concluded in our 2011 status review. Bertrand et al. (2006) reported that the two pumas documented in New Brunswick could be members of a remnant population, although this conclusion is contradicted by the fact that they recognized one of the two as being of South American origin. Rosatte (2011) believed that pumas may not have been extirpated in Ontario: ''In my opinion, the majority of Cougars currently in Ontario are most likely a genetic mixture of escaped/released captives (or their offspring), immigrants (or their offspring), and/or native animals . . . In view of this, at least some native Cougars in Ontario may have survived the decimation of eastern Cougar populations in the 1800s. This would be feasible, given the size of Ontario (area of more than 1 million km$^2$) and the remoteness of the province, especially in the north. However, the presence of Cougars in Ontario between the 1930s and 1980s

may also have been the result of immigration from the west or escaped/released captive animals (Bolgiano and Roberts 2005).'' Mallory et al. (2012) indicated that the origin of the pumas in Ontario ''remains unclear,'' but added, ''Nevertheless, sightings of Cougars with kittens and reports of young animals suggest that a breeding population exists in Ontario and adjacent provinces (Wright 1953, Nero and Wrigley 1977, Gerson 1988, Rosatte 2011).'' We note that Bertrand et al. (2006), Rosatte (2011), and Mallory et al. (2012) provide no confirmed evidence of adult or lactating female pumas, kittens, or breeding, or of an abundance of confirmed occurrences typically associated with small puma populations such as those occurring in Nebraska, the Dakotas, and Florida. Neither do they document any evidence of a continuous presence of pumas in their study areas since the late 1800s.

Given the absence of trapping records and confirmed historical records in eastern Canada since the late 1800s, the best available information points to the extirpation of puma populations in this portion of the eastern puma's historical range. Areas of Canada most likely to have been historically occupied by eastern pumas (southern Ontario and Quebec, New Brunswick, and Nova Scotia) were extensively trapped and logged, and evidence of a small breeding population would, in all probability, have been noted. With no confirmation of breeding pumas in eastern Canada for many decades, the Service concludes that those puma populations were extirpated. Further, because there is no indication of breeding or the abundant evidence of presence typically associated with small, reproducing populations, the Service concludes that the individual pumas occasionally found in Eastern Canada and the Eastern United States (outside Florida) are escaped or released pets or animals that have dispersed from western populations (or, rarely, Florida); refer to Comment 16 below for more detail).

One commenter mistakenly indicated that, among other investigators, Cardoza and Langlois (2002) and Maehr et al. (2003) provide substantial scientific evidence that eastern pumas continue to exist. On the contrary, Cardoza and Langlois (2002) shared skepticism of the plethora of anecdotal reports and sightings, concluding that ''the search for cougars in the East must be conducted as a scientific endeavor.'' They encouraged the Service to delist the eastern puma if it is extinct or re-list it as a DPS if any populations exist. If the subspecies were to remain listed, they encouraged the Service to revise the recovery plan, because ''agencies have failed to meet the objective of . . . having found or established . . .'' at least three self-sustaining populations. Maehr et al. (2003) called for recovery of pumas in Eastern North America but provided no documentation of a persistent population outside of Florida.

*(7) Comment:* We received several comments stating that pumas are wary and cryptic and could possibly escape detection for many years (citing Stoner et al. 2006, 2013).

*Our response:* Using data on puma harvests in Utah, Stoner et al. (2013) predicted that remote habitats are more likely to harbor relict populations of pumas, regardless of habitat quality, when range contractions are caused by humans. That is, pumas faced with human-induced range contraction were more likely to recede along a gradient determined by human population density rather than habitat quality; thus, remote, low-quality habitats may have greater refugia value to pumas.

Puma refugia in western North America are often characterized by remote, steep, mountainous terrain with little infrastructure for human access and relatively low ungulate populations (Stoner et al. 2013). In contrast, potential refugia for pumas in Eastern North America (*e.g.,* Laundre 2013, Glick 2014, O'Neil et al. 2014) are neither mountainous nor remote, are readily accessible and continue to be heavily used by humans, and exist in a landscape having much higher human density (Glick 2014). Observing that small puma populations in refugia in Florida, Nebraska, and the Dakotas leave ample evidence of their presence (USFWS 2011, pp. 42–43), we infer that any remnant population of pumas persisting in Eastern North America outside Florida would have left a more or less continuous record of credible evidence since the late 1800s (*e.g.,* pumas trapped and shot, road mortalities, carcasses, tracks, and/or photographs). Although one person commented that species can go many decades without being sighted, or can be thought extinct before being rediscovered (so-called ''Lazarus species''), we received no comments providing scientific data indicating that a small, breeding population of pumas exists, only conjecture that they *may* exist. We agree that the historical record and the best available scientific information presented in our 2011 status review, along with scientific articles published since then, provide evidence that individual pumas (of captive origin or dispersing animals) are encountered with increasing frequency in Eastern North America. Nonetheless, there is no available scientific information, nor has any evidence been provided in comments on the proposed rule, that a breeding population of pumas has persisted in Eastern North America anywhere other than Florida.

*(8) Comment:* Some commenters maintained that delisting a species based on extinction requires absolute certainty that it is gone, while one reviewer requested that the Service document extinction using valid statistical methods with appropriate statistical power. The same reviewer stated that we must clearly demonstrate that the eastern puma subspecies is extinct according to government regulations at 50 CFR 424.11(d)(3).

*Our response:* Proving whether a taxon is extant or extinct presents a dilemma for conservation biologists (Diamond 1987). With regard to delisting on the basis of extinction, the Act's implementing regulations at 50 CFR 424.11(d) describe the burden of proof: ''Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.''

The IUCN Standards and Petitions Subcommittee (IUCN 2014) has established criteria to track the conservation status of species, and it is instructive to consider those criteria here. The ''extinct'' category is used by the IUCN when there is evidence beyond a reasonable doubt that the last individual of a taxon has died, recognizing that this is extremely difficult to detect. The IUCN designates a taxon as extinct only after adequate surveys have failed to record the species and local or unconfirmed reports have been investigated and discounted. Relevant types of evidence supporting an IUCN designation of extinct include the following (Butchart et al. 2006):

- For species with recent last records, the decline has been well documented;
- Severe threatening processes are known to have occurred (*e.g.,* extensive habitat loss, the spread of alien invasive predators, intensive hunting); and
- The species possesses attributes known to predispose taxa to extinction (*e.g.,* flightlessness for birds).

Such evidence should be balanced against the following opposing considerations (Butchart et al. 2006):

- Recent field work has been inadequate (surveys have been insufficiently intensive/extensive or inappropriately timed, or the species' range is inaccessible, remote, unsafe, or inadequately known);

• The species is difficult to detect (it is cryptic, inconspicuous, nocturnal, nomadic, or silent, or its vocalizations are unknown, identification is difficult, or the species occurs at low densities);

• There have been reasonably convincing recent local reports or unconfirmed sightings; and

• Suitable habitat (free of introduced predators and pathogens, if relevant) remains within the species' known range, and/or allospecies or congeners may survive despite similar threatening processes.

The IUCN has not issued a determination that the eastern puma subspecies, *P.c. couguar,* is extinct, because they have accepted that all pumas in North America constitute one subspecies that is extant in Florida and western North America. However, the IUCN standards for extinction have been met for the eastern puma.

Many decades have passed since documentation of the last credible eastern puma records, which are contained in the scientific literature and are documented for each State and province within the eastern puma's historical range in our 2011 status review. In addition, severe threats (indiscriminate shooting, trapping, poisoning, deforestation, and extirpation of ungulate prey in much of the range) were evident at the time eastern puma populations were extirpated. Further, pumas are prone to extirpation because of their relatively small population sizes and low population densities, large habitat area requirements, and relatively slow population growth traits (Purvis et al. 2000).

Service-sponsored surveys in the early 1980s in the southern (Downing 1994a, 1994b) and northern (Brocke and VanDyke 1985) parts of the eastern puma's historical range failed to detect any pumas, noting that while difficulty of detection may be expected in the South, it should not be particularly difficult to detect pumas in the North, where there is snow. Our 2011 review also describes numerous other wildlife surveys that did not detect a breeding population of pumas in Eastern North America outside of Florida, and negative survey data are available for many portions of the historical range that still have intact habitat. Despite suggestions that we conduct further surveys, we are not aware of areas within the historical range of the eastern puma with enough evidence of a breeding population to merit the additional effort.

In our 2011 status review, we acknowledged the thousands of reported puma sightings while noting that 90 to 95 percent of these sightings have been shown to be invalid (Brocke 1981, Downing 1984, Hamilton 2006); these invalid reports have generally involved instances of misidentification and, at times, deliberate hoaxes. With respect to increasing frequency of confirmed puma sightings in recent years, we recognize that suitable habitat is available within the historical range of the eastern puma (see our response to comment 3, above), that past threats have been largely eliminated (with some level of protection for dispersing pumas), and that, according to some biologists, western pumas will continue to expand their range eastward (*e.g.,* LaRue and Nielsen 2015).

There is no regulatory requirement for the Service to conduct statistical analyses in order to draw conclusions about extinction. Both our 2011 status review and our review of scientific information that has become available since then point to overwhelming evidence that the eastern puma subspecies is extinct (see also our earlier responses to comments 2, 7, and 10). Given that the last eastern pumas that were assumed to have existed were killed in Maine (1938) and New Brunswick (1932), the preponderance of scientific evidence fully supports our conclusion that breeding populations of pumas in Eastern North America outside of Florida and, until recent decades, Manitoba have been absent for at least the past 80 years, and that pumas recently sighted within the historical range of the eastern puma are escaped or released pets and western (and, rarely, Florida) dispersers. This conclusion and our use of the best available scientific information were sustained by peer reviewers (see comment 20, below).

*(9) Comment:* One commenter stated that puma populations in South Dakota, North Dakota, and Nebraska may be at the western edge of the eastern puma's historical range and may still retain genetic structure similar to the eastern puma subspecies. Thus, eastern pumas exist and should remain listed.

*Our response:* Pumas were extirpated from most of the Dakotas and Nebraska by the early 1900s (Thompson 2009, Wilson et al. 2010). Since 1970, breeding populations of pumas farther west—within the mapped range of the subspecies *P.c. hippolestes*—have expanded their ranges into eastern Montana (Desimone et al. 2005), eastern Wyoming (Moody et al. 2005), eastern Colorado, eastern New Mexico, eastern Texas, western North and South Dakota, and Nebraska (Wilson et al. 2010, LaRue et al. 2012). Molecular genetic data show that pumas in the Black Hills of South Dakota are most closely related to pumas in Wyoming (Thomson 2009, Jaurez et al. 2015), and that pumas breeding in Nebraska are likely from Wyoming and South Dakota (Wilson et al. 2010). The Service has found no evidence that pumas in the Dakotas and Nebraska are descended from the eastern puma subspecies.

*(10) Comment:* We received one comment about high hunting mortality in the easternmost puma populations in the Dakotas and Nebraska, raising a concern about fewer eastward-dispersing pumas to potentially recolonize former habitat. This commenter questioned the accuracy of the Service's statements that ''cougar populations are growing in the West'' and ''pumas may continue to disperse into midwestern states.''

*Our response:* This comment is outside the scope of this rule, which concerns only the delisting of the eastern cougar due to extinction.

*(11) Comment:* We received one comment that cited Morrison (2015) to dispute information in our 2011 status review indicating that the easternmost extant breeding population of pumas in Canada occurs in Manitoba.

*Our response:* Morrison (2015) stated that a newly colonized area in southwest Saskatchewan and southeast Alberta ''now supports the easternmost confirmed breeding population of cougars in Canada.'' However, the scientific information available at the time of our 2011 review, including the 1998 COSEWIC review of pumas in Canada (Scott 1998), indicated that the easternmost breeding population of pumas occurred in Manitoba (USFWS 2011, pp. 11–12; Hutlet 2005). In addition, Watkins (2006) documented multiple confirmed puma reports in Manitoba, including two pumas killed in 2004. Another puma, radio tagged in South Dakota, was killed in Manitoba in 2008. Most recently, individual pumas in Manitoba have been trapped in 2011 and killed in 2015 and 2016 (*http://www.naturenorth.com/winter/Cougar/Cougar_1.html*).

Manitoba biologists have documented 20 occurrences of pumas since 2002 (carcasses, tracks, photos), including 6 puma carcasses (3 male and 3 female) since 2004. However, there has been no conclusive evidence of kittens or lactating females, and thus breeding status is uncertain. Biologists are unsure whether an increased number of dispersing pumas in Manitoba is on the cusp of developing a breeding population or whether a small breeding population currently exists (W. Watkins, Manitoba Conservation and Water Stewardship, email dated February 1,

2016). In either event, there is no evidence showing that any of these pumas is the eastern puma subspecies.

*(12) Comment:* We received numerous comments from people who believed they had seen a puma or evidence of a puma (deer kills, vocalizations, missing pets, dead livestock, tracks, game camera photos, collections of alleged sightings on maps, YouTube videos). Some reviewers expressed concern that pumas are dangerous and bound to attack humans, and others asserted that the sheer number of sighting reports proves the existence of eastern pumas.

*Our response:* As discussed in our response to comment 8, above, we acknowledge the thousands of reports of pumas in Eastern North America, but most of these are unverified and, in the majority of cases, represent misidentifications (Downing 1984, Brocke and VanDyke 1985, Hamilton 2006, South Dakota Fish, Wildlife and Parks 2005). Still, confirmed occurrences of pumas within the historical range of the eastern puma are increasing, particularly in the Midwest (LaRue et al. 2012, LaRue and Nielsen 2015). The best available scientific information supports the conclusion that confirmed occurrences of pumas in Eastern North America are released or escaped pets or dispersers from western populations. In recent decades, pumas have incrementally expanded their breeding population eastward in both Canada and the United States, and LaRue and Nielsen (2014) provide a scientific rationale for why range expansion will likely continue.

*(13) Comment:* One commenter stated that Michigan has a resident population of pumas (citing a 1994 book by D. Evers, Endangered and Threatened Wildlife of Michigan, and Swanson and Rusz 2006), asserting that these are neither escaped or released pets nor transients moving east from South Dakota. The commenter contends that Michigan has a long, uninterrupted history (80 years) of puma presence, including puma reports from 1966 and 1984 (*i.e.,* before the Black Hills population in South Dakota was large enough to have dispersing animals) and further notes that the Michigan Department of Natural Resources (MDNR) verified puma evidence in 2008 and 2009. The commenter suggested that the Service ought to collect puma samples, conduct a full genetic analysis of samples collected in each State/region, and review related information about pumas in eastern Canada.

*Our response:* We have reviewed all information provided by the public with respect to pumas in Michigan along with data obtained for the 2011 status review and information obtained since then. Regarding a resident Michigan puma population, the MDNR stated (in a letter dated March 30, 2007) that ''all available information suggests the eastern puma subspecies was extirpated after the turn of the century [1900].'' The MDNR also expressed concerns about the scientific validity of information presented in Swanson and Rusz (2006), except for one confirmed occurrence in Delta County (2004). Kurta and Schwartz (2007) further refuted Swanson and Rusz's (2006) conclusion that a population of eight pumas existed in Michigan.

Nonetheless, as in most eastern States and provinces, there continue to be numerous reports of pumas in Michigan, the most credible of which are investigated by the MDNR following its response protocol. At the time of the 2011 review, the MDNR had confirmed one puma report from Alcona County (1998) and one ''likely'' occurrence in Menominee County (2004). Since then, additional confirmed occurrences have been documented in the Upper Peninsula of Michigan in Ontonagon County (two in 2011), Houghton County (one in 2011), Keweenaw County (three in 2011), Baraga County (one in 2011, two in 2012), Marquette County (four in 2012, two in 2013), Delta County (one in 2015), Menominee County (one in 2010, two in 2012, one in 2015), Schoolcraft County (one carcass in 2015), Luce County (one in 2013, one in 2014), Mackinac County (two in 2014), and Chippewa County (one in 2014).

Noting that many of these records could represent multiple confirmations of the same animal, the number of confirmed puma occurrences in the Upper of Peninsula of Michigan has totaled 27 since 2010. This is in marked contrast to the number of confirmed puma records in Nebraska (255 since 2010), with its small breeding population of about 25 pumas.

The overall record of pumas dispersing eastward has grown substantially since the 2011 status review, with 271 confirmed puma occurrences east of documented breeding areas in the Dakotas, Nebraska, Colorado, and Texas (*www.cougarnet.org/confirmations*). The majority of these animals are dispersing juvenile males (although see our response to comment 11 concerning Manitoba). Many scientists, including MDNR biologists, think it possible that a breeding population of pumas could become reestablished in Michigan and other midwestern States and Canadian provinces; however, at this time, the MDNR has concluded that pumas in Michigan, documented exclusively in the Upper Peninsula, are all dispersing animals from western populations (R. Mason, MDNR Wildlife Division, emails dated 2 February 2016). All four puma carcasses examined by MDNR to date (mortalities from various causes), as well as trail camera photos where sex can be determined, have been males. The MDNR has no current evidence of any females and no evidence of puma reproduction in Michigan (R. Mason, MDNR Wildlife Division, emails dated 2 February 2016). Similarly, the Service has not found evidence that breeding occurs east of Saskatchewan, North Dakota, South Dakota, and Nebraska.

*(14) Comment:* One commenter contested the genetic basis for the South Dakota origin of the puma killed in Connecticut in 2014.

*Our response:* The Service recently reviewed Hawley et al. (2016) regarding the puma killed in Connecticut in 2014. DNA samples from this puma had mitochondrial DNA consistent with haplotype ''M,'' which is widespread in North American pumas (Culver et al. 2000, Culver and Schwartz 2011). Structure analysis indicated that, genetically, this animal was most closely related to the subpopulation of pumas found in the Black Hills of South Dakota. Assignment tests showed that this animal had a 99.9-percent chance of originating from the South Dakota puma population compared to other populations in the database (U.S. Forest Service Rocky Mountain Research Lab, Missoula, Montana).

*(15) Comment:* Several reviewers expressed concern that, after delisting of the eastern puma, pumas occurring or dispersing into the former range of the eastern puma would be left unprotected. Some commenters observed that State laws would not adequately protect pumas in the absence of its Federal listing, noting that only 7 of 19 States in the historical range protect the subspecies under a State endangered species law or its equivalent. Thus, the Act's protections against take are needed to promote natural recolonization of animals with genetics identical to pumas originally occurring in Eastern North America. Others commented that pumas need to be managed at a metapopulation level to ensure access to refugia and safe passage between populations.

*Our response:* Advances in molecular biology in the last 10 to 15 years have enabled scientists to document the origin of many of the pumas reported in Eastern North America. Further, within the last 5 years, advances in isotope analysis allow determinations of whether an animal has had a history of being in captivity. Analyses have

revealed that some of the pumas found in Eastern North America are of South American origin or show evidence of having been in captivity. Outside Florida (with the exception of the panther killed in Georgia in 2008; see comment 16, below), pumas of North American origin have been found to be either wild western pumas or to have been captive animals.

The take protections of the Act do not extend to nonlisted pumas, irrespective of their origin or the fact that they have been found within the eastern puma's historical range. However, despite the Act's inapplicability to these pumas, some States have enforced their respective wildlife laws to protect all pumas within their jurisdictions. In addition to the take prohibitions associated with some State endangered species laws, many States within the historical range have closed seasons on pumas, affording some level of protection, and similar provincial protections are provided to pumas that may disperse into eastern Canada. Florida panthers, wherever they occur, continue to be protected from take under the Act, and all other pumas occurring in Florida continue to be protected under a similarity of appearance designation (32 FR 4001, March 11, 1967).

We emphasize that the authority and responsibility for protection and management of pumas not listed under the Act resides with the States, and balancing a public interest in natural recolonization with the concern for public, pet, and livestock safety will be a challenging endeavor. Recent studies of public attitudes toward pumas recolonizing or being reintroduced in Eastern North America provide a good foundation for management plans, policy decisions, and educational initiatives (Davenport et al. 2010, Thornton and Quinn 2010, Jacobsen et al. 2012, Bruskotter and Wilson 2014, McGovern and Kretser 2014, Smith et al. 2015, McGovern and Kretzer 2015). These human dimension studies also identify the many social and political challenges associated with such initiatives.

*(16) Comment:* Some commenters expressed a concern that if the eastern puma is delisted, there will be no protection under the Act for Florida panthers that disperse beyond Florida. Pumas can travel long distances (over 1,000 miles); thus, dispersing Florida panthers could potentially occur through much of the historical range of the eastern puma subspecies. Protection from take is important for the natural range expansion of the Florida panther. Some commenters suggested that the Florida panther be reclassified as a DPS to ensure continued Federal protection from take. Commenters also stated that Florida panthers are a source population that could, potentially, naturally recolonize other parts of Eastern North America.

*Our response:* As a listed subspecies, Florida panthers are protected under the Act from take wherever they occur—both in and outside of Florida. For instance, a dispersing Florida panther killed in Georgia in 2008 was protected under the Act and became a subject of Federal investigation. These protections against take of Florida panthers will continue in the event of delisting the eastern puma on the basis of extinction.

*(17) Comment:* Several commenters suggested that the Service update its analysis to consider new information regarding confirmed puma sightings in the historical range of the eastern puma. The Service should actively search for new reports of pumas within their Eastern North America historical range.

*Our response:* Since completing our 2011 status review, we have continued to monitor confirmed records of pumas in Eastern North America (*e.g.,* through *cougarnet.org;* see earlier comments 2, 7, and 10). We also refer reports and sightings of pumas we receive to the respective State wildlife agencies. Although pumas continue to be confirmed in Eastern North America, the available scientific information fully supports our conclusion that these animals are released or escaped pets or dispersers from western populations or, rarely, Florida. To date, there remains a complete lack of evidence of breeding eastern pumas in locations not already documented in the 2011 review, and despite many additional puma reports in Eastern North America, the best available information indicates that the eastern puma subspecies is extinct. For these reasons, it is not necessary or advisable to conduct surveys or actively solicit additional reports of pumas in Eastern North America to determine eastern puma status.

*(18) Comment:* Several commenters stated that the current listing requires insignificant funding and staff resources, and that therefore it does no harm to keep eastern pumas on the List. The Service should thus heed the precautionary principle (Simson 2015) and give listed pumas the benefit of the doubt. Furthermore, the Service has already set a precedent for listing species in unoccupied portions of their historical range (*e.g.,* wolves).

*Our response:* Section 4(b)(1)(A) of the Act requires that listing decisions under section 4(a)(1) be made solely on the basis of the best scientific and commercial data available. Therefore, in making the determination whether to delist the eastern puma, we did not consider the funding and staffing consequences of keeping it on the List or removing it from the List. Nonetheless, the Service disagrees that retaining the extinct eastern puma on the List has no repercussions. Keeping an extinct entity on the List can cause confusion—in this case, confusion over whether escaped or released captive pumas and dispersing animals from non ESA-listed western puma populations are protected when found in the historical range of the eastern puma. Confusion surrounding the Service's responsibilities relating to pumas also unnecessarily complicates the States' management of puma issues. Additionally, this final rule will not change the Act's protections for the Florida panther (*P.c. coryi*). Florida panthers, wherever they occur, continue to be protected from take under the Act, and all other pumas occurring in Florida continue to be protected under a similarity of appearance designation (32 FR 4001, March 11, 1967). Pumas occurring elsewhere in the U.S. do not receive the protections of the Act.

There also continue to be costs associated with retaining the eastern puma on the List. Maintaining the eastern puma on the List obligates the Service to continue to compile information relating to puma science and reported sightings and to respond to reported sightings. The Service therefore expends considerable staff time addressing puma reports and questions, diverting limited resources from conservation efforts for listed species that still exist.

While many listed species have areas of unoccupied range, there is no precedent for listing a species when its entire range is unoccupied because the entity is extinct. It is important to recognize that under the Act the Service cannot list a ''vacant'' range—we can list only species, subspecies, and DPSs. Thus, if a species as defined by the Act is determined to be extinct, we can neither list it nor keep it listed. We acknowledge that this commenter could be implying that the eastern puma should remain listed because its entire unoccupied historical range represents a portion of the historical range of a higher-level taxon to which it belongs (*e.g.,* a North American subspecies). However, for any higher-level taxon of puma to be listed, the Service would need to determine that it meets the definition of an endangered species or a threatened species, and this determination must be based on its status where it currently occurs, not on

its status as absent in a portion of its historical range.

Almost 80 years have passed (including more than 40 years while listed under the Act) with no confirmation of the existence of the eastern puma. In addition to the effort and resources put into evaluating all available scientific evidence, this amount of time is sufficient to determine the extinction of an animal that is not difficult to detect wherever it exists as a breeding population—this reasoning satisfies the precautionary principle. See also our response to comment 8.

*(19) Comment:* Some commenters suggested that the Service develop a recovery plan to address puma recolonization and habitat protection across the North American continent. One commenter was impressed by the California Department of Fish and Wildlife's draft wolf plan, (*https://www.ca.gov/conservation.mammals/gray-wolf*), developed before wolves began to breed in that State, and would like to see a study of the issues State wildlife agencies anticipate if pumas should naturally recolonize the East and Midwest.

*Our response:* Because the eastern puma listing imparts no protection either directly or indirectly to other pumas, there would be no benefit to retaining the listed status of the extinct subspecies for the purpose of allowing State wildlife agencies to prepare for recolonization of pumas from western populations to Eastern North America. For a species that has recovered, delisting may require States to demonstrate that the species will be managed to maintain its recovered status, and States often develop management plans to show that their oversight will be adequate to address any emerging or reemerging threats. Because we are delisting due to extinction rather than recovery, there is no need for States to foresee problems and demonstrate adequate management solutions for the eastern puma.

Section 4 of the Act authorizes the Service to develop recovery plans for species listed as endangered or threatened. With regard to listed pumas, recovery plans were developed for the eastern puma (*http://ecos.fws.gov/docs/recovery_plan/820802.pdf*) and Florida panther (*http://ecos.fws.gov/docs/recovery_plan/081218.pdf*). The eastern puma recovery plan called for the discovery or establishment of at least three self-sustaining populations. This goal has proven to be unachievable given the absence of any source individuals, making the plan moot. Finalization of this rule will not affect the Florida panther recovery plan, which will continue to be implemented.

In some instances, the Service has promoted the development of multi-State conservation plans for species that are petitioned or are candidates for Federal listing (*e.g.,* sage grouse, New England cottontail); however, we do not have the authority to develop recovery plans for nonlisted species (*i.e.,* for pumas dispersing from western populations). The Federal government does share authority for managing and conserving fish and wildlife with the States, but our limited fiscal resources are focused on Federal trust resources, including threatened and endangered species, migratory birds, and migratory fish. Thus, it would be inappropriate for the Service to oblige States to develop a plan for recolonizing or reintroducing nonlisted pumas, nor would we have any authority to require that Canadian provinces participate in such an effort.

*Peer Review Comments*

In accordance with our 1994 peer review policy (59 FR 34270, July 1, 1994), we invited six independent scientists to comment on our proposed delisting proposal (81 FR 41925, June 28, 2016). These individuals are recognized for their expertise in large carnivore ecology and management, with particular knowledge in one or more of the following areas: puma population ecology, management, demographics, conservation, and population genetics. In response to our request, we received comments from five experts.

We reviewed all peer review comments for substantive issues and new information regarding the status of the eastern puma. With the exception of our position in the proposed rule on current North American puma taxonomy, the peer reviewers largely endorsed our methods and overall conclusions, and provided new information and suggestions to improve the final rule. Specific peer review comments are addressed below and incorporated as appropriate into this rule or into supplemental documents (such as references cited), available at: *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001.

*(20) Peer review comment:* With regard to the current status of the eastern puma, three reviewers concurred with the Service's conclusion that there are no breeding populations of pumas in the historical range of the eastern puma and that the eastern puma subspecies is extinct, and agreed that the Service adequately documented this conclusion with the best available scientific information. One reviewer cited unpublished genetic data showing that all puma samples from Eastern North America evaluated in her laboratory were of South American origin, consistent with animals originating from captive sources, while another reviewer concluded that pumas in Eastern North America are not extinct but live in a highly discrete, endangered population segment in southern Florida. Two reviewers concurred that the vast majority of recently documented sightings represent either misidentifications or misrepresentations, and that the rare confirmed reports are likely dispersers from western puma populations or pumas that have been released or escaped from captivity.

One reviewer provided extensive comments and data concerning confirmed puma reports in Eastern North America. Based on this information, the reviewer surmised that there is not a breeding population of pumas within the historical range of the eastern puma. This reviewer also discussed published studies that suggest evidence of resident puma populations in Eastern North America (*e.g.,* Johnston 2002, Bertrand et al. 2006, Swanson and Rusz 2006, Rosatte 2011, Mallory 2012), concluding that most of these claims were based on unreliable eyewitness accounts and noting the lack of evidence of kittens. The reviewer disagreed with the reasoning presented in some of these papers that a breeding population of pumas could exist within the historical range of the eastern puma without being detected. This reviewer also reviewed genetic evidence from Bertrand et al. 2006, Swanson and Rusz 2006, Kurta et al. 2007, Mallory et al. 2012, Lang et al. 2013, and Rosatte 2013, and, based on these collective sources, concluded that recent confirmed reports do not constitute compelling evidence of a breeding population, and that the confirmed individuals within the historical range represent animals that have dispersed from western populations.

*Our response:* We concur with these comments, which validate or further corroborate the best available scientific information and conclusions in our 2011 status review (USFWS 2011).

*(21) Peer review comment:* Four of the five peer reviewers stated that the best available scientific information (Culver et al. 2000, Culver 2010) supports the conclusion that there is a single subspecies of puma, *Puma concolor couguar,* in North America. A fifth peer reviewer did not comment on this issue. Two peer reviewers noted that the revised taxonomy, *P.c. couguar,* is identical to the nomenclature used for

the listed eastern puma subspecies, which could create confusion with a determination that the listed eastern puma subspecies, *P.c. couguar,* is extinct. These peer reviewers recommended that the Service accept the revised taxonomy and consider the single North American subspecies extant but extirpated within the historical range previously delineated for the eastern puma. Another peer reviewer further suggested that genetic evidence, documentation of long-distance dispersal of pumas, and lack of geographic barriers support a single North American subspecies. Two peer reviewers pointed out that species-wide morphological studies based on more than 1,000 puma skulls (Gay 1994, Gay and Best 1996, Wilkens et al. 1997) did not support separation of populations into the 32 previously described subspecies, with one reviewer discussing Wilkens et al.'s (1997) findings of the skull measurements, pelage color, mid-dorsal whorl, kinked tail, and deformed sperm thought to be unique to the Florida panther. Based on morphological and genetic studies, these two peer reviewers concluded there was no evidence that the eastern puma was ever a valid subspecies and suggested that the Service should delist based on taxonomic error. One reviewer suggested that the incorrect original classification of the eastern puma subspecies may warrant a reassessment of taxonomy. Another peer reviewer indicated that the original subspecies designation was arbitrary and the eastern puma still persists as the Florida panther.

*Our response:* These peer review comments reflect those expressed by many public reviewers, to which we provide a detailed response under comment 4, above. Although mounting evidence appears to support a single North American puma subspecies, resolution of any remaining uncertainty would constitute an additional, rather than a preemptive, line of reasoning for delisting the eastern puma. Because we have determined that drawing a conclusion regarding a revision of North American subspecies taxonomy is not necessary to delist the eastern puma based on extinction, we have no compelling basis for withdrawing our proposal to delist due to extinction in order to consider delisting due to original data error. Therefore, for the purposes of this regulatory action, we continue to treat the eastern puma as a subspecies as originally listed under the Act.

*(22) Peer review comment:* Two peer reviewers commented that the only remnant population of pumas in Eastern North America persists in Florida, and that it should be designated as a DPS. Going further, one of these reviewers suggested that an endangered DPS designation should encompass the entire historical range of the Florida panther and the eastern puma subspecies.

*Our response:* These peer review comments are similar to several comments from the public, and our response is discussed in detail under comments 4 and 5.

*(23) Peer review comment:* One reviewer suggested that a recovery plan should be developed for pumas in Eastern North America including, specifically, pumas from Florida. This recovery plan should also include translocating animals from western puma populations and protecting dispersing individuals from western populations.

*Our response:* We address this issue in our response to public comments concerning a recovery plan for pumas in Eastern North America (see our response to comment 19).

**Assessment of Species Status**

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, and removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). To determine whether a species should be listed as endangered or threatened, we assess the likelihood of its continued existence using the five factors described in section 4(a)(1) of the Act (see Consideration of Factors Affecting the Species, below). A species may be reclassified or removed from the List on the same basis. With regard to delisting a species due to extinction, ''a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct'' (50 CFR 424.11(d)(1)). According to these dual standards, we must determine whether the eastern puma subspecies is a valid listed entity that remains extant in order to determine its appropriate listing status.

With regard to the validity of the eastern puma as a subspecies and, therefore, as a listable entity, we recognize that support for a single North American subspecies has gained wide acceptance in the scientific community. However, the Service has not yet conducted a comprehensive assessment of all available scientific information pertinent to North American puma taxonomy and therefore has not yet drawn a conclusion whether to accept the single North American subspecies taxonomy. Furthermore, the Service has determined that, because drawing a conclusion on the single North American subspecies taxonomy is not needed to delist the eastern puma based on extinction, we have no essential basis for withdrawing our proposal to delist due to extinction in order to consider delisting due to original data error. Therefore, for the purposes of this regulatory action, we continue to treat the eastern puma as a subspecies as originally listed under the Act.

With regard to a determination that the eastern puma subspecies is extinct, it is important to note that the continuing presence of pumas in Eastern North America is not debated. However, physical and genetic evidence indicates that pumas recently observed in Eastern North America are released or escaped captive animals, with the exception of some wild pumas that have dispersed from western populations or, rarely, Florida.

Most significantly, no evidence whatsoever has been found to show that either individuals or relict populations of the eastern puma subspecies remain extant. The most recent confirmed records of pumas native to Eastern North America are from Tennessee (1930), New Brunswick (1932), and Maine (1938). These records coincide with the extirpation of white-tailed deer in most of the eastern puma's range in the 1800s, with the exception of a few remaining large forest tracts, and a shift of eastern pumas toward the northern periphery of their historical range during that time. In contrast, areas throughout North America that still support extant populations of native pumas have had a long and continuous record of confirmed occurrences.

Given the puma's life span, generally thought to be 10 to 11 years, it is implausible that nonbreeding eastern pumas could have persisted in the wild without being detected for more than seven decades and under conditions of habitat loss and lack of their primary prey base. By the same token, it is highly improbable that a breeding population of the subspecies could have gone undetected for that long. Together with the complete lack of either a recent report or a long-term record of eastern puma presence, these factors are indicative of the long-term absence of this subspecies.

In summary, we find that pumas (except for single transients) are reasonably detectable, that no contemporary puma sightings in Eastern

North America have been verified as the eastern puma subspecies since 1938, and that it is extremely unlikely that undetected individuals or eastern puma populations could have survived the long period during which most of their habitat was lost and their primary prey was nearly extirpated. We therefore conclude that the eastern puma subspecies, *Puma (=Felis) concolor couguar,* is extinct.

**Consideration of Factors Affecting the Species**

As mentioned under Assessment of Species Status above, section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. When we evaluate whether a species should be listed as an endangered species or threatened species, we must consider the five listing factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the species' continued existence. We must consider these same factors in reclassifying a species or removing it from the List. Discussion of these factors and their application to the eastern puma follows. The principal factors leading to the listing of the eastern puma were widespread persecution (via poisoning, trapping, hunting, and bounties) (factors B and D), decline of forested habitat (factor A), and near-extirpation of white-tailed deer populations during the 1800s (factor A). Other natural or manmade factors affecting the species' continued existence (factor E) and disease or predation (factor C) were not identified as threats. These impacts led to the extirpation of most eastern puma populations by 1900. However, because we have determined that all populations of pumas described as the eastern puma have been extirpated and no longer exist, analysis of the five factors under section 4(a)(1) of the Act, which apply to threats facing extant populations, is immaterial.

As stated above, given the period of time that has passed without verification of even a single eastern puma, the Service concludes that the last remaining members of this subspecies perished decades ago. Therefore, the eastern puma is no longer extant and cannot be evaluated as an endangered species or threatened species.

**Determination**

After a thorough review of all available information, we have determined that the subspecies *Puma (=Felis) concolor couguar* is extinct. Based upon this determination and taking into consideration the definitions of ''endangered species'' and ''threatened species'' contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), upon its effective date this rule removes the eastern puma from the List of Endangered and Threatened Wildlife at 50 CFR 17.11.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or as threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. However, because the Service has determined the eastern puma to be extinct, this final rule removes any Federal conservation measures for any individual eastern pumas as originally listed on June 4, 1973 (38 FR 14678) (*Puma* (=*Felis*) *concolor couguar*). This final rule will not change the Act's protections for the Florida panther (*P.c. coryi*).

**Effects of the Rule**

This final rule revises 50 CFR 17.11 by removing the eastern puma from the List of Endangered and Threatened Wildlife due to extinction. Upon the effective date of this rule, the prohibitions and conservation measures provided by the Act will no longer apply to this subspecies. There is no designated critical habitat for the eastern puma.

**Post-Delisting Monitoring**

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires the Service to implement a program, in cooperation with the States, to monitor for not less than 5 years the status of all species that have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). Because we have determined that the eastern puma is extinct, post-delisting monitoring is not warranted.

**Required Determinations**

*National Environmental Policy Act*

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Accordingly, the Service communicated with Tribes during the public comment period on the proposed rule and received no comments expressing concern about our conclusion that the eastern puma is extinct.

**References Cited**

A complete list of references is available as a supplemental document at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001. References are also posted on *http://www.fws.gov/northeast/ecougar.*

**Authors**

The primary authors of this rule are the staff members of the Service's Maine Fish and Wildlife Service Complex, Ecological Services Maine Field Office, and the Hadley, Massachusetts, Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

### § 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Puma (=cougar), eastern'' under ''Mammals'' in the ''List of Endangered and Threatened Wildlife.''

Dated: December 1, 2017.

**James W. Kurth,**

*Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2018–01127 Filed 1–22–18; 8:45 am]

BILLING CODE 4333–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 665

RIN 0648–XF881

## Pacific Island Fisheries; 2018 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

**ACTION:** Notification of lobster harvest guideline.

**SUMMARY:** NMFS establishes the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands for calendar year 2018 at zero lobsters.

**DATES:** January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Bob Harman, NMFS PIR Sustainable Fisheries, tel. 808–725–5170.

**SUPPLEMENTARY INFORMATION:** NMFS manages the Northwestern Hawaiian Islands (NWHI) commercial lobster fishery under the Fishery Ecosystem Plan for the Hawaiian Archipelago. The regulations at 50 CFR 665.252(b) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline for the NWHI commercial lobster fishery for calendar year 2018 at zero lobsters. Harvest of NWHI lobster resources is not allowed.

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

Dated: January 17, 2018.

**Alan D. Risenhoover,**

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

[FR Doc. 2018–01064 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 83, No. 15

Tuesday, January 23, 2018

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2017–1091; Airspace Docket No. 17–AWP–26]**

## Proposed Amendment of Class D and Class E Airspace; Atwater, CA

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

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

**SUMMARY:** This action proposes to amend Class D airspace, and Class E airspace extending upward from 700 feet above the surface at Castle Airport, Atwater, CA, to accommodate airspace redesign due to the decommissioning of the El Nido VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the FAA transitions from ground-based to satellite-based navigation. Also, this action would update the airport's geographic coordinates to match the FAA's aeronautical database. This action also would make an editorial change to the Class D airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''. These actions are necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before March 9, 2018.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–1091; Airspace Docket No. 17–AWP–26, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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

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

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW, Renton, WA 98057; telephone (425) 203–4511.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and Class E airspace at Castle Airport, Atwater, CA, to accommodate airspace redesign in support of IFR operations at the airport.

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2017–1091; Airspace Docket No. 17–AWP–26) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number).

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–1091/Airspace Docket No. 17–AWP–26.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW, Renton, WA 98057.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 for airspace redesign by modifying Class D airspace to a 4.6-mile radius (from a 4.5-mile radius) of the airport from the airport 297° bearing clockwise to the airport 164° bearing, thence direct to the point of beginning. This modification would provide additional Class D airspace south of the airport and would remove Class D airspace southwest and northwest of the airport, thereby containing instrument IFR departure aircraft until reaching 700 feet above the surface, and removing airspace not required by IFR operations. Also, this action would remove the reference to the El Nido VOR/DME in the legal description due to its planned decommissioning as the FAA transitions from ground-based to satellite-based navigation.

Class E airspace extending upward from 700 feet above the surface would be modified to a 7.2-mile (from a 7-mile) radius of the airport, and would remove the 23-mile extension northwest of the airport.

Additionally, the airport's geographic coordinates would be updated to match the FAA's aeronautical database for the Class D and Class E airspace areas. An editorial change also would be made to the Class E surface area airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''.

These actions are necessary for the safety and management of IFR operations at this airport.

Class E airspace designations are published in paragraph 6002, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017 and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**AWP CA D Atwater, CA [Amended]**

Castle Airport, CA
(Lat. 37°22′50″ N, long. 120°34′06″ W)

That airspace extending upward from the surface up to but not including 2,000 feet MSL within a 4.6-mile radius of Castle Airport beginning at the 297° bearing from the airport clockwise to the 164° bearing, thence to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AWP CA E5 Atwater, CA [Amended]**

Castle Airport, CA
(Lat. 37°2250 N, long. 120°34′06″ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Castle Airport.

Issued in Seattle, Washington, on January 11, 2018.

**Shawn M. Kozica,**

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

[FR Doc. 2018–01026 Filed 1–22–18; 8:45 am]

BILLING CODE 4910–13–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R10–OAR–2017–0597; FRL–9973–22—Region 10]**

## Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve the Alaska State Implementation Plan (SIP) as meeting specific infrastructure requirements for the fine particulate matter ($PM_{2.5}$) NAAQS.

**DATES:** Comments must be received on or before February 22, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2017–0597, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), or other information the disclosure of which is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency—Region 10, 1200 Sixth Ave, Seattle, WA 98101; telephone number: (206) 553–6357; email address: *hall.kristin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background
II. Infrastructure Elements
III. EPA Approach To Review of Infrastructure SIP Submissions
IV. EPA Evaluation
V. Proposed Action
VI. Statutory and Executive Orders Review

## I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for fine particulate matter ($PM_{2.5}$) (62 FR 38652). Subsequently, on October 17, 2006, the EPA tightened the 24-hour $PM_{2.5}$ NAAQS from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³, and retained the annual $PM_{2.5}$ standard at 15 μg/m³ (71 FR 61144). More recently, on December 14, 2012, the EPA lowered the level of the primary annual $PM_{2.5}$ NAAQS to 12 μg/m³ and retained the remaining particulate matter standards (January 15, 2013, 78 FR 3086).

After a new or revised NAAQS is promulgated, the CAA requires states to submit infrastructure SIPs to meet basic elements required to implement, maintain, and enforce the new or revised NAAQS. On March 10, 2016, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision to meet the 2012 $PM_{2.5}$ NAAQS infrastructure requirements, in addition to outstanding 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure elements not included in prior submissions. Specifically, Alaska's March 10, 2016, submission addresses the following infrastructure elements:

- CAA section 110(a)(2)(A) through (M) for the 2012 $PM_{2.5}$ NAAQS;
- CAA section 110(a)(2)(G) for the 2006 $PM_{2.5}$ NAAQS; and
- CAA section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS.

We note that Alaska's March 10, 2016, submission addresses other program areas, such as regional haze, transportation conformity, and nonattainment planning. In this action, we are proposing to approve the portion of the March 10, 2016, submission related to $PM_{2.5}$ infrastructure requirements only.[1] We previously approved other portions of the submission on August 28, 2017 (82 FR 40712) and September 8, 2017 (82 FR 42457), and we intend to address the remainder of the submission in separate, future actions.

## II. Infrastructure Elements

CAA section 110(a)(1) provides the procedure and timing for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet related to a newly established or revised NAAQS. The EPA has issued guidance to help states address these requirements, most recently on September 13, 2013 (2013 Guidance).[2] The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's 2013 Guidance restated our interpretation that two elements are not governed by the three-year submission deadline in CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on separate schedules, pursuant to CAA section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C), to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) CAA section 110(a)(2)(I). As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). The EPA has also determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

## III. EPA Approach To Review of Infrastructure Submissions

The EPA is proposing to approve Alaska's March 10, 2016, submission as meeting certain $PM_{2.5}$ NAAQS infrastructure requirements. Our most recent action on an Alaska infrastructure submission was published on May 12, 2017 (82 FR 22081). In the preamble of the action, we published a discussion of the EPA's overall approach to review of these types of submissions. Please see our July 20, 2016, proposed rule for this discussion (81 FR 47103, at page 47104).

## IV. EPA Evaluation

### *110(a)(2)(A): Emission Limits and Other Control Measures*

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

*State submission:* The submission cites regulations set forth at Alaska Administrative Code Title 18 *Environmental Conservation,* Chapter 50 *Air Quality Control* (18 AAC 50). The relevant regulations are listed below:

- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.015: Air Quality Designations, Classifications, and Control Regions.

[1] Consistent with past practice, the EPA intends to act on requirements related to the CAA section 110(a)(2)(D)(i)(I) interstate transport provisions in a separate action. *See* 79 FR 45103 (August 4, 2014).

[2] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.050: Incinerator Emission Standards.
- 18 AAC 50.055: Industrial Processes and Fuel Burning Equipment.
- 18 AAC 50.065: Open Burning.
- 18 AAC 50.070: Marine Vessel Visible Emission Standards.
- 18 AAC 50.075: Solid Fuel-Fired Heating Device Visible Emission Standards.
- 18 AAC 50.076: Solid Fuel-Fired Heating Device Fuel Requirements; Registration of Commercial Wood Sellers.
- 18 AAC 50.077: Standards for Wood-Fired Heating Devices.
- 18 AAC 50.301: Permit Continuity.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration (PSD) Permits.
- 18 AAC 50.345: Construction, Minor and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.502: Minor Permits for Air Quality Protection.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.
- 18 AAC 50.540: Minor Permit: Application.
- 18 AAC 50.542: Minor Permit Review and Issuance.
- 18 AAC 50.544: Minor Permits: Content.
- 18 AAC 50.546: Minor Permits: Revisions.
- 18 AAC 50.560: General Minor Permits.

*EPA analysis:* Alaska regulates emissions of $PM_{2.5}$ (and nitrogen oxides ($NO_X$) and sulfur dioxide ($SO_2$) as precursors to $PM_{2.5}$) through its SIP-approved major and minor new source review (NSR) permitting programs, and other rules described below. The EPA recently approved numerous revisions to the Alaska SIP, including updates to 18 AAC 50.010 *Ambient Air Quality Standards* to reflect the most recent NAAQS revisions—the 2012 $PM_{2.5}$ and 2015 ozone NAAQS (82 FR 42457, September 8, 2017; 82 FR 40712, August 28, 2017). As a result, Alaska's ambient air quality standards in 18 AAC 50.010 are up-to-date with current NAAQS.

Alaska has no areas designated nonattainment for the 2012 $PM_{2.5}$ NAAQS. We note, however, that the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Alaska's major NSR permitting rules in 18 AAC Chapter 50, Article 3 for attainment and unclassifiable areas, generally rely on the federal PSD program regulations at 40 CFR 51.166 and 40 CFR 52.21, which are incorporated by reference into the Alaska SIP, to implement its SIP-approved PSD permitting program. The EPA most recently approved revisions to Alaska's PSD rules on August 28, 2017 (82 FR 40712). The current Alaska SIP-approved PSD program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 28, 2015.

Alaska regulates minor stationary sources of $PM_{2.5}$ and precursors through its federally-approved minor NSR permitting program. Alaska's minor NSR rules in 18 AAC Chapter 50, Article 5 were originally approved into the SIP on July 5, 1983, and the state has made updates and revisions to the program since then. The EPA most recently approved substantive revisions to the Alaska minor NSR rules on September 19, 2014 (79 FR 56268) and August 28, 2017 (82 FR 40712).

In addition to permitting requirements, Alaska's SIP contains rules that limit particulate matter emissions. These controls include incinerator emission standards, emission limits for specific industrial processes and fuel burning equipment, open burning restrictions, visible emission limits on marine vessel emissions, and requirements for installing and operating solid fuel-fired devices. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(B): Ambient Air Quality Monitoring/Data System*

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

*State submission:* The submission references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations. Alaska Statutes (AS) 46.03.020 *Powers of the department* paragraph (5) provides authority to undertake studies, inquiries, surveys, or analyses essential to the accomplishment of the purposes of ADEC. AS 46.14.180 *Monitoring* provides authority to require sources to monitor emissions and ambient air quality to demonstrate compliance with applicable permit program requirements. 18 AAC 50.201 *Ambient Air Quality Investigation* provides authority to require a source to do emissions testing, reduce emissions, and apply controls to sources.

The submission references ADEC's revised *Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program,* adopted by reference into the State Air Quality Control Plan at 18 AAC 50.030(4). Validated State & Local Air Monitoring Stations, and Special Purpose Monitoring ambient air quality monitoring data are verified, and then electronically reported to the EPA through the Air Quality System on a quarterly basis. The submission also references the adoption of the federal reference and interpretation methods for $PM_{2.5}$. These methods are used by ADEC in its ambient air quality monitoring program to determine compliance with the standards.

*EPA analysis:* A comprehensive air quality monitoring plan to meet CAA monitoring requirements was originally submitted by Alaska on January 18, 1980 (40 CFR 52.70) and approved by the EPA on April 15, 1981 (46 FR 21994). The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including $PM_{2.5}$ monitoring. Alaska's SIP-approved regulations in 18 AAC 50 Article 2 govern source-specific monitoring and emissions testing for $PM_{2.5}$ in accordance with federal reference methods. Alaska regularly assesses the adequacy of the state monitoring network and submits that assessment to the EPA for review. In practice, Alaska operates a comprehensive $PM_{2.5}$ monitoring network, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(C): Program for Enforcement of Control Measures*

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

*State submission:* With respect to enforcement, the submission states that a violation of the prohibitions in the regulations above, or any permit condition, can result in civil actions (AS 46.03.760 *Civil action for pollution; damages*), administrative penalties (AS 46.03.761 *Administrative penalties*), or

criminal penalties (AS 46.03.790 *Criminal penalties*). In addition, the submission references compliance order and enforcement proceeding provisions found at 18 AAC Chapter 95 *Administrative Enforcement.*

With respect to construction of new and modified stationary sources, the submission points to ADEC's statutory authority established in AS 46.14 *Air Quality Control,* Article 01 *General Regulations and Classifications* and Article 02 *Emission Control Permit Program.* The submission states that ADEC's PSD/NSR programs were originally approved by the EPA on February 16, 1995 (60 FR 8943), and revisions to the program were approved in 2007, 2011, and 2015. Alaska's regulations for construction of new and modified major sources in attainment and unclassifiable areas (PSD) are found at 18 AAC 50.306, and those for nonattainment areas (nonattainment NSR) are found at 18 AAC 50.311. Minor stationary sources are permitted via minor NSR regulations in 18 AAC 50 Article 5.

*EPA analysis:* We are proposing to find that Alaska statute provides ADEC authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or the environment. Enforcement cases may be referred to the State Department of Law. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2012 $PM_{2.5}$ NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) for regulation of construction of new or modified stationary sources, states are required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2012 $PM_{2.5}$ NAAQS. As explained above, we are not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA.

For the PSD portion of element 110(a)(2)(C) (as well as for the PSD portions of elements (D)(i)(II) and (J)) the EPA interprets the CAA to require an infrastructure submission that demonstrates a complete PSD permitting program meeting current requirements for all regulated NSR pollutants. Alaska has a SIP-approved PSD program that incorporates by reference certain federal PSD program requirements at 40 CFR 52.21 and 40 CFR 51.166. We most recently approved updates to the program on August 28, 2017 (82 FR 40712). The Alaska PSD rules meet current requirements for all regulated NSR pollutants—we are therefore proposing to approve element 110(a)(2)(C) for PSD.

Turning to the minor NSR requirement, the EPA originally approved Alaska's minor NSR program into the SIP on July 5, 1983 as meeting federal minor NSR requirements at 40 CFR 51.160 through 40 CFR 51.164 (48 FR 30623). Over the years, we have approved revisions to the program as consistent with the CAA and federal minor NSR requirements, most recently on August 28, 2017 (82 FR 40712). We have determined that the program regulates construction of new and modified minor sources for purposes of the 2012 $PM_{2.5}$ NAAQS consistent with CAA requirements. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(D)(i): Interstate Transport*

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (*i.e.* measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

*State submission:* Alaska's March 10, 2016, submission addresses 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS, however, we intend to evaluate the requirement in a separate, future action. For purposes of CAA section 110(a)(2)(D)(i)(II), the submission references the Alaska SIP-approved PSD program and the Alaska Regional Haze Plan.

*EPA analysis:* CAA section 110(a)(2)(D)(i)(II) requires state SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). As noted above for section 110(a)(2)(C), Alaska's SIP-approved PSD program, last revised on August 28, 2017, incorporates by reference current federal PSD requirements (82 FR 40712). We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2012 $PM_{2.5}$ NAAQS.

To address whether emissions from sources in Alaska interfere with any other state's required measures to protect visibility, the submission references the Alaska regional haze SIP, submitted on March 29, 2011, and approved by the EPA on February 14, 2013 (78 FR 10546). The EPA believes, as noted in the 2013 Guidance, that with respect to the 110(a)(2)(D)(i)(II), where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration for the visibility sub-element. Because the Alaska regional haze SIP was found to meet federal requirements, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2012 $PM_{2.5}$ NAAQS (prong 4).

*110(a)(2)(D)(ii): Interstate and International Transport Provisions*

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source, and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

*State submission:* The submission references Alaska's SIP-approved PSD program and certifies that Alaska has no pending obligations under CAA section 115 or 126.

*EPA analysis:* At 18 AAC 50.306(b), Alaska's PSD program incorporates by reference the general provisions of 40 CFR 51.166(q)(2) to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by

the emissions of sources subject to PSD. As a result, Alaska's PSD regulations provide for notice consistent with CAA section 126(a) and federal requirements. We confirm that Alaska has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(E): Adequate Resources*

CAA section 110(a)(2)(E) requires each state to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

*State submission:* The submission asserts that ADEC maintains adequate personnel, funding, and authority to implement the SIP. The submission refers to AS 46.14.030 *State Air Quality Control Plan* which provides ADEC statutory authority to act for the state and adopt regulations necessary to implement the state air plan. The submission also references 18 AAC 50.030 *State Air Quality Control Plan* which provides regulatory authority to implement and enforce the SIP.

With respect to CAA section 110(a)(2)(E)(ii), Alaska's regulations on conflict of interest are found in Title 2 *Administration,* Chapter 50 *Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying* (2 AAC 50.010–2 AAC 50.920). Regulations concerning financial disclosure are found in Title 2, Chapter 50, Article 1—*Public Official Financial Disclosure.* These regulations were previously adopted and approved into the SIP. There are no state air quality boards in Alaska. The ADEC commissioner, however, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office.

With respect to CAA section 110(a)(2)(E)(iii) and assurances that the state has responsibility for ensuring adequate implementation of the plan where the state has relied on local or regional government agencies, the submission references statutory authority and requirements for establishing local air pollution control programs found at AS 46.14.400 *Local air quality control programs.*

The submission also states that ADEC provides technical assistance and regulatory oversight to the Municipality of Anchorage, Fairbanks North Star Borough, and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the Municipality of Anchorage and Fairbanks North Star Borough that allows the local entities to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the Municipality of Anchorage and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the air-shed common to the two jurisdictions.

*EPA analysis:* We are proposing to find that the Alaska SIP meets the adequate personnel, funding and authority requirements of CAA section 110(a)(2)(E)(i). Alaska receives sections 103 and 105 grant funds from the EPA and provides matching funds necessary to carry out SIP requirements. For purposes of CAA section 110(a)(2)(E)(ii), we previously approved Alaska's conflict of interest disclosure and ethics regulations as meeting the requirements of CAA section 128 on October 22, 2012 (77 FR 64427). Finally, we are proposing to find that Alaska has provided necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of the SIP as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(F): Stationary Source Monitoring System*

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

*State submission:* The submission states that ADEC has general statutory authority in AS 46.14 *Air Quality Control* to regulate stationary sources via an air permitting program which includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. The submission states ADEC has regulatory authority to determine compliance with these statutes via information requests (18 AAC 50.200) and ambient air quality investigations (18 AAC 50.201). Monitoring protocols and test methods for stationary sources are adopted by reference, including the federal reference and interpretation methods for $PM_{2.5}$. The submission also references the SIP-approved Alaska PSD program. Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis.

*EPA analysis:* The Alaska SIP establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. 18 AAC 50.200 *Information Requests* provides ADEC authority to issue information requests to an owner, operator, or permittee for purposes of ascertaining compliance. 18 AAC 50.201 *Ambient Air Quality Investigations* provides authority to require an owner, operator, or permittee to evaluate the effect emissions from the source have on ambient air quality. In addition, 18 AAC 50.306 *Prevention of Significant Deterioration Permits* and 18 AAC 50.544 *Minor Permits: Content* provide for establishing permit conditions to require the permittee to install, use and maintain monitoring equipment, sample emissions, provide source test reports, monitoring data, emissions data, and information from analysis, keep records and make periodic reports on process operations and emissions. This information is made available to the public through public processes outlined in these SIP-approved rules.

Additionally, states are required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions

Inventory System. As required, Alaska reports emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website *https://www.epa.gov/air-emissions-inventories.* Based on the above analysis, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(G): Emergency Episodes*

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

*State submission:* We note that Alaska's submission addresses not only the 2012 $PM_{2.5}$ NAAQS for this element, but also the 1997 and 2006 $PM_{2.5}$ NAAQS. Alaska cites statutory authority including AS 46.03.820 *Emergency powers* which provides ADEC with emergency order authority where there is an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment. The submission references 18 AAC 50.246 *Air Quality Episodes and Advisories for $PM_{2.5}$* which authorizes ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action, including restrictions on open burning under 18 AAC 50.065 and limits on visible emissions from solid fuel-fired heating devices under 18 AAC 50.075. The submission states that ADEC has also worked with the Fairbanks North Star Borough (FNSB) to develop an emergency episode plan for $PM_{2.5}$ applicable in the FNSB area. This plan was adopted into the state plan at 18 AAC 50.030.

*EPA analysis:* Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' The EPA finds that AS 46.03.820 *Emergency Powers* provides emergency order authority comparable to CAA Section 303. We also find that Alaska's emergency episode rule at 18 AAC 50.246 *Air Quality Episodes and Advisories for $PM_{2.5}$*, in conjunction with 18 AAC 50.065 *Open Burning* and 18 AAC 50.075 *Solid Fuel-Fired Device Visible Emission Standards,* most recently approved by the EPA on September 8, 2017 (82 FR 40712), are consistent with the requirements of 40 CFR part 51 subpart H for $PM_{2.5}$ (prevention of air pollution emergency episodes, sections 51.150 through 51.153). Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(H): Future SIP Revisions*

CAA section 110(a)(2)(H) requires that SIPs provide for revision of the plan (i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining the standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

*State submission:* The submission refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) *Powers of the Department* and AS 46.14.010(a) *Emission Control Regulations.*

*EPA analysis:* As cited above, the Alaska SIP provides for revisions, and in practice, Alaska regularly submits SIP revisions to the EPA to take into account changes to the NAAQS and other requirements. We have taken action on revisions to the Alaska SIP on many occasions in the past, most recently on September 8, 2017 (82 FR 42457), August 28, 2017 (82 FR 40712), May 19, 2016 (81 FR 31511), March 18, 2015 (80 FR 14038), and September 19, 2014 (79 FR 56268). We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(I): Nonattainment Area Plan Revision Under Part D*

*EPA analysis:* There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1), because SIPs incorporating necessary local nonattainment area controls are due on a different timeline, pursuant to section 172 and the various pollutant specific subparts 2 through 5 of part D. As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

*110(a)(2)(J): Consultation With Government Officials*

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and federal land managers with respect to NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

*State submission:* The submission refers to statutory authority to consult and cooperate with officials of local governments, state and federal agencies, and non-profit groups found at AS 46.030.020 *Powers of the department* paragraphs (3) and (8). The submission states that municipalities and local air quality districts seeking approval for a local air quality control program shall enter into a cooperative agreement with ADEC according to AS 46.14.400 *Local air quality control programs,* paragraph (d). ADEC can adopt new CAA regulations only after a public hearing as per AS 46.14.010 *Emission control regulations,* paragraph (a). In addition, the submission notes that public notice and public hearing regulations for SIP submission and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, the submission also references the SIP-approved Alaska PSD program.

*EPA analysis:* The EPA finds that the Alaska SIP, including the Alaska rules for major source permitting, contains provisions for consulting with government officials as specified in CAA section 121. Alaska's PSD program provides opportunity and procedures for public comment and notice to appropriate federal, state and local agencies. We most recently approved updates to the Alaska PSD program on August 28, 2017 (82 FR 40712). In addition, we most recently approved the Alaska rules that define transportation conformity consultation on September 8, 2015 (80 FR 53735) and regional haze interagency planning on February 14, 2013, (78 FR 10546).

ADEC routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues including transportation conformity and regional haze, and provides notice to appropriate agencies

related to permitting actions. Alaska regularly participates in regional planning processes including the Western Regional Air Partnership, which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the EPA, whose purpose is to understand current and evolving regional air quality issues in the West. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2012 $PM_{2.5}$ NAAQS.

Section 110(a)(2)(J) also requires the public to be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. ADEC is a partner in the EPA's AIRNOW and Enviroflash Air Quality Alert programs, which provide air quality information to the public for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. Alaska also provides real-time air monitoring information to the public on the ADEC air quality website, in addition to air advisory information. During the summer months, the Fairbanks North Star Borough prepares a weekly Air Quality forecast for the Fairbanks area on its website. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 2012 $PM_{2.5}$ NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) and permitting. The EPA most recently approved updates to Alaska's PSD program on August 28, 2017 (82 FR 40712). As discussed in section 110(a)(2)(C), the program meets current federal requirements. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 2012 $PM_{2.5}$ NAAQS.

With respect to visibility protection under element (J), the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement related to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the analysis above, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(K): Air Quality Modeling/Data*

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

*State submission:* The submission states that air quality modeling is regulated under 18 AAC 50.215(b) *Ambient Air Quality Analysis Methods.* Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040 *Federal Standards Adopted by Reference.* Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020 *Baseline Dates and Maximum Allowable Increases.*

*EPA analysis:* On August 28, 2017, we approved revisions to 18 AAC 50.215 *Ambient Air Quality Analysis Methods* and 18 AAC 50.040 *Federal Standards Adopted by Reference* (82 FR 40712). 18 AAC 50.040, at paragraph (f), incorporates by reference the EPA regulations at 40 CFR part 51, Appendix W *Guidelines on Air Quality Models* revised as of July 1, 2015. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(L): Permitting Fees*

CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

*State submission:* The submission states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 *Permit Administration Fees* and AS 46.14.250 *Emission Fees.* The permit fees for stationary sources are assessed and collected by the Air Permits Program according to 18 AAC 50, Article 4. ADEC is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410).

*EPA analysis:* The EPA fully-approved Alaska's title V program on July 26, 2001 (66 FR 38940). While Alaska's operating permit program is not formally approved into the SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full title V approval, a state must demonstrate the ability to collect adequate fees. The Alaska title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i).

In addition, Alaska SIP-approved regulations at 18 AAC 50.306(d)(2) and 18 AAC 50.311(d)(2) require fees for purposes of major new source permitting as specified in 18 AAC 50.400 through 18 AAC 50.499. Therefore, we are proposing to conclude that Alaska has satisfied the requirements of CAA section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

*110(a)(2)(M): Consultation/Participation by Affected Local Entities*

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

*State submission:* The submission asserts ADEC has authority to consult and cooperate with officials and representatives of any organization in the state; and persons, organization, and groups, public and private using, served by, interested in, or concerned with the environment of the state. The submission refers to AS 46.030.020 *Powers of the department* paragraphs (3) and (8) which provide authority to ADEC to consult and cooperate with affected state and local entities.

*EPA analysis:* The EPA finds that the Alaska provisions cited above provide for local and regional authorities to participate and consult in the SIP development process. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2012 $PM_{2.5}$ NAAQS.

## V. Proposed Action

We are proposing to approve the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (H), (J), (K), (L), and (M). We are also proposing to approve the Alaska SIP as meeting CAA section 110(a)(2)(G) for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.

## VI. Statutory and Executive Orders Review

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

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

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

### List of Subjects in 40 CFR Part 52

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

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

Dated: January 11, 2018.

**Chris Hladick,**

*Regional Administrator, Region 10.*

[FR Doc. 2018–01165 Filed 1–22–18; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**RIN 0648–BH36**

## Fisheries off West Coast States; Highly Migratory Fisheries; Amendment 4 to Fishery Management Plan for West Coast Highly Migratory Species Fisheries (HMS FMP); Revisions to the Biennial Management Cycle

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

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for review by the Secretary of Commerce. The intent of Amendment 4 is to bring descriptions of the management context for highly migratory species (HMS) fisheries up to date, better describe the Council's role in the process of making stock status determinations including evaluations of the best scientific information available (BSIA), and change the schedule of the Council's three-meeting biennial management cycle for HMS stocks. The amendment is administrative in nature and is not expected to affect activities authorized under the FMP or their harvest levels.

**DATES:** Comments on Amendment 4 must be submitted received by March 26, 2018 to be considered in the decision whether to approve, disapprove, or partially approve Amendment 4.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2017–0138, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0138,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to *Amber.Rhodes@noaa.gov,* NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2017–0138'' in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft Amendment 4 and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2017–0138, or contact Amber Rhodes, NMFS West Coast Region, 562–980–3231, *Amber.Rhodes@noaa.gov* or Heidi Taylor, NMFS West Coast Region, 562–980–4039, *Heidi.Taylor@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amber Rhodes, NMFS, 562–980–3231, *Amber.Rhodes@noaa.gov* or Heidi Taylor, NMFS, 562–980–4039, *Heidi.Taylor@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** During the Council's 2016 biennial management cycle meetings for HMS and considerations for recent revisions to agency guidelines for National Standard 1 (81 FR 71858, October 18, 2016), key

differences have become evident regarding the management of HMS stocks versus other Council-managed stocks for which management activities are largely or fully within the scope of Council jurisdiction. In contrast to NMFS-conducted assessments for other Council-managed stocks, HMS assessments are conducted by teams of regional fishery management organization (RFMO) science providers, which may include scientists from the United States and other participating nations in Pacific HMS fisheries or international science providers who work at RFMOs. Additionally, alternative peer review processes are used to determine whether the output of these international HMS assessments constitute BSIA (81 FR 54561; August 16, 2016), consistent with BSIA determinations for most U.S.-targeted stocks subject to international agreements. Following these steps, NMFS uses assessment outputs, which meet the BSIA standard, to determine stock status by following the status determination criteria (*i.e.,* maximum fishing mortality thresholds and minimum stock size thresholds) in the HMS FMP.

The proposed changes to the HMS FMP are administrative in nature, do not involve the issuance of any permits, and are described in further detail below:

- The description of the stock status determination process in Chapter 4 of the current HMS FMP has been revised to account for the fact that the HMS management unit species are internationally assessed and that these stock assessments are not routinely subject to Scientific and Statistical Committee (SSC) review for purposes of determining BSIA, unlike assessments for domestically-managed stocks.
- Additionally, to better align the Council's biennial management schedule with the NMFS' process for conducting HMS stock status determinations, the schedule described in Chapter 5 of the FMP would be changed under the proposed amendment to the HMS FMP. The three-meeting biennial management cycle would take place during September, November, and March Council meetings instead of during June, September, and November meetings; however, the schedule would continue to start on even years.
- Chapters 1 and 6 in the FMP also have been substantially revised to better describe the management context (Chapter 1) and the types of measures available and in use to manage U.S. West Coast HMS fisheries (Chapter 6).
- Chapter 8 (Research and Data Needed for Management) is proposed to be deleted, because it is out of date. This information may be periodically updated and presented in the HMS Stock Assessment and Fishery Evaluation Report produced by the HMS Management Team and the Research and Data Needs Report produced periodically by the Council's SSC.

NMFS expects to publish and request public comment on proposed revisions to regulations to implement Amendment 4 in the near future. Public comments on the proposed rule must be received by the end of the comment period on Amendment 4 to be considered in the approval/disapproval decision on the amendment. All comments received during the comment period for Amendment 4, whether specifically directed to the amendment, or the proposed rule, will be considered in the decision whether to approve, disapprove, or partially approve Amendment 4.

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

Dated: January 18, 2018.

**Emily H. Menashes,**

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

[FR Doc. 2018–01180 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 83, No. 15

Tuesday, January 23, 2018

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

## AFRICAN DEVELOPMENT FOUNDATION

### Public Quarterly Meeting of the Board of Directors

**AGENCY:** United States African Development Foundation.

**ACTION:** Notice of meeting.

**SUMMARY:** The US African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

**DATES:** The meeting date is Tuesday, February 6, 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Marie-Cécile Groelsema, 202–233–8883.

**Authority:** Public Law 96–533 (22 U.S.C. § 290h).

Dated: January 18, 2018.

**June B. Brown,**

*General Counsel.*

[FR Doc. 2018–01136 Filed 1–22–18; 8:45 am]

**BILLING CODE 6117–01–P**

## CIVIL RIGHTS COMMISSION

### Sunshine Act Meeting Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of Commission public briefing.

**DATES:** Friday, February 2, 2018, 9:00 a.m. EST.

**ADDRESSES:** Marriott Crabtree Raleigh Durham, 4500 Marriott Drive, Raleigh, NC 27612.

**FOR FURTHER INFORMATION CONTACT:** Brian Walch, (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission will hold a public briefing as part of its ongoing assessment of federal enforcement of the Voting Rights Act (VRA). This meeting is open to the public. Testimony from this briefing will form an integral basis for our 2018 report to Congress, the President, and the American people regarding the state of voting rights across the nation.

Our Commissioners will receive testimony from current and former state and federal government officials, legal experts, academics, and civil society actors. Panelists will discuss voter access, including federal voting rights enforcement efforts after the 2006 reauthorization of the temporary provisions of the VRA, and the impact of the *Shelby County* v. *Holder* decision on the Department of Justice's enforcement strategies and priorities.

We will also offer an open comment period in which members of the public will be able to address the Commission. Individuals who wish to participate should sign-up at the briefing. Each individual will have up to three (3) minutes to speak, with spots allotted on a first-come, first-serve basis; forty (40) spots will be available during the two-hour period. The first half of the available slots will be available for sign-up during the morning (10:40 a.m.) and lunch breaks (12:20 p.m.). The second half of the available slots will be available for sign-up during the afternoon break (2:50 p.m.), until all available slots are filled.

In addition, the Commission welcomes the submission of additional material for consideration as we prepare our report. Please submit such information to *VotingRights@usccr.gov* no later than Monday March 19, 2018.

The event will live-stream at *https://www.youtube.com/user/USCCR/videos.* If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven (7) business days before the date of the meeting.

**I. Introductory Remarks: Chair Catherine E. Lhamon: 9:00 a.m.–9:10 a.m.**

**II. Panel One: Scope and Efficacy of Department of Justice (DOJ) Voting Rights Act (VRA) Enforcement: 9:10 a.m.–10:40 a.m.**

- Peyton McCrary, served as a historian in the Civil Rights Division of DOJ for over twenty-seven years, until his retirement in late 2016. Dr. McCrary does research on the factual issues in voting rights litigation and assist DOJ attorneys in identifying expert witnesses to retain for cases that the Department pursues. He also co-authored a book chapter that examines how the DOJ has administered Section 5 from 1965 to present.
- Vanita Gupta, President and CEO, The Leadership Conference on Civil and Human Rights. Ms. Gupta served in DOJ from October 2014–January 2017 as Principal Deputy Assistant Attorney General and head of the Civil Rights Division.
- J. Gerald Hebert, Senior Director, Voting Rights & Redistricting at Campaign Legal Center. Mr. Hebert served in several capacities at DOJ from 1973 to 1994, and served as chief counsel in over one hundred voting rights lawsuits.
- Justin Levitt, Professor of Law at Loyola Los Angeles Law School. Professor Levitt served as the Deputy Assistant Attorney General at DOJ from 2015–2017.

**III. Break: 10:40 a.m.–10:50 a.m.**

**IV. Panel Two: Case Studies: A Litigator's Perspective of Laws Affecting Voter Access Since Shelby: 10:50 a.m.–12:20 p.m.**

- Ezra Rosenberg, Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights under Law (LCCR).
- Nina Perales, Vice President of Litigation at the Mexican American Legal Defense and Educational Fund (MALDEF).
- Dale Ho, Director of Voting Rights Project at the American Civil Liberties Union (ACLU).
- E. Mark Braden, Counsel at Baker Hostetler.
- Dan Morenoff, Executive Director of the Equal Voting Rights Institute.
- Natalie Landreth, Senior Staff Attorney at the Native American Rights Fund.

**V. Break: 12:20 p.m.–1:20 p.m.**

**VI. Panel Three: Voter Access: 1:20 p.m.–2:50 p.m.**

- Michelle Bishop, Disability Advocacy Specialist for Voting Rights at the National Disability Rights Network.
- Michael J. Pitts, Professor of Law at Indiana University.

• Cleta Mitchell, Partner at Foley & Larder LLP.
• John Fund, Columnist for the *National Review.*
• Anita Earls, Former Executive Director at the Southern Coalition for Social Justice.
• John Merrill, Secretary of State of Alabama.

**VII. Break: 2:50 p.m.–3:00 p.m.**

**VIII. Panel Four: Recommendations for Ensuring Access to the Ballot Post-Shelby: 3:00 p.m.–4:30 p.m.**

• John J Park Jr., Counsel at Strickland, Brockington, Lewis LLP.
• Judd Choate, President of the National Association of State Election Directors and Elections Director for the State of Colorado.
• Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund.
• Lorraine Minnite, Professor of Political Science at Rutgers University.
• Jerry Vattamala, Director of the Democracy Program at Asian American Legal Defense and Educational Fund (AALDEF).

**IX. Break: 4:30 p.m.–6:00 p.m.**

**X. Open Public Comment Period: 6:00 p.m.–8:00 p.m.**

• Individuals who wish to participate in the open public comment period should sign-up at the briefing. Each individual will have up to three (3) minutes to speak, with spots allotted on a first-come, first-serve basis; forty (40) spots will be available during the two-hour period. The first half of the available slots will be available for sign-up during the morning (10:40 a.m.) and lunch breaks (12:20 p.m.) of the briefing. The second half of the available slots will be available for sign-up during the afternoon break (2:50 p.m.) until all available slots are filled.

**XI. Adjourn Briefing: 8:00 p.m.**

Dated: January 19, 2018.

**Brian Walch,**

*Director, Communications and Public Engagement.*

[FR Doc. 2018–01237 Filed 1–19–18; 11:15 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Oregon Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Tuesday, February 6, 2018 and 1:00 p.m. (Pacific Time) Tuesday, March 6, 2018. The purpose of the meeting is for the Committee to continue planning to collect testimony focused on human trafficking in Oregon.

**DATES:** The meeting will be held on Tuesday, February 6, 2018 at 1:00 p.m. PT and Tuesday, March 6, 2018 at 1:00 p.m. PT.

**Public Call Information**

*Dial:* 888–298–3457.
*Conference ID:* 6258443.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 888–298–3457, conference ID number: 6258443. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=270.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome
II. Approve Minutes From Previous Meeting
III. Discussion Briefing Agenda
  a. Speakers
  b. Panel Categories
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 18, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–01159 Filed 1–22–18; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Arizona Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meetings of the Arizona Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Mountain Time) Wednesday, January 31, 2018. The purpose of the meetings is for the Committee to discuss logistics for March 9, 2018 briefing on voting rights.

**DATES:** The meeting will be held on Wednesday, January 31, 2018 at 12:00 p.m. MT.

*Public Call Information:* Dial: 877–419–6593 Conference ID: 1710920.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437

**SUPPLEMENTARY INFORMATION:** This meetings are available to the public through the following toll-free call-in number: 877–419–6593, conference ID number: 1710920. Any interested member of the public may call this number and listen to the meetings. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-

line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meetings. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://facadatabase.gov/committee/meetings.aspx?cid=235.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

## Agenda

I. Welcome
II. Approval of Minutes From Previous Meeting
III. Discuss Briefing Agenda
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 18, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–01158 Filed 1–22–18; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–147–2017]**

### Approval of Subzone Status; Plaza Warehousing & Realty Corporation; Caguas, Puerto Rico

On September 20, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Trade and Export Company, grantee of FTZ 61, requesting subzone status subject to the existing activation limit of FTZ 61, on behalf of Plaza Warehousing & Realty Corporation, in Caguas, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (82 FR 44558, September 25, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 61T was approved on January 18, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 61's 1,821.07-acre activation limit.

Dated: January 18, 2018.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2018–01141 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–827]**

### Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 15, 2017, the Department of Commerce (Commerce) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (China) for the period of review (POR) December 1, 2015, through November 30, 2016. We continue to find that Tianjin Tonghe Stationery Industrial Co. Ltd. (Tianjin Tonghe) and Ningbo Homey Union Co., Ltd. (Ningbo Homey) are not eligible for separate rates and, therefore, remain part of the China-wide entity. We also determine that the entity composed of Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. (collectively, the Wah Yuen entity) had no shipments during the POR.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Sergio Balbontin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6478.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 15, 2017, Commerce published the *Preliminary Results.*[1] On October 16, 2017, Prime Time Commerce, LLC (Prime Time), an importer, submitted a case brief.[2] We received no other interested party comments.

## Scope of the Order

The merchandise subject to the order includes certain cased pencils from China. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9609.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written product description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[3]

[1] *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016,* 82 FR 43329 (September 15, 2017) (*Preliminary Results*) and accompanying Memorandum from James Maeder, Senior Director performing the duties of the Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission: Certain Cased Pencils from the People's Republic of China; 2014–2015'' (Preliminary Decision Memorandum).

[2] *See* Letter from Prime Time, ''Certain Cased Pencils from the People's Republic of China: Case Brief Prime Time Commerce LLC,'' dated October 16, 2017.

[3] *See* Memorandum from James Maeder, Senior Director performing the duties of the Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum: Certain Cased Pencils from the People's Republic of China; 2015–2016,''

**Analysis of Comments Received**

All issues raised in Prime Time's case brief are addressed in the accompanying Issues and Decision Memorandum.[4] A list of these issues is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html*. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

**Final Determination of No Shipments**

In the *Preliminary Results,* Commerce determined the Wah Yuen entity did not have any shipments of subject merchandise during the POR.[5] As we have not received any information to contradict our preliminary finding, we determine that the Wah Yuen entity did not have any shipments of subject merchandise during the POR. We will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.[6]

**Methodology**

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). In the *Preliminary Results*, Commerce determined that Tianjin Tonghe and Ningbo Homey were ineligible for a separate rate and are part of the China-wide entity, subject to the China-wide entity rate of 114.90 percent.[7] As we have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this determination, we continue to find that Tianjin Tonghe and Ningbo Homey are ineligible for a separate rate.

As noted in the *Preliminary Results*, Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the entity is not under review and the entity's rate is not subject to change.

For a full description of the methodology underlying our conclusions, *see* Issues and Decision Memorandum.

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. With regard to Tianjin Tonghe and Ningbo Homey, we will instruct CBP to apply an assessment rate of 114.19 percent of the entered value of subject merchandise during the POR which was exported by those companies.

Additionally, consistent with its assessment practice in non-market economy (NME) cases, for the Wah Yuen entity which Commerce determined had no shipments of the subject merchandise, any suspended entries made under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[9]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results of administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies which have a separate rate, the cash deposit rate will be that established in these final results (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

1. Summary
2. Background
3. Scope of the Order

dated concurrently with and hereby adopted by this notice. (Issues and Decision Memorandum).

[4] *Id.*

[5] *See Preliminary Results,* 82 FR 43330, and Preliminary Decision Memorandum at 4.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Notice*); *see also* ''Assessment Rates'' section below.

[7] *See Preliminary Results,* 82 FR at 43330–43331, and Preliminary Decision Memorandum at 5–6.

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

[9] For a full discussion of this practice *see Assessment Notice.*

4. Discussion of the Issues
Comment 1: Whether Commerce Erred by Rejecting Prime Time's Information Submitted on Behalf of Ningbo Homey
Comment 2: Whether Commerce Should Calculate an Exporter/Importer-Specific Margin for Prime Time
5. Recommendation

[FR Doc. 2018–01032 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–357–821 and C–560–831]**

### Biodiesel From the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders

**Correction**

In notice document 2017–28480, appearing on pages 522 through 523, in the issue of Thursday, January 4, 2018, make the following correction:

The table, on page 522, in the third column, eleven lines from the top, should read as set forth below.

| | Subsidy rate (percent) |
|---|---|
| *Exporters/producers from Argentina:* | |
| LDC Argentina S.A [1] | 72.28 |
| Vicentin S.A.I.C [2] | 71.45 |
| All Others | 71.87 |
| *Exporters/Producers from Indonesia:* | |
| Wilmar Trading Co., Ltd | 34.45 |
| PT Musim Mas | 64.73 |
| All Others | 38.95 |

[1] In the final determination, Commerce found the following companies to be cross-owned with LDC Argentina S.A.: LDC Semillas S.A., Semillas del Rosario S.A.

[2] In the final determination, Commerce found the following companies to be cross-owned with Vicentin S.A.I.C.: Oleaginosa San Lorenzo S.A., Los Amores S.A.

[FR Doc. C1–2017–28480 Filed 1–22–18; 8:45 am]

BILLING CODE 1301–00–D

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–076]**

### Certain Plastic Decorative Ribbon From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Maliha Khan at (202) 482–0895, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On December 27, 2017, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of certain plastic decorative ribbon (plastic decorative ribbon) from the People's Republic of China (China), filed in proper form on behalf of Berwick Offray, LLC (the petitioner).[1] The CVD Petition was accompanied by an antidumping (AD) Petition concerning imports of plastic decorative ribbon from China. The petitioner is a domestic producer of plastic decorative ribbon.[2]

On January 2, 2018, Commerce requested supplemental information pertaining to certain areas of the Petition.[3] The petitioner filed responses to these requests, including revised scope language, on January 5, 2018.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to imports of plastic decorative ribbon from China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing plastic decorative ribbon in the United States. Also, consistent with section 702(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.[5]

**Period of Investigation**

Because the Petition was filed on December 27, 2017, the period of investigation for this investigation is January 1, 2016, through December 31, 2016.

**Scope of the Investigation**

The products covered by this investigation are plastic decorative ribbon from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

**Comments on Scope of the Investigation**

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[6]

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[8] all such factual information should be limited to public information. To facilitate preparation of its questionnaire, Commerce requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, February 5, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, February 15, 2018, which is 10 calendar days from the initial comments deadline.[9]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the

[1] *See* Letter to the Secretary of Commerce ''Plastic Decorative Ribbon from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties'' (December 27, 2017) (the Petition).

[2] *See* Volume I of the Petition, at 3 and Exhibit I–3.

[3] *See* Letters from Commerce, to the petitioner, dated January 2, 2018.

[4] *See* Letter from the petitioner, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Commerce's January 2, 2018 Supplemental Questions Regarding Volumes I and III of the Petition for the Imposition of Antidumping and Countervailing Duties'' dated January 4, 2018 (General Issues and China CVD Supplement).

[5] *See* the ''Determination of Industry Support for the Petitions'' section, below.

[6] *See* Volume I of the Petition at 5–6; *see also* General Issues and China CVD Supplement at Exhibit COM-Supp-2.

[7] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[9] *See* 19 CFR 351.303(b).

investigation may be relevant, the party may contact Commerce and request permission to submit the additional nformation. All such comments must be filed on the records of each of the concurrent AD and CVD investigation.

**Filing Requirements**

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Consultations**

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC of the receipt of the Petition, and provided them the opportunity for consultations with respect to the Petition.[11] The GOC did not request consultations.

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that plastic decorative ribbon, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' the Appendix to this notice. The petitioner provided its own 2016 production of the domestic like product, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[15] We relied on data the petitioner provided for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, General Issues and China CVD Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[17] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* Letter to the Embassy of China, ''Countervailing Duty Petition on Certain Plastic Decorative Ribbon from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition'' (December 29, 2017); *see also* Memorandum from Maliha Khan, International Trade Compliance Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance to the File, ''Contact with the Embassy of the People's Republic of China Regarding Possible Consultations,'' dated January 12, 2018.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Certain Plastic Decorative Ribbon from the People's Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Plastic Decorative Ribbon from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 3 and Exhibit I–3; *see also* General Issues and China CVD Supplement, at 4.

[16] *Id.* For further discussion, *see* China CVD Initiation Checklist, at Attachment II.

[17] *See* China CVD Initiation Checklist, at Attachment II.

[18] *See* section 702(c)(4)(D) of the Act; *see also* China CVD Initiation Checklist, at Attachment II.

[19] *See* China CVD Initiation Checklist, at Attachment II.

produced by that portion of the industry expressing support for, or opposition to, the Petition.[20] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that Commerce initiate.[21]

**Injury Test**

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a negative impact on the domestic industry's performance.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[24]

**Initiation of CVD Investigation**

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of plastic decorative ribbon from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[25] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[26] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[27]

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 24 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

**Respondent Selection**

The petitioner named 51 producers/exporters of plastic decorative ribbon from China.[28] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of plastic decorative ribbon from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On January 17, 2018, Commerce plans to release CBP data under APO to all parties with access to information protected by APO. Interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.*

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of plastic decorative ribbon from China are materially injuring or threatening material injury to a U.S. industry.[29] A negative ITC determination will result in the investigation being terminated.[30] Otherwise, the investigation will

[20] *Id.*

[21] *Id.*

[22] *See* Volume I of the Petition, at 13 and Exhibit I–7; *see also* General Issues and China CVD Supplement, at 4–5 and Exhibit COM–Supp–3.

[23] *See* Volume I of the Petition, at 12–13, 20–35, and Exhibits I–7, I–9, and I–10; *see also* General Issues and China CVD Supplement, at 4–5 and Exhibits COM–Supp–3 and COM–Supp–4.

[24] *See* China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Plastic Decorative Ribbon from the People's Republic of China (Attachment III).

[25] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[26] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[27] *See Applicability Notice,* 80 FR at 46794–95.

[28] *See* Volume I of the Petition at Exhibit I–6.

[29] *See* section 703(a) of the Act.

[30] *Id.*

proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and,[31] if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[32] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[33] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives.[34] Investigations initiated on the basis of Petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix—Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows,'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the ''other products'' *(i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering

[31] *See* 19 CFR 351.301(b).

[32] *See* 19 CFR 351.301(b)(2).

[33] *See* section 782(b) of the Act.

[34] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base that is suitable for attaching the bow to a Christmas tree or other object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

Further, excluded from the scope of the antidumping duty order are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

[FR Doc. 2018–01147 Filed 1–22–18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–878]**

## Stainless Steel Flanges From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination With Final Antidumping Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel flanges from India. The period of investigation is January 1, 2016, through December 31, 2016.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ryan Mullen or Chelsey Simonovich, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5260 or (202) 482–2000, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on September 11, 2017.[1] On October 27, 2017, Commerce postponed the preliminary determination of this investigation and the revised deadline is now January 16, 2018.[2] For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The products covered by this investigation are stainless steel flanges from India. For a complete description of the scope of this investigation, see Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.* , scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

In making these findings, we relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

### Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist with respect to imports of stainless steel flanges from India for Bebitz

[1] *See Stainless Steel Flanges from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 42654 (September 11, 2017) (Initiation Notice).

[2] *See Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determination of Countervailing Duty Investigations*, 82 FR 49786 (October 27, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Stainless Steel Flanges from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

Flanges Works, Echjay Forgings Private Limited, and all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

**Alignment**

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of stainless steel flanges from India based on a request made by the petitioners.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than May 28, 2018, unless postponed.

**All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Bebitz Flanges Works. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Echjay Forgings Private Limited. Consequently, the rate calculated for Echjay Forgings Private Limited is also assigned as the rate for all-other producers and exporters.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent) |
|---|---|
| Bebitz Flanges Works [9] | 239.61 |
| Echjay Forgings Private Limited [10] | 5.00 |
| All-Others | 5.00 |

[8] *See* Letter to the Secretary from the Petitioners, re: Petitioners''' Request to Align the Countervailing Duty Final Determination with the Antidumping Duty Final Determination, dated December 18, 2017.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by Bebitz Flanges Works, Echjay Forgings Private Limited, and all-other producers and exporters. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Bebitz Flanges Works: Viraj Profiles Limited.

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Echjay Forgings Private Limited: Echjay Forging Industries Private Limited.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The products covered by this investigation are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTS). While HTS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Alignment
IV. Scope Comments
V. Scope of the Investigation
VI. Injury Test
VII. Preliminary Determination of Critical Circumstances
VIII. Subsidies Valuation
IX. Benchmarks and Discount Rates
X. Use of Facts Otherwise Available and Adverse Inferences
XI. Analysis of Programs
XII. Calculation of the All-Others Rate
XIII. ITC Notification
XIV. Disclosure and Public Comment
XV. Verification
XVI. Conclusion

[FR Doc. 2018–01146 Filed 1–22–18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–061]**

## Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber From the People's Republic of China: Final Affirmative Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (China). The period of investigation is January 1, 2016, through December 31, 2016. For information on the estimated subsidy rates, *see* the ''*Final Determination and Suspension of Liquidation*'' section of this notice.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Bordas or Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3813 or (202) 482–0698, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce published the *Preliminary Determination* on November 6, 2017.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum[2] issued concurrently with this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

### Scope Comments

In accordance with the Preliminary Scope Memorandum, Commerce provided parties an opportunity to provide comments on all issues regarding product coverage (*i.e.,* scope).[3] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[4] As a result, the scope of this investigation was modified for the preliminary determination. No further changes to the scope of the investigation were made to this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the

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[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 82 FR 51396 (November 6, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Commerce Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Commerce Memorandum, ''Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated December 8 31, 2017 (Preliminary Scope Memorandum); *see also See* Commerce Memorandum, ''Due Dates for Case and Rebuttal Briefs Regarding the Scope,'' dated December 11, 2017.

[4] *See Fine Denier Polyester Staple Fiber from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 82 FR 29029 (June 27, 2017) (*Initiation Notice*).

record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5]

**Methodology**

Commerce is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient) and that the subsidy is specific. For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

**Scope of the Investigation**

The merchandise covered by this investigation is generally described as fine denier PSF from China. For a complete description of the scope of this investigation, *see* Appendix II.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by the parties, are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

**Use of Adverse Facts Available (AFA)**

For purposes of this final determination, we relied on facts available, and because certain respondents did not act to the best of their ability in responding to Commerce's requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[6] A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decision Memorandum.

**Changes Since the Preliminary Determination**

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Calculation Memoranda.[7]

**Final Determination**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated.

In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate. Under section 705(c)(5)(A)(i) of the Act, the ''all-others'' rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available.

Pursuant to section 705(c)(5)(A)(i) of the Act, we have calculated the ''all-others'' rate using the subsidy rates of the two individually investigated respondents. However, we have not calculated the ''all-others'' rate by weight-averaging the rates because doing so risks disclosure of proprietary information. Therefore, and consistent with Commerce's practice, for the ''all-others'' rate, we calculated a simple average of the two mandatory respondents' subsidy rates.

| Company | Subsidy rate (%) |
|---|---|
| Jiangyin Hailun Chemical Fiber Co. Ltd.[8] | 38.00 |
| Jiangyin Huahong Chemical Fiber Co. Ltd.[9] | 47.57 |
| All-Others | 42.79 |

**Disclosure**

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after November 6, 2017, the date of publication of the *Preliminary Determination* in the **Federal Register**.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

[5] *See* Commerce Memorandum, ''Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Final Determinations,'' dated concurrently with this determination and hereby adopted by this notice (Final Scope Memorandum).

[6] *See* sections 776(a) and (b) of the Act.

[7] *See* Commerce Memoranda, ''Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Jiangyin Hailun Chemical Fiber Co. Ltd.; Final Analysis Memorandum,'' dated January 16, 2017 (Hailun's Final Calculation Memorandum) and ''Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Jiangyin Huahong Chemical Fiber Co. Ltd.; Final Analysis Memorandum,'' dated January 16, 2017 (Huahong's Final Calculation Memorandum).

[8] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Jiangyin Hailun Chemical Fiber Co. Ltd.: Jiangyin Bolun Chemical Fiber Co., Ltd. (Bolun); Jiangyin Fenghua Synthetic Fiber Co., Ltd. (Fenghua); Jiangsu Hailun Petrochemicals Co., Ltd. (Hailun Petrochemical); Jiangyin Huamei Special Fiber Co., Ltd. (Huamei); Jiangyin Huasheng Polymerization Co., Ltd. (Huasheng); Jiangyin Huaxing Synthetic Co., Ltd. (Huaxing); Jiangying Huayi Polymerization Co., Ltd. (Huayi); Jiangsu Sanfangxiang Group Co., Ltd. (Sanfangxiang Group); Jiangsu Sanfangxiang International Trading Co., Ltd. (Sanfangxiang Trading); Sanhai International Trading PTE Ltd. (Sanhai); Jiangyin Xingsheng Plastic Co., Ltd. (Xingsheng Plastic); Jiangyin Xingtai New Material Co., Ltd. (Xingtai); Jiangsu Xingye Plastic Co., Ltd. (Xingye Plastic); Jiangsu Xingye Polytech Co., Ltd. (Xingye Polytech); Jiangyin Xingyu New Material Co., Ltd. (Xingyu); Jiangyin Xinlun Chemical Fiber Co., Ltd. (Xinlun); Jiangyin Xinyuan Thermal Power Co., Ltd. (Xinyuan Thermal); and Jiangyin Yunlun Chemical Fiber Co., Ltd. (Yunlun).

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found Jiangsu Huahong Industrial Group Co., Ltd. to be cross-owned with Jiangyin Huahong Chemical Fiber Co. Ltd.; Jiangyin Hongkai Chemical Fiber Co., Ltd. (Hongkai); Jiangyin Huahong International Trade Co., Ltd. (Huahong International Trade); and Jiangyin Huakai Polyesterer Co., Ltd. (Huakai).

**Return or Destruction of Proprietary Information**

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Application of the Countervailing Duty Law to Imports from the PRC
VI. Subsidies Valuation Information
VII. Benchmarks and Discount Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Analysis of Comments
Comment 1: Application of AFA to the Electricity Program
Comment 2: Export Buyer's Credit Program
Comment 3: Market Distortion in the MEG/PTA Industry
Comment 4: Input Benchmarks
Comment 5: Hailun Verification Minor Corrections
Comment 6: Huahong Verification Minor Corrections
Comment 7: Exclusion of Finance Leasing and Margin Trading from the Policy Loans Benefit Calculation
Comment 8: Treatment of Hailun's Other Types of Financing under the Policy Loan Program
Comment 9: PTA for LTAR Benefit
Comment 10: Sales Denominator for the Sanfangxiang Group
Comment 11: Sales Denominator for Hailun Petrochemical
Comment 12: Treatment of Foreign-Purchased Inputs
Comment 13: Correction of Calculation Errors for Huahong
Comment 14: Correction of Calculation Errors for Hailun
XI. Recommendation

## Appendix II

**Scope of the Investigation**

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2018–01152 Filed 1–22–18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–876]**

### Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber From India: Final Affirmative Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of fine denier polyester staple fiber (fine denier PSF) from India. The period of investigation is January 1, 2016, through December 31, 2016. For information on the estimated subsidy rates, *see* the ''*Final Determination and Suspension of Liquidation*'' section of this notice.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely or Trisha Tran, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1593 or (202) 482–4852, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 6, 2017, Commerce published the *Preliminary Determination.*[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum [2] issued concurrently with this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

## Scope Comments

In accordance with the Preliminary Scope Memorandum, Commerce provided parties an opportunity to provide comments on all issues regarding product coverage (*i.e.,* scope).[3] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[4] As a result, the scope of this investigation was modified for the preliminary determination. No further changes to the scope of the investigation were made to this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis

[1] *See Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination,* 82 FR 51387 (November 6, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Commerce Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Commerce Memorandum, ''Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated May 31, 2016 (Preliminary Scope Memorandum); *see also See* Commerce Memorandum, ''Due Dates for Case and Rebuttal Briefs Regarding the Scope,'' dated December 11, 2017.

[4] *See Fine Denier Polyester Staple Fiber from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 82 FR 29029 (June 27, 2017) (*Initiation Notice*).

of all comments timely received, *see* the Final Scope Decision Memorandum.[5]

**Methodology**

Commerce conducted this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient) and that the subsidy is specific. For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

**Scope of the Investigation**

The merchandise covered by this investigation is fine denier PSF from India. For a complete description of the scope of this investigation, *see* Appendix II.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by the parties, are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

**Use of Adverse Facts Available (AFA)**

For purposes of this final determination, we relied on facts available, and because certain respondents did not act to the best of their ability in responding to Commerce's requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[6] A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decisions Memorandum.

**Changes Since the Preliminary Determination**

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' sales figures and subsidy rate calculations since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Calculation Memoranda.[7]

**Final Determination**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated.

In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate. Under section 705(c)(5)(A)(i) of the Act, the ''all-others'' rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available.

Pursuant to section 705(c)(5)(A)(i) of the Act, we have calculated the ''all-others'' rate using the subsidy rates of the two individually investigated respondents. The Department calculated the all-others' rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

| Company | Subsidy rate (percent) |
|---|---|
| Bombay Dyeing & Manufacturing Company Limited .... | 13.38 |
| Reliance Industries Limited .. | 27.36 |
| All-Others ..... | 24.80 |

**Disclosure**

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after November 6, 2017, the date of publication of the *Preliminary Determination* in the **Federal Register**.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

**Return or Destruction of Proprietary Information**

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

[5] *See* Commerce Memorandum, ''Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Final Determinations,'' dated concurrently with this determination and hereby adopted by this notice (Final Scope Memorandum).

[6] *See* sections 776(a) and (b) of the Act.

[7] *See* Commerce Memoranda, ''Bombay Dyeing Final Determination Calculation Memorandum,'' dated January 16, 2018 (Bombay Dyeing's Final Calculation Memorandum) and ''Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Determination Calculation for Reliance Industries Limited,'' dated January 16, 2018 (Reliance's Final Calculation Memorandum).

[8] With two respondents under examination, the Department normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. The Department then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, the Department based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please *see* the All-Others' Rate Calculation Memorandum.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. List of Issues
III. Background
IV. Scope Comments
V. Scope of the Investigation
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Analysis of Comments
Comment 1: Whether to Countervail the AAP and DDB
Comment 2: Whether to Apply AFA to Reliance and Bombay Dyeing's Discovered Benefits under the TUFS
Comment 3: Treatment of the EPCG
Comment 4: Whether to Apply AFA to Bombay Dyeing's Unreported Benefits from the SHIS
Comment 5: Whether Commerce should countervail the FPS/IEIS
Comment 6: Whether Commerce should countervail the SGOM PSI
Comment 7: Whether to Apply AFA to the POI Value of Bombay Dyeing's Company-Wide Sales and Company-Wide Export Sales
Comment 8: Whether to Apply AFA to Reliance's Unreported Benefits from the AAP
Comment 9: Whether to Apply AFA to Reliance's Unreported Benefits from the MEIS and the MLFPS
Comment 10: Whether to Apply AFA to Reliance's Alleged Benefits for EOU programs
Comment 11: Whether to Apply AFA to Reliance's Purported Benefits for Two Income Deductions Related to SEZ programs
Comment 12: Whether to Apply AFA to Reliance's Purported Benefits under Section 35(1)(iv), Section 35(I)(ii), and Section 35(I)(i) Income Tax Deductions
Comment 13: Whether to Apply AFA to Reliance's Unreported Benefits for SEZ programs
Comment 14: Whether to Revise the Application of AFA Rates for SEZ programs
Comment 15: Whether to Apply Total AFA to Reliance
Comment 16: Whether to Revise the Calculation of Benefits Received under the EPCG
XI. Recommendation

## Appendix II

**Scope of the Investigation**

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2018–01151 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–065]**

### Countervailing Duty Investigation of Stainless Steel Flanges From the People's Republic of China: Preliminary Affirmative Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers/exporters of stainless steel flanges from the People's Republic of China (China). The period of investigation is January 1, 2016, through December 31, 2016. We invite interested parties to comment on this preliminary determination.

**DATES:** Applicable January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Justin Neuman or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0486 or (202) 482–4047, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (Act). Commerce published the notice of initiation of this investigation on September 11, 2017.[1] On October 27, 2017, Commerce postponed the preliminary determination of this investigation to January 16, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

## Scope of the Investigation

The products covered by this investigation are stainless steel flanges from China. For a complete description of the scope of this investigation, see Appendix I.

## Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4]

In making these findings, Commerce relied totally on facts available, because neither the GOC nor any of the selected mandatory respondent companies responded to the questionnaire. Further,

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[1] *See Stainless Steel Flanges from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 82 FR 42654 (September 11, 2017) (*Initiation Notice*).

[2] *See Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 82 FR 49786 (October 27, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

because these parties did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference in selecting from among the facts otherwise available.[5] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

**All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to mandatory respondents Bothwell (Jiangyan) Steel Fittings Co., Ltd., Hydro-Fluids Controls Limited, Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd, and Qingdao I-Flow Co., Ltd. There is no other information on the record with which to determine an all-others rate. As a result, in accordance with section 705(c)(5)(A)(ii) of the Act, we have established the all-others rate by applying the countervailable subsidy rate established for the mandatory respondents. Consequently, the rate calculated for the mandatory respondents is also assigned as the rate for all-other producers and exporters.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent) |
|---|---|
| Bothwell (Jiangyan) Steel Fittings Co., Ltd | 174.73 |
| Hydro-Fluids Controls Limited | 174.73 |
| Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd | 174.73 |
| Qingdao I-Flow Co., Ltd | 174.73 |
| All-Others | 174.73 |

**Suspension of Liquidation**

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The products covered by this investigation are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United

[5] *See* sections 776(a) and (b) of the Act.

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Application of the CVD Law to Imports from China
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Calculation of the All-Others Rate
IX. ITC Notification
X. Public Comment
XI. Conclusion

[FR Doc. 2018–01145 Filed 1–22–18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–075]**

## Certain Plastic Decorative Ribbon From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable January 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley at (202) 482–3148, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On December 27, 2017, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) Petition concerning imports of certain plastic decorative ribbon (plastic decorative ribbon) from the People's Republic of China (China), filed in proper form on behalf of Berwick Offray, LLC (the petitioner).[1] The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of plastic decorative ribbon from China. The petitioner is a domestic producer of plastic decorative ribbon.[2]

On January 2, 2018, Commerce requested supplemental information pertaining to certain areas of the Petition.[3] The petitioner filed responses to these requests, including revised scope language, on January 5, 2018.[4] On January 12, 2018, the petitioner filed a submission clarifying the scope language.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of plastic decorative ribbon from China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing plastic decorative ribbon in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) and (F) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that the petitioner is requesting.[6]

### Period of Investigation

Because the Petition was filed on December 27, 2017, and China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for this investigation is April 1, 2017, through September 30, 2017.

### Scope of the Investigation

The products covered by this investigation are plastic decorative ribbon from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

### Comments on Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, February 5, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, February 15, 2018, which is 10 calendar days from the initial comments deadline.[10]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

[1] *See* Letter to the Secretary of Commerce, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties'' (December 27, 2017) (the Petition).

[2] *See* Volume I of the Petition, at 3 and Exhibit I–3.

[3] *See* Letter from Commerce, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Plastic Decorative Ribbon from the People's Republic of China: Supplemental Questions'' dated January 2, 2018 (General Issues Supplemental Questions); *see also* Letter from Commerce, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Plastic Decorative Ribbons from the People's Republic of China: Supplemental Questions'' dated January 2, 2018 (AD Supplemental Questions).

[4] *See* Letter from the petitioner, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Response to the Department's January 2, 2018 Supplemental Questions Regarding Volumes I and II of the Petition for the Imposition of Antidumping and Countervailing Duties'' dated January 5, 2018 (General Issues and China AD Supplement).

[5] *See* Letter from the petitioner, ''Certain Plastic Decorative Ribbon from the People's Republic of China: Amendment to the Petition for the Imposition of Antidumping and Countervailing Duties'' dated January 12, 2018 (Scope Clarification).

[6] *See* the ''Determination of Industry Support for the Petition'' section, below.

[7] *See* General Issues Supplemental Questions and AD Supplemental Questions; *see also* General Issues and China AD Supplement, at 2–4 and Exhibit COM-Supp-2; and Scope Clarification.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

**Filing Requirements**

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Comments on Product Characteristics for AD Questionnaires**

Commerce will provide interested parties an opportunity to comment on the appropriate physical characteristics of plastic decorative ribbon to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe plastic decorative ribbon, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on February 5, 2018. Any rebuttal comments must be filed by 5:00 p.m. ET on February 15, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the less-than-fair-value investigation.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that plastic decorative ribbon, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. The petitioner provided its own 2016 production of the domestic like product, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[15] We relied on data the petitioner provided for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, General Issues and China AD Supplement, and other information readily available to Commerce indicates

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Certain Plastic Decorative Ribbon from the People's Republic of China (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Plastic Decorative Ribbon from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 3 and Exhibit I–3; *see also* General Issues and China AD Supplement, at 4.

[16] *Id.* For further discussion, *see* China AD Initiation Checklist, at Attachment II.

that the petitioner has established industry support for the Petition.[17] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[20] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting that Commerce initiate.[21]

## Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a negative impact on the domestic industry's performance.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, negligibility, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[24]

## Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which Commerce based its decision to initiate the AD investigation of imports of plastic decorative ribbon from China. The sources of data for the petitioner's calculations relating to U.S. price and NV are discussed in greater detail in the initiation checklist.[25]

## Export Price

The petitioner based U.S. price on export price (EP) using price quotes for sales of plastic decorative ribbon produced in and exported from China to unaffiliated U.S. customers.[26]

## Normal Value

Commerce considers China to be a non-market economy (NME) country.[27] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by Commerce. The presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[28]

The petitioner states that Thailand is an appropriate surrogate country for China, because it is a market economy country that is at a level of economic development comparable to that of China, it is a significant producer of comparable merchandise, and public information from Thailand is available to value all material input factors.[29] Based on the information provided by the petitioner, we determine that it is appropriate to use Thailand as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs no later than 30 days before the scheduled date of the preliminary determination.

## Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters is not available, the petitioner relied on its own production experience as a domestic producer of plastic decorative ribbon in the United States as an estimate of Chinese manufacturers' FOPs.[30] The petitioner valued the estimated FOPs using surrogate values from Thailand.[31] Additionally, for the surrogate values denominated in Thai Baht, the petitioner converted Thai Baht prices into U.S. Dollars using the average exchange rate available on Commerce's website.[32]

## Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of plastic decorative ribbon from China are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for plastic decorative ribbon from China range from 74.34 percent to 370.04 percent.[33]

## Initiation of the Less-Than-Fair-Value Investigation

Based upon the examination of the Petition, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating this AD investigation to determine whether imports of plastic decorative ribbon from China are being, or are likely to be,

[17] *See* China AD Initiation Checklist, at Attachment II.

[18] *See* section 732(c)(4)(D) of the Act; *see also* China AD Initiation Checklist, at Attachment II.

[19] *See* China AD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *Id.*

[22] *See* Volume I of the Petition, at 13 and Exhibit I–7; *see also* General Issues and China AD Supplement, at 4–5 and Exhibit COM-Supp-3.

[23] *See* Volume I of the Petition, at 12–13, 20–35 and Exhibits I–7, I–9, and I–10; *see also* General Issues and China AD Supplement, at 4–5 and Exhibits COM-Supp-3 and COM-Supp-4.

[24] *See* China AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Plastic Decorative Ribbon from the People's Republic of China (Attachment III).

[25] *See* China AD Initiation Checklist.

[26] *Id.*

[27] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair-Value and Postponement of Final Determination,* 82 FR 50858, 50871 (November 2, 2017), and accompanying decision memorandum, China's Status as a Non-Market Economy; *see also* Volume II of the Petitions, at 10–11.

[28] *See* China AD Initiation Checklist.

[29] *See* Volume II of the Petition at 7–9 and Exhibit II–5.

[30] *Id.* at 9 and Exhibit II–2.

[31] *Id.* at 17 and Exhibits II–10.

[32] *Id.* at 16 and Exhibit II–10.

[33] *See* Volume II of the Petition at 22 and Exhibit II–10.

sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made.[34] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[35] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[36]

**Respondent Selection**

The petitioner named 51 producers/exporters of plastic decorative ribbon from China.[37] In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company, where appropriate, Commerce intends to select mandatory respondents based on the responses received. For this investigation, Commerce will request Q&V information from known exporters and producers identified with complete contact information in the Petition. In addition, Commerce will post the Q&V questionnaires along with filing instructions on Enforcement and Compliance's website at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of plastic decorative ribbon from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V response must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on January 30, 2018. All Q&V responses must be filed electronically via ACCESS.

**Separate Rates**

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[38] The specific requirements for submitting a separate-rate application are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[39] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate-rate consideration.

**Use of Combination Rates**

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[40]

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of plastic decorative ribbon from China, are materially injuring or threatening material injury to a U.S. industry.[41] A negative ITC determination will result in the investigation being terminated.[42] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[43] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[44] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual

[34] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[35] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[36] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[37] *See* Volume I of the Petition at Exhibit I–6.

[38] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[39] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[40] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

[44] *See* 19 CFR 351.301(b)(2).

information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[45] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives.[46] Investigations initiated on the basis of Petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 16, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix—Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base that is suitable for attaching the bow to a Christmas tree or other object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having

[45] *See* section 782(b) of the Act.

[46] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

[FR Doc. 2018–01148 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Highly Migratory Species Dealer Reporting Family of Forms

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 26, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, Atlantic Highly Migratory Species Management Division, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, (978) 281–9260 or *Dianne.Stephan@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for extension of a currently approved information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. NMFS must also promulgate regulations, as necessary and appropriate, to carry out obligations the United States (U.S.) undertakes internationally regarding tuna management through the Atlantic Tunas Convention Act (ATCA, 16 U.S.C. 971 *et seq.*).

This collection serves as a family of forms for Atlantic highly migratory species (HMS) dealer reporting, including purchases of HMS from domestic fishermen, and the import, export, and/or re-export of HMS, including federally managed tunas, sharks, and swordfish.

Transactions covered under this collection include purchases of Atlantic HMS from domestic fishermen; and the import/export of all bluefin tuna, frozen bigeye tuna, southern bluefin tuna or swordfish under the HMS International Trade Program, regardless of geographic area of origin. This information is used to monitor the harvest of domestic fisheries, and/or track international trade of internationally managed species.

The domestic dealer reporting covered by this collection includes weekly electronic landing reports and negative reports (*i.e.,* reports of no activity) of Atlantic swordfish, sharks, bigeye tuna, albacore, yellowfin, and skipjack tunas (collectively referred to as BAYS tunas), and biweekly and electronic daily landing reports for bluefin tuna, including tagging of individual fish. Because of the recent development of an individual bluefin quota (IBQ) management system (RIN 0648–BC09), electronic entry of IBQ-related landing data is required for Atlantic bluefin tuna purchased from Longline and Purse seine category vessels. NMFS intends to consider integrating the electronic dealer reporting for bluefin tuna and electronic reporting for the IBQ system; however, at this time, dealers must submit limited bluefin tuna landings data to both NMFS systems for purse seine and pelagic longline vessels.

International trade tracking programs are required by both the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC) to account for all international trade of covered species. The U.S. is a member of ICCAT and IATTC and required by ATCA and the Tunas Convention Act (16 U.S.C. 951 *et. seq.,* consecutively) to promulgate regulations as necessary and appropriate to implement ICCAT and IATTC recommendations. These programs require that a statistical document or catch document accompany each export from and import to a member nation, and that a re-export certificate accompany each re-export. The international trade reporting requirements covered by this collection include implementation of catch document, statistical document, and re-export certificate trade tracking programs for bluefin tuna, frozen bigeye tuna, and swordfish. An electronic catch document program for bluefin tuna (EBCD) was recommended by ICCAT and implemented by the United States in 2016 (0648–BF17). U.S. regulations implementing ICCAT statistical document and catch document programs require statistical documents and catch documents for international transactions of the covered species from all ocean areas, so Pacific imports and exports must also be accompanied by statistical documents and catch documents. Since there are statistical document programs in place under other international conventions (*e.g.,* the Indian Ocean Tuna Commission), a statistical document or catch document from another program may be used to satisfy the statistical document requirement for imports into the United States.

Dealers who internationally trade Southern bluefin tuna are required to participate in a trade tracking program to ensure that imported Atlantic and Pacific bluefin tuna will not be intentionally mislabeled as ''southern bluefin'' to circumvent reporting requirements. This action is authorized under ATCA, which provides for the promulgation of regulations as may be necessary and appropriate to carry out ICCAT recommendations.

In addition to statistical document, catch document, and re-export certificate requirements, this collection includes biweekly reports to complement trade tracking statistical documents by summarizing statistical document data and collecting additional economic information.

**II. Method of Collection**

Methods of submission include electronic, mail, fax, and tagging of fish.

**III. Data**

*OMB Control Number:* 0648–0040.
*Form Number(s):* None.
*Type of Review:* Regular submission (request for extension of a currently approved information collection).
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 9,585.
*Estimated Time per Response:* 5 minutes each for catch document, statistical document, and re-export certificate; 15 minutes for catch document/statistical document/re-export certificate validation by government official; 120 minutes for authorization of non-governmental catch document/statistical document/re-export certificate validation; 2 minutes for daily Atlantic bluefin tuna landing reports; 3 minutes for daily Atlantic bluefin tuna landing reports from pelagic longline and purse seine vessels; 1 minute for Atlantic bluefin tuna tagging; 15 minutes for biweekly Atlantic bluefin tuna dealer landing reports; 15 minutes for HMS international trade biweekly reports; 15 minutes for weekly electronic HMS dealer landing reports (*e*-dealer); 5 minutes for negative weekly electronic HMS dealer landing reports (*e*-dealer); 15 minutes for voluntary fishing vessel and catch forms; 2 minutes for provision of HMS dealer email address.
*Estimated Total Annual Burden Hours:* 39,961.
*Estimated Total Annual Cost to Public:* $12,570 in recordkeeping/reporting costs.

**IV. Request for Comments**

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

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

Dated: January 17, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–01072 Filed 1–22–18; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Assessment of the Social and Economic Impact of Hurricanes and Other Climate Related Natural Disasters on Commercial and Recreational Fishing Industries in the Eastern, Gulf Coast and Caribbean Territories of the United States

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 26, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Lisa L. Colburn, (401) 782–3253 or *lisa.l.colburn@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for a new information collection.

The NOAA Fisheries Office of Science and Technology's Economics and Social Analysis Division seeks to conduct assessments of the social and economic impacts from hurricanes and other climate related natural disasters on commercial and recreational fishing industries in the eastern, gulf coast and Caribbean territories of the United States. It seeks to collect data on the immediate and long-term disruption and impediments to recovery of normal business practices to the commercial and recreational fishing industries. Data would be collected from commercial and recreational for hire fishermen, fish dealers, bait and tackle stores, marinas and other businesses dependent on the fishing industry for livelihood. The data will improve research and analysis of potential fishery management actions by understanding the immediate effects and/or long-term compounding effects of natural disasters on communities most dependent on commercial and recreational fishing. This data collection is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and essential for implementing National Standard 8, which calls for the sustained participation of fishing communities.

**II. Method of Collection**

This information will be collected by telephone, on-line, and in person.

**III. Data**

*OMB Control Number:* 0648–xxxx.
*Form Number(s):* None.
*Type of Review:* Regular submission [new information collection].
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 20,000.
*Estimated Time per Response:* 20 minutes.
*Estimated Total Annual Burden Hours:* 6,667.
*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

**IV. Request for Comments**

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

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

Dated: January 17, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–01073 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF944**

### Pacific Fishery Management Council; Public Meetings and Hearings

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

**ACTION:** Notice of opportunities to submit public comments.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) has announced its annual preseason management process for the 2018 ocean salmon fisheries. This notice informs the public of opportunities to provide comments on the 2018 ocean salmon management measures.

**DATES:** Written comments on the salmon management alternatives adopted by the Pacific Council at its March 2018 meeting, and described in Preseason Report II, received electronically or in hard copy by 5 p.m. Pacific Time, March 30, 2018, will be considered in the Pacific Council's final recommendation for the 2018 management measures.

**ADDRESSES:** Documents will be available from Mr. Phil Anderson, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, and posted on the Pacific Council website at *http://www.pcouncil.org.* You may submit comments, identified by NOAA–NMFS–2017–0113, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0113,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Mr. Phil Anderson, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.
- *Fax:* 503–820–2299, Attn: Ms. Robin Ehlke.
- Comments can also be submitted via email to *PFMC.comments@noaa.gov.*

*Instructions:* Comments sent by any other method, to any other address or individual may not be considered by NMFS or the Pacific Council. All comments received are a part of the public record and will generally be posted for public viewing on *http://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 and the Pacific Council will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Ehlke, Pacific Council, telephone: 503–820–2280. For information on submitting comments via the Federal e-Rulemaking portal, contact Peggy Mundy, NMFS West Coast Region, telephone: 206–526–4323; email: *peggy.mundy@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Pacific Council has published its annual notice of availability of reports, public meetings, and hearings for the 2018 ocean salmon fisheries (82 FR 61268, December 27, 2017). The Pacific Council will adopt alternatives for 2018 ocean salmon fisheries at its March 8–14, 2018, meeting at the DoubleTree by Hilton Sonoma, Rohnert Park, CA. Details of this meeting are available on the Pacific Council's website (*http://www.pcouncil.org*) and will be published in the **Federal Register** in February 2018. On March 22, 2018, ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2018 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.* The report will include a description of the salmon management alternatives and a summary of their biological and economic impacts. Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

- March 26, 2018: Chateau Westport, Fremont Room, 710 West Hancock, Westport, WA 98595, telephone 360–268–9101.
- March 26, 2018: Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.
- March 27, 2018: Laurel Inn & Conference Center, 801 West Laurel Drive, Salinas, CA 93906, telephone: 831–449–2474.

Comments on the alternatives the Pacific Council adopts at its March 2018 meeting, and described in Preseason Report II, may be submitted in writing or electronically as described under **ADDRESSES**, or verbally or in writing at any of the public hearings held on March 26–27, 2018, or at the Pacific Council's meeting, April 5–11, 2018, at the Sheraton Portland Airport Hotel, in Portland, OR. Details of these meetings will be available on the Pacific Council's website (*http://www.pcouncil.org*) and will be published in the **Federal Register**. Written and electronically submitted comments must be received no later than 5 p.m. Pacific Time, March 30, 2018, in order to be included in the briefing book for the April Council meeting where they will be considered in the adoption of the Pacific Council's final recommendation for the 2018 salmon fishery management measures. All comments received accordingly will be reviewed and considered by the Pacific Council and NMFS.

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

Dated: January 17, 2018.

**Alan D. Risenhoover,**

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

[FR Doc. 2018–01098 Filed 1–22–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR18–10–000]**

### Powder River Crude Services, LLC; Notice of Petition for Declaratory Order

Take notice that on January 10, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2017), Powder River Crude Services, LLC (Petitioner), filed a petition for a declaratory order seeking Commission approval of the rate framework, gathering agreements, and open season process that support a new crude and

gathering system in the Powder River Basin of Wyoming, all as more fully explained in the petition.

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 Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on February 9, 2018.

Dated: January 17, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–01110 Filed 1–22–18; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP17–490–000]**

### Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for Environmental Review of the Rivervale South to Market Project

On August 31, 2017, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP17–490–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities entirely within New Jersey. The proposed project is known as the Rivervale South to Market Project (Project), and would enable Transco to provide an additional 190 million cubic feet (MMcf) per day of firm transportation service to meet supply needs for the 2019/2020 winter heating season.

On September 15, 2017, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

**Schedule for Environmental Review**

Issuance of EA—March 16, 2018
90-day Federal Authorization Decision Deadline—June 14, 2018

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Project Description**

Transco proposes to construct, modify, upgrade, and operate various facilities in connection with its proposed Rivervale South to Market Project in Bergen, Hudson, and Union Counties, New Jersey. According to Transco, the Project would increase the firm delivery transportation capacity of its existing pipeline system by 190 MMcf per day of natural gas from the Rivervale interconnection to existing Compressor Station 210 in Mercer County and the Central Manhattan meter and regulation station (M&R) station in Hudson County. The Compressor Station 210 pooling point would receive 140 MMcf, and the Central Manhattan M&R would receive 50 MMcf.

The Project would consist of the following facilities:

- Construct 0.61 mile of 42-inch-diameter pipeline loop [1] along Transco's Mainline A, from mileposts 1825.80 to 1826.41 (Bergen County);
- uprate 10.35 miles of the existing 24-inch-diameter North New Jersey Extension from the Paramus M&R station (Bergen County) to the Orange and Rockland M&R station (Bergen County). The North New Jersey Extension would be uprated from a maximum allowable operating pressure of 650 pounds per square inch gauge (''psig'') to 812 psig;
- upgrade the existing valves, including overpressure protection valves, and yard piping, and related activities at the Paramus, Central Manhattan, Orange and Rockland, and Emerson M&R stations; and
- construct additional facilities, such as mainline valves, cathodic protection, internal inspection device (pig [2]) launchers and receivers, and communication equipment.

**Background**

On October 19, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Rivervale South to Market Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Borough of Emerson, New Jersey; the U.S. Fish and Wildlife Service; the U.S. Environmental Protection Agency; Food & Water Watch; and the New Jersey Sierra Club. Additionally, in response to the Notice of Application, the Commission received comments from the Hackensack Riverkeeper. The primary issues raised by the commentors are impacts on drinking water, wetlands, and wildlife; the necessity of the Project; pipeline safety; pollution prevention practices; the continued reliance on fossil fuels; long-term environmental impacts; improper segmentation; evaluation of cumulative, indirect, and secondary impacts; environmental impacts from increased shale gas development; evaluation of alternatives, including those outside FERC's jurisdiction; climate change; environmental justice; and the need for an Environmental Impact Statement.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This

[1] A loop is a segment of pipe that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A pig is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–490), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 17, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–01112 Filed 1–22–18; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5944–023]**

### Ampersand Moretown Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 5944–023.

c. *Date Filed:* November 20, 2017.

d. *Submitted By:* Ampersand Moretown Hydro, LLC.

e. *Name of Project:* Moretown No. 8 Project.

f. *Location:* On the Mad River, near the town of Moretown, in Washington County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Sayad Moudachirou, Ampersand Energy Partners, LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111; (617) 933–7206; email—*sayad@ampersandenergy.com.*

i. *FERC Contact:* Steve Kartalia at (202) 502–6131; or email at *stephen.kartalia@ferc.gov.*

j. Ampersand Moretown Hydro, LLC filed its request to use the Traditional Licensing Process on November 20, 2017. Ampersand Moretown Hydro, LLC provided public notice of its request on November 30, 2017. In a letter dated January 17, 2018, the Director of the Division of Hydropower Licensing approved Ampersand Mortetown Hydro, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Ampersand Moretown Hydro, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at 5594 Route 100B, Moretown, VT 05660.

n. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 5944. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2020.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 17, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–01111 Filed 1–22–18; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

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

**Filings Instituting Proceedings**

*Docket Numbers:* RP18–349–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* § 4(d) Rate Filing: Duke K410135 Release for 2018–04–01 to be effective 4/1/2018.
*Filed Date:* 1/16/18.
*Accession Number:* 20180116–5073.
*Comments Due:* 5 p.m. ET 1/29/18.

*Docket Numbers:* RP18–350–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* § 4(d) Rate Filing: Duke K410135 Release for 2018–11–01 to be effective 11/1/2018.
*Filed Date:* 1/16/18.
*Accession Number:* 20180116–5075.
*Comments Due:* 5 p.m. ET 1/29/18.

*Docket Numbers:* RP18–351–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* § 4(d) Rate Filing: Duke K410135 Release for 2019–04–01 to be effective 4/1/2019.
*Filed Date:* 1/16/18.
*Accession Number:* 20180116–5076.
*Comments Due:* 5 p.m. ET 1/29/18.

*Docket Numbers:* RP18–352–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* § 4(d) Rate Filing: Duke K410135 Release for 2019–11–01 to be effective 11/1/2019.
*Filed Date:* 1/16/18.
*Accession Number:* 20180116–5077.
*Comments Due:* 5 p.m. ET 1/29/18.

*Docket Numbers:* RP18–353–000.
*Applicants:* Northern Natural Gas Company.
*Description:* § 4(d) Rate Filing: 20180116 Rate Schedule TF and Miscellaneous Filing to be effective 2/16/2018.
*Filed Date:* 1/16/18.
*Accession Number:* 20180116–5191.
*Comments Due:* 5 p.m. ET 1/29/18.

*Docket Numbers:* RP18–354–000.

*Applicants:* Chesapeake Energy Marketing, L.L.C., Territory Resources LLC.

*Description:* Joint Petition of Chesapeake Energy Marketing, L.L.C., et. al. for Limited Waiver and Request for Expedited Action under RP18–354.

*Filed Date:* 1/16/18.

*Accession Number:* 20180116–5195.

*Comments Due:* 5 p.m. ET 1/29/18.

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

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

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

Dated: January 17, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–01104 Filed 1–22–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

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

*Docket Numbers:* ER10–2137–019; ER14–2798–011; ER14–2799–011; ER10–2131–019; ER10–2138–019; ER10–2139–019; ER10–2140–019; ER10–2141–019; ER14–2187–013; ER16–1720–004; ER15–103–007; ER18–140–002.

*Applicants:* Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Invenergy Energy Management LLC, Invenergy Nelson LLC, Lackawanna Energy Center LLC.

*Description:* Notice of Change in Facts under Market-Based Rate Authority of Beech Ridge Energy LLC, et. al.

*Filed Date:* 1/16/18.

*Accession Number:* 20180116–5286.

*Comments Due:* 5 p.m. ET 2/6/18.

*Docket Numbers:* ER11–3401–014; ER11–3576–015.

*Applicants:* Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC.

*Description:* Notice of Non-material Change in Status of Golden Spread Electric Cooperative, Inc., et. al.

*Filed Date:* 1/16/18.

*Accession Number:* 20180116–5284.

*Comments Due:* 5 p.m. ET 2/6/18.

*Docket Numbers:* ER18–654–000.

*Applicants:* PacifiCorp.

*Description:* Tariff Cancellation: Termination of Georgia-Pacific Construct Agmt—Camas to be effective 3/31/2018.

*Filed Date:* 1/16/18.

*Accession Number:* 20180116–5194.

*Comments Due:* 5 p.m. ET 2/6/18.

*Docket Numbers:* ER18–655–000.

*Applicants:* ITC Midwest LLC.

*Description:* § 205(d) Rate Filing: Filing of a Master JUA for Distribution Underbuild with Butler County REC to be effective 3/19/2018.

*Filed Date:* 1/16/18.

*Accession Number:* 20180116–5215.

*Comments Due:* 5 p.m. ET 2/6/18.

*Docket Numbers:* ER18–656–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: 1st Amendment to CDWR WPA for the Thermalito Restoration Project (SA 275) to be effective 1/18/2018.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5000.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–658–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: Calpine NITSA Rev 11 to be effective 1/1/2018.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5032.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–659–000.

*Applicants:* ITC Midwest LLC.

*Description:* § 205(d) Rate Filing: Filing of a Master JUA for Distribution Underbuild with Iowa Lakes Elec Coop to be effective 3/19/2018.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5033.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–660–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3390 SWPA & South Central MCN Interconnection Agreement to be effective 12/31/9998.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5049.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–661–000.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

*Description:* § 205(d) Rate Filing: 2018–01–17_Ameren-Farmington 1st Rev WDS to be effective 1/1/2018.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5059.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–663–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of SA No. 3284; Queue No. W3–139 to be effective 4/3/2017.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5078.

*Comments Due:* 5 p.m. ET 2/7/18.

*Docket Numbers:* ER18–664–000.

*Applicants:* Steamboat Hills LLC.

*Description:* Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 2/23/2018.

*Filed Date:* 1/17/18.

*Accession Number:* 20180117–5083.

*Comments Due:* 5 p.m. ET 2/7/18.

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

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

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

Dated: January 17, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–01103 Filed 1–22–18; 8:45 am]

**BILLING CODE 6717–01–P**

## EXPORT-IMPORT BANK

**[Public Notice 2018–6007]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice and request for public comments. Request for OMB review and extension of approval.

**SUMMARY:** The Export-Import Banks of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,'' for approval under the Paperwork Reduction Act (PRA). This collection was developed as part of the Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery. This is the notice of our intent to submit this collection to OMB for the extension of approval. We are soliciting comments on the specific aspects for the proposed information collection.

**DATES:** Comments must be received on or before March 26, 2018 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *www.regulations.gov.* (EIB 11–01) By email to *Mia.Johnson@exim.gov* or by mail to Mia L. Johnson, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

Comments submitted in response to this notice may be made available to the public through the *www.regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Mia Johnson, *Mia.Johnson@exim.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title and Form Number:* EIB 11–01, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable. The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Current Actions:* Extension of approval for a collection of information.

*Type of Review:* Extension.

*Survey Type:* Web based/email based survey; Feedback/Comment Evaluation Form; Detailed Mail Evaluation Form; Telephone; Focus Group.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below we provide projected average estimates for the next three years:

*Average Expected Annual Number of Activities:* 10.

*Average Number of Respondents per Activity:* 467.

*Annual Responses:* 4,670.

*Frequency of Response:* Once per request.

*Average Minutes per Response:* 8.

*Burden hours:* 623.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov*.

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 Office of Management and Budget control number.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2018–01154 Filed 1–22–18; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CG Docket No. 03–123; DA 17–1213]**

## Pleading Cycle Established for Comment on Applications for State Certification for the Provision of Telecommunications Relay Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission seeks public comment on state applications for renewal of the certification of their state telecommunications relay services (TRS) programs.

**DATES:** Interested parties may file comments no later than February 22, 2018. Reply comments may be filed no later than March 9, 2018.

**ADDRESSES:** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Documents may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dana Wilson, Consumer and Governmental Affairs Bureau at: (202) 418–2247; email: *Dana.Wilson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** Interested parties may file comments on or before the dates indicated above in the Dates portion of this notice. All filings must reference CG Docket No. 03–123 and the relevant state identification number of the state application for which comments are being submitted.

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), (844) 432–2275 (videophone), or (202) 418–0432 (TTY). Document DA 17–1213 can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/general/telecommunications-relay-services-trs*.

### Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of certification of their state TRS programs, for the five-year period from July 26, 2018 through July 25, 2023. Each state's application for certification must demonstrate that its TRS program complies with section 225 of the Communications Act and the Commission's rules governing the provision of TRS. This notice seeks public comment on the following state applications for certification, which can be found on the Commission's website at: *https://www.fcc.gov/general/trs-state-and-territories.*

File No: TRS–46–17
Alabama Public Service Commission, State of Alabama
File No: TRS–02–17
Commission for the Deaf and Hard of Hearing, State of Arizona
File No: TRS–47–17
Arkansas Deaf and Hearing Impaired, State of Arkansas
File No: TRS–35–17
Delaware Public Service Commission, State of Delaware
File No: TRS–49–17
Public Service Commission, District of Columbia
File No: TRS–51–17
Georgia Public Service Commission, State of Georgia
File No: TRS–43–17
Idaho Public Service Commission, State of Idaho
File No: TRS–03–17
Iowa Utilities Board, State of Iowa
File No: TRS–07–17
Kansas Dual Party Relay Services, State of Kansas
File No: TRS–52–17
Kentucky Public Service Commission, Commonwealth of Kentucky
File No: TRS–53–17

Office of the Public Advocate, State of Maine
File No: TRS–33–17
Telecommunications Access of Maryland, State of Maryland
File No: TRS–34–17
Dept. of Telecommunications and Cable, Commonwealth of Massachusetts
File No: TRS–54–17
Michigan Public Service Commission, State of Michigan
File No: TRS–39–17
Minnesota Dept. of Commerce Telecommunications Access Minnesota, State of Minnesota
File No: TRS–15–17
Missouri Public Service Commission, State of Missouri
File No: TRS–56–17
Dept. of Public Health and Human Services, State of Montana
File No: TRS–25–17
Dept. of Health and Human Services Aging and Disability Services, State of Nevada
File No: TRS–45–17
New Jersey Board of Public Utilities, State of New Jersey
File No: TRS–14–17
Commission for the Deaf and Hard of Hearing, State of New Mexico
File No: TRS–16–17
New York State Dept. of Public Service, State of New York
File No: TRS–12–17
Public Service Commission, Commonwealth of North Dakota
File No: TRS–37–17
Public Utilities Commission of Ohio, State of Ohio
File No: TRS–57–17
Oklahoma Telephone Association, State of Oklahoma
File No: TRS–62–17
Micronesian Telephone Corporation d/b/a Pacific Telecom, Inc., Saipan
File No: TRS–60–17
Public Service Commission, State of South Dakota
File No: TRS–09–17
Public Service Commission, State of Utah
File No: TRS–44–17
Vermont Dept. of Public Service, State of Vermont

Federal Communications Commission.

**Eliot Greenwald,**

*Deputy Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2018–01083 Filed 1–22–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

**[Notice 2018–02]**

## Filing Dates for the Ohio Special Election in the 12th Congressional District

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special elections.

**SUMMARY:** Ohio has scheduled special elections on May 8, 2018, and August 7, 2018, to fill the U.S. House of Representatives seat in the 12th Congressional District vacated by Representative Patrick J. Tiberi.

Committees required to file reports in connection with the Special Primary Election on May 8, 2018, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on August 7, 2018, shall file a 12-day Pre-Primary, 12-day Pre-General Report and a 30-day Post-General Report.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:**

### Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on April 26, 2018; a 12-day Pre-General Report on July 26, 2018; and a 30-day Post-General Report on September 6, 2018. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on April 26, 2018. (See charts below for the closing date for each report.)

### Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2018 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Ohio Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Ohio Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Ohio Special Elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

### Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

The lobbyist bundling disclosure threshold for calendar year 2017 is $17,900. This threshold amount may increase in 2018 based upon the annual cost of living adjustment (COLA). Once the adjusted threshold amount becomes available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTIONS

| Report | Close of books [1] | Reg./cert and overnight mailing deadline | Filing deadline |
|---|---|---|---|
| **Committees Involved in *Only* the Special Primary (05/08/18) Must File** | | | |
| Pre-Primary | 04/18/18 | 04/23/18 | 04/26/18 |
| July Quarterly | 06/30/18 | 07/15/18 | [2] 07/15/18 |

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTIONS—Continued

| Report | Close of books [1] | Reg./cert and overnight mailing deadline | Filing deadline |
|---|---|---|---|
| **Committees Involved in Both the Special Primary (05/08/18) and Special General (08/07/18) Must File** | | | |
| Pre-Primary | 04/18/18 | 04/23/18 | 04/26/18 |
| July Quarterly | 06/30/18 | 07/15/18 | [2] 07/15/18 |
| Pre-General | 07/18/18 | 07/23/18 | 07/26/18 |
| Post-General | 08/27/18 | 09/06/18 | 09/06/18 |
| October Quarterly | 09/30/18 | 10/15/18 | 10/15/18 |
| **Committees Involved in *Only* the Special General (08/07/18) Must File** | | | |
| Pre-General | 07/18/18 | 07/23/18 | 07/26/18 |
| Post-General | 08/27/18 | 09/06/18 | 09/06/18 |
| October Quarterly | 09/30/18 | 10/15/18 | 10/15/18 |

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

Dated: January 17, 2018.

On behalf of the Commission.

**Caroline C. Hunter,**

*Chair, Federal Election Commission.*

[FR Doc. 2018–01075 Filed 1–22–18; 8:45 am]

BILLING CODE 6715–01–P

## FEDERAL MARITIME COMMISSION

**[Docket No. 18–02]**

### Notice of Filing of Complaint and Assignment

*Tarik Afif Chaouch* v. *Demetrios Air Freight Co., Demetrios International Shipping Co., Inc., and Troy Container Line Ltd.*

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Tarik Afif Chaouch, hereinafter ''Complainant,'' against Demetrios Air Freight Co., Demetrios International Shipping Co., Inc., and Troy Container Line LTD., hereinafter ''Respondents.'' Complainant states it hired the Respondents to ship two cars to Algiers, Algeria.

Complainant alleges that due to an error the Respondents made on the bill of lading, the shipment was ''. . . impounded in Algiers, Algeria for approximately four months . . .'' Complainant alleges that this error resulted in costs for which Complainant would not have otherwise been responsible. Complainant alleges that it is ''. . . subject to injury as a direct result of the violations by respondent of sections 46 U.S.C. code § 41104 and more specifically paragraphs 4 and 5.''

Complainant seeks reparations in the amount of $21,086.70, and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/18-02/.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by January 18, 2019, and the final decision of the Commission shall be issued by August 1, 2019.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2018–01179 Filed 1–22–18; 8:45 am]

BILLING CODE 6731–AA–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 February 16, 2018.

*A. Federal Reserve Bank of New York* (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Barclays PLC and Barclays Bank PLC, both of London England;* have applied for their subsidiary, Barclays US Holdings Ltd., organized under the laws of the Cayman Islands and located in New York, New York, to become a bank holding company by acquiring Barclays US LLC, New York, New York and thereby indirectly acquire Barclays Bank Delaware, Wilmington, Delaware.

Board of Governors of the Federal Reserve System, January 18, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–01134 Filed 1–22–18; 8:45 am]

BILLING CODE P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information (FR 4100; OMB No. 7100–0309).

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report:**

*Report title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information.

*Agency form number:* FR 4100.

*OMB control number:* 7100–0309.

*Frequency:* On occasion.

*Respondents:* State member banks (SMBs), bank holding companies (BHCs), affiliates and certain non-bank subsidiaries of bank holding companies, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

*Estimated number of respondents:* Develop response program: 1; Incident notification: 412.

*Estimated average hours per response:* Develop response program: 24; Incident notification: 36.

*Estimated annual burden hours:* Develop response program: 24; Incident notification: 14,832.

*General description of report:* The ID-Theft Guidance is the information collection associated with the *Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice* (security guidelines), which was published in the **Federal Register** in March 2005.[1] Trends in customer information theft and the accompanying misuse of that information led to the issuance of these security guidelines applicable to financial institutions. The security guidelines are designed to facilitate timely and relevant notification to affected customers and the appropriate regulatory authority (ARA) of the financial institutions. The security guidelines provide specific direction regarding the development of response programs and customer notifications.

*Legal authorization and confidentiality:* The Board has determined that the reporting, recordkeeping, and disclosure requirements associated with the FR 4100 are authorized by the Gramm-Leach-Bliley Act and are mandatory (15 U.S.C. 6801(b)). Since the FR 4100 provides that a financial institution regulated by the Board should notify its designated Reserve Bank upon becoming aware of an incident of unauthorized access to sensitive customer information, issues of confidentiality may arise if the Board were to obtain a copy of a customer notice during the course of an examination, a copy of a Suspicious Activity Report (SAR), or other sensitive customer information. In such cases, the information would likely be exempt from disclosure to the public under the Freedom of Information Act (5 U.S.C 552(b)(3), (4), (6), and (8)). Also, a federal employee is prohibited by law from disclosing a SAR or the existence of a SAR (31 U.S.C. 5318(g)).

*Current actions:* On September 12, 2017, the Federal Reserve published a notice in the **Federal Register** (82 FR 42814) requesting public comment for 60 days on the extension, without revision, of the Reporting, Recordkeeping, and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information. The comment period for this notice expired on November 13, 2017. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, January 17, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–01113 Filed 1–22–18; 8:45 am]

**BILLING CODE 6210–01–P**

[1] *See* 70 FR 15736

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to revise, without extension, the Annual Report of Foreign Banking Organizations (FR Y–7). The revisions to the mandatory FR Y–7 information collection are effective beginning with FR Y–7 reports for fiscal year-ends that end on or after March 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board

authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the revision of the following information collection:

*Report Titles:* Annual Report of Holding Companies; Annual Report of Foreign Banking Organizations; Report of Changes in Organizational Structure; Supplement to the Report of Changes in Organizational Structure.

*Agency Form Numbers:* FR Y–6; FR Y–7 (with revision); FR Y–10; FR Y–10E.

*OMB Control Number:* 7100–0297.

*Effective Date:* Beginning with fiscal year-ends that end and for reports submitted on or after March 1, 2018.

*Frequency:* FR Y–6: Annual; [1] FR Y–7: Annual; [2] FR Y–10: Event-generated; [3] FR Y–10E: Event-generated.[4]

*Respondent:* Bank holding companies (BHCs) and savings and loan holding companies, securities holding companies, and intermediate holding companies (collectively, holding companies (HCs)), foreign banking organizations (FBOs), state member banks unaffiliated with a BHC, Edge Act and agreement corporations, and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only).

*Number of Respondents:* FR Y–6 initial: 13; FR Y–6 ongoing: 4,827; FR Y–7: 243; FR Y–10: 5,298; FR Y–10E: 5,298.

*Estimated Average Hours per Response:* FR Y–6 initial: 10 hours; FR Y–6 ongoing: 5.5 hours; FR Y–7: 6 hours; FR Y–10: 2.5 hours; FR Y–10E: 0.5 hour.

*Estimated Annual Burden Hours:* FR Y–6 initial: 130 hours; FR Y–6 ongoing: 26,549 hours; FR Y–7: 1,458 hours; FR Y–10: 39,735 hours; FR Y–10E: 2,649 hours.

*General Description of Report:* The FR Y–6 is an annual information collection submitted by top-tier domestic HCs and FBOs that are non-qualifying. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor HC operations and determine HC compliance with the provisions of the BHC Act, Regulation Y (12 CFR 225), the Home Owners' Loan Act (HOLA), Regulation LL (12 CFR 238), and Regulation YY (12 CFR 252).

The FR Y–7 is an annual information collection submitted by FBOs that are qualifying to update their financial and organizational information with the Federal Reserve. The FR Y–7 collects financial, organizational, shareholder, and managerial information. The Federal Reserve uses the information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

The FR Y–10 is an event-generated information collection submitted by FBOs; top-tier HCs; securities holding companies as authorized under Section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)); state member banks unaffiliated with a BHC; Edge and agreement corporations that are not controlled by a member bank, a domestic BHC, or an FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only) to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y–10E is an event-driven supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

*Legal authorization and confidentiality:* These information collections are mandatory as follows:

FR Y–6: Section 5(c)(1)(A) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1844(c)(1)(A)); sections 8(a) and 13(a) of the International Banking Act (IBA) (12 U.S.C. 3106(a) and 3108(a)); sections 11(a)(1), 25, and 25A of the Federal Reserve Act (FRA) (12 U.S.C. 248(a)(1), 602, and 611a); and sections 113, 165, 312, 618, and 809 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y–7: Sections 8(a) and 13(a) of the IBA (12 U.S.C. 3106(a) and 3108(a)); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y–10 and FR Y–10E: Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. 1843(k), and 1844(c)(1)(A)); section 8(a) of the IBA (12 U.S.C. 3106(a)); sections 11(a)(1), 25(7), and 25A of the FRA (12 U.S.C. 248(a)(1), 321, 601, 602, 611a, 615, and 625); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)); and section 10(c)(2)(H) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a(c)(2)(H)).

Except as discussed below, the data collected in the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E are generally not considered confidential. With regard to information that a banking organization may deem confidential, the institution may request confidential treatment of such information under one or more of the exemptions in the Freedom of Information Act (FOIA) (5 U.S.C. 552). The most likely case for confidential treatment will be based on FOIA exemption 4, which permits an agency to exempt from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged and confidential'' (5 U.S.C. 552(b)(4)). To the extent an institution can establish the potential for substantial competitive harm, such information would be protected from disclosure under the standards set forth in *National Parks & Conservation Association* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974). In particular, the disclosure of the responses to the certification questions on the FR Y–7 may interfere with home country regulators' administration, execution, and disclosure of their stress test regime and its results, and may cause substantial competitive harm to the FBO providing the information, and thus this information may be protected from

[1] The FR Y–6 is submitted annually, no later than 90 calendar days after the end of the respondent's fiscal year. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment.

[2] All FBOs that are qualifying file the FR Y–7 annually as of the end of the FBO's fiscal year; the data are due no later than four months after the report date. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment.

[3] The FR Y–10 is event-generated, and the data are submitted within 30 calendar days of a reportable transaction or event. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment. Limited data from the FR Y–10 are published on the National Information Center's public website.

[4] The FR Y–10E is event-generated and the data are submitted on an ad-hoc basis as needed.

disclosure under FOIA exemption 4. Exemption 6 of FOIA might also apply with regard to the respondents' submission of non-public personal information of owners, shareholders, directors, officers and employees of respondents. Exemption 6 covers ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). All requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

*Current Actions:* On December 2, 2015, the Board published a notice in the **Federal Register** (80 FR 75457) requesting public comment for 60 days on the proposal to revise, with extension, of the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E. In the notice, the Board proposed revisions to the FR Y–7 reporting form to require an FBO to indicate its compliance with Regulation YY by certifying that it meets, does not meet, or is not subject to the relevant U.S. risk committee certification requirement and to indicate that it meets, does not meet, or is not subject to the relevant home country stress testing requirement. The notice also included revisions to the instructions to the FR Y–7 reporting form to describe the requirements and the scope of applicability of the report to FBOs. The comment period for this notice expired on February 1, 2016. The Federal Reserve received two comment letters, one from an industry association and one from a banking organization. One comment letter requested clarification on certain of the requirements of Regulation YY, including the requirement to form a U.S. risk committee, while the other comment letter requested clarification on the instructions for the FR Y–6 and the FR Y–10 reports. The Board is adopting the revisions as proposed except that (i) the Board is extending the effective date to be effective beginning with FR Y–7 reports submitted for fiscal year-ends that end on or after March 1, 2018, and (ii) the Board is not adopting the proposed extensions of the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E. The Board is also clarifying several of the issues raised by commenters in response to the December 2, 2015, **Federal Register** notice, as further discussed below.

Section 165 of the Dodd-Frank Act directs the Board to establish enhanced prudential standards for BHCs and FBOs with total consolidated assets of $50 billion or more and nonbank financial companies that the Financial Stability Oversight Council has designated for supervision by the Board. In addition, the Dodd-Frank Act directs the Board to issue regulations applying certain standards to BHCs and FBOs with total consolidated assets of $10 billion or more. In particular, the Board is directed to require publicly traded BHCs and FBOs with total consolidated assets of $10 billion or more to establish risk committees.[5] In addition, section 165 requires the Board to issue regulations imposing company-run stress test requirements on BHCs, FBOs, state member banks, and savings and loan holding companies with total consolidated assets of more than $10 billion.[6]

In February of 2014, the Board adopted enhanced prudential standards for FBOs, including risk committee and stress testing requirements for FBOs with total consolidated assets of more than $10 billion. These standards are contained in the Board's Regulation YY, which applies different requirements to FBOs depending on their asset size. The risk committee and stress testing requirements are located in the following subparts:

- Subpart L establishes stress testing requirements for FBOs with total consolidated assets of more than $10 billion;
- Subpart M establishes risk committee requirements for publicly traded FBOs with total consolidated assets between $10–$50 billion;
- Subpart N establishes enhanced prudential standards (including risk committee and stress testing requirements) for FBOs with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion; and
- Subpart O establishes enhanced prudential standards (including risk committee and stress testing requirements) for FBOs with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more.

With regard to risk committee requirements, an FBO subject to subpart M or N of Regulation YY is required to certify that it has a risk committee that oversees the risk management practices of the combined U.S. operations of the company and has at least one member with appropriate risk expertise.[7] This certification must be filed on an annual basis with the Board concurrently with the FR Y–7. An FBO subject to subpart O of Regulation YY is subject to additional U.S. risk committee requirements that are more prescriptive and must employ a U.S. chief risk officer in the United States.[8]

With regard to stress testing, an FBO subject to subpart L, N, or O of Regulation YY must be subject to a consolidated capital stress testing regime administered or reviewed by the FBO's home country supervisor, meet the home country supervisor's minimum standards, and, in some cases, provide information to the Board about the results of home country stress testing or face additional requirements in the United States. In particular, the U.S. branches and agencies of the FBO become subject to an asset maintenance requirement, and the FBO generally must conduct an annual stress test of its U.S. subsidiaries. An FBO subject to subpart O also must stress test any U.S. IHC.

The revisions to the FR Y–7 implement the U.S. risk committee certification requirement in Regulation YY and provide FBOs with a standardized way to indicate compliance with the home country stress testing requirements (and thus, avoid being subject to additional requirements in the U.S.). The revisions to the FR Y–7 also better describe the risk committee requirements in Regulation YY and the scope of applicability of the report to FBOs.

**Detailed Discussion of Public Comments**

The following is a detailed discussion of the two comments received regarding the FR Y–7 proposal and the responses related to the changes in the FR Y–7 proposal. Although no comments were received on the reporting burden estimates, the Board has reconsidered the estimates given the clarifications provided to Regulation YY. Thus, the Board increased the estimated hourly burden from 4 hours to 6 hours per response.

A commenter requested a number of clarifications regarding the provisions in Regulation YY that require an FBO to maintain a committee of its global board of directors (or equivalent thereof) that oversees the risk-management policies of the combined U.S. operations of the FBO.[9] Each of these questions are matters of interpretation of the requirements of Regulation YY and are

[5] *See* 12 CFR 252.132(a) and 252.144(a).

[6] *See* 12 U.S.C. 5365(i).

[7] The combined U.S. operations of an FBO include its U.S. branches and agencies and U.S. subsidiaries (other than any company held under section 2(h)(2) of the BHC Act, if applicable).

[8] FBOs subject to subpart O are not required to certify that they have a U.S. risk committee because the Board expects to gain sufficient information through the supervisory process to evaluate whether the U.S. risk committee meets the requirements of this section.

[9] *See* 12 CFR 252.132(a) and 252.144(a).

not related to the reporting requirements in the FR Y–7.

First, the commenter requested clarification on whether the committee that oversees U.S. risk must be composed entirely of members of the FBO's global board or may be configured in other ways that take into account the size, scale, and complexity of an FBO's combined U.S. operations and more effectively utilize the expertise of personnel familiar with the risk of these operations.

In response to this comment, to certify compliance with sections 252.132(a) and 252.144(a), the FBO is not required to form a special U.S. risk committee comprised of members of the FBO's board of directors. Rather, the FBO must ensure that the FBO's board of directors or a committee comprised of members of the FBO's board of directors has primary responsibility for oversight of the risks of the combined U.S. operations. The committee that oversees U.S. risk for an FBO subject to Regulation YY is not required to (though it may) directly administer the FBO's U.S. risk management policies; rather, the FBO may designate specific senior management officials from the FBO's U.S. operations to be responsible for administering the U.S. risk management policies and for providing regular reports directly to the FBO's board of directors or risk committee.[10] The rule is intended to allow an FBO flexibility in establishing its oversight function so long as the FBO's board of directors is informed about and provides the appropriate level of guidance about the risks of the combined U.S. operations of the FBO. However the FBO designs its oversight function, the FBO must also take appropriate measures to ensure that the risk management policies for its combined U.S. operations are implemented and that the risk committee is provided sufficient information on the combined U.S. operations to allow it to carry out its responsibilities.[11]

The same commenter requested clarification regarding how the requirement in Regulation YY for an FBO to have a committee that oversees U.S. risk would apply to an FBO with a two-tier board structure. The two-tier board structure is a common feature of FBOs in European countries, and generally consists of a supervisory board independent from management that sets the direction of the company and oversees the company's senior management, and a management/executive board that implements the company's strategies and risk management. The purpose of the risk committee requirements in Regulation YY is to ensure that the FBO parent is aware of and takes responsibility for the oversight of the risks of its combined U.S. operations. This oversight function can be integrated into various board structures that currently exist in different foreign countries. In a two-tier board structure, a committee of either the supervisory board or the management/executive board (or a combination thereof) could be considered a committee of the FBO board of directors for purposes of complying with the requirement under Regulation YY for an FBO to maintain a committee that oversees U.S. risk. Both tiers of a two-tier board are typically involved in evaluating risk management at an FBO with the same goals as those of a single board of directors in the United States.

The same commenter requested clarification regarding various requirements in Regulation YY relating to capital stress testing and liquidity stress testing.[12] To be exempt from additional U.S. capital stress testing requirements, Regulation YY requires an FBO to be subject on a consolidated basis to an annual capital stress testing regime in its home country that meets certain requirements and to actually meet any minimum stress testing standards set by the FBO's home country supervisor.[13] In reporting Item 5 of the FR Y–7, an FBO is expected to evaluate the stress testing regime to which it is subject and make a reasonable conclusion about whether this regime meets the home country stress testing criteria in Regulation YY.

Moreover, the same commenter requested clarification as to whether an FBO would meet the home country stress test requirements upon a satisfactory completion of an Internal Capital Adequacy Assessment Process (ICAAP). If an ICAAP satisfies the underlying requirements for a capital stress test, including all applicable information requirements in Regulation YY, satisfactory completion of the ICAAP would be sufficient to satisfy these requirements.

Regulation YY requires an FBO to report on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the FBO or the FBO's combined U.S. operations. In either case, the liquidity stress test must incorporate three specified planning horizons. The same commenter requested guidance on how an FBO should report when the FBO's home country uses fewer or different planning horizons.

In the event that an FBO is not required to conduct an internal liquidity stress test for its consolidated operations using the three specified planning horizons in Regulation YY or chooses not to do so, the FBO may instead choose to provide an internal liquidity stress test for just the combined U.S. operations. Under Regulation YY, if an FBO does not comply with the internal liquidity stress testing reporting requirements, it must limit the net aggregate amount owed by the parent or other non-U.S. affiliates to the U.S. operations to 25 percent or less of the third party liabilities of the combined U.S. operations.

In addition, although Regulation YY does not prescribe the information that must be reported to the Board regarding the internal liquidity stress tests, given the diversity in liquidity reporting requirements across jurisdictions, FBOs are expected to provide sufficient information in the internal liquidity stress test to allow the Board to assess the liquidity position of the FBO.[14]

The same commenter requested guidance on an FBO's compliance with the stress testing requirement when *annual* stress testing is not required by the FBO's home country supervisor. Regulation YY requires an FBO to be subject to a stress testing regime that includes an annual supervisory stress test or annual supervisory evaluation of the FBO's internal stress test. A bi-annual stress test, for example, would not satisfy this requirement.

The same commenter requested guidance on whether an FBO would be deemed to satisfy the requirement to report and certify compliance with its home country capital adequacy requirements by completing the FR Y–7Q. In addition, the commenter requested confirmation of the as-of date and frequency of the certification of the FR Y–7Q. Regulation YY requires an FBO to report compliance with capital adequacy measures that are consistent with the Basel Capital Framework (as defined in 12 CFR 252.143(a) and 252.154(a)) concurrently with filing the FR Y–7Q; however, Regulation YY does not specify the frequency or the as-of date for an FBO's certification of

[10] *See* 79 FR 17284 (March 27, 2014).

[11] *See* 12 CFR 252.132(c) and 252.144(c).

[12] *See* 12 CFR 252.122(a), 12 CFR 252.145(a), 12 CFR 252.146(b), and 12 CFR 252.158(b).

[13] The capital stress testing regime must include: (i) An annual supervisory capital stress test conducted by the relevant home country supervisor or an annual evaluation and review by the home country supervisor of an internal capital adequacy stress test conducted by the FBO; and (ii) requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

[14] *See* 79 FR 17239, 17301 (March 27, 2014).

compliance with its home country capital requirements. On December 2, 2016, the Board approved a final notice to amend the FR Y–7Q to expand reporting regarding an FBO's home country capital ratios consistent with Regulation YY. An FBO's completion of the FR Y–7Q on a quarterly basis would satisfy both the requirement to report and the requirement to certify to the Board its compliance with capital adequacy measures that are consistent with the Basel Capital Framework. If an FBO is unable to report that it is in compliance with such capital adequacy measures, the Board may impose requirements, conditions, and restrictions relating to the U.S. operations of the FBO.[15]

A second commenter requested clarification on the definition of an inactive company when an entity is in the liquidation process. Respondents should refer to the definition of ''Liquidation'' in the Banking, Savings and Loan, and Nonbanking Schedules in the FR Y–10 instructions on how to classify an entity during the liquidation process. Specifically, the instructions state ''liquidation refers to final distribution of assets, satisfaction of liabilities, and closing of capital accounts of a company, as opposed to sale or transfer of the company.''

The same commenter also requested that the instructions be expanded on reporting when a nonbanking company is a functionally regulated subsidiary since the mere registration with a functional regulator does not necessarily qualify a company as being functionally regulated for these purposes. In response to the commenter's request, the Board notes that respondents should refer to the definition of ''Functionally Regulated Subsidiary'' in the FR Y–10 instructions, which provides that certain companies may be required to be registered with one of the enumerated regulators without necessarily qualifying as being functionally regulated by that regulator; for example, publicly held companies may be required to be registered with the U.S. Securities and Exchange Commission (SEC) without necessarily qualifying as functionally regulated by the SEC as a securities broker-dealer, investment adviser, investment company, or company that engages in commodity futures trading.

[15] *See* 12 CFR 252.143(c) and 252.154(c).

Board of Governors of the Federal Reserve System, January 18, 2018.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2018–01153 Filed 1–22–18; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities; Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is adopting a proposal to extend for three years, with revision, the following mandatory reports:

(1) The Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y–11; OMB No. 7100–0244),

(2) the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y–11S; OMB No. 7100–0244),

(3) the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314; OMB No. 7100–0073), and

(4) the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S; OMB No. 7100–0073).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Final approval under OMB delegated authority of the extension for three years, with revision, of the following information collections:*

*1. Report Title:* Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies and the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies.

*Agency Form Number:* FR Y–11 and FR Y–11S.

*OMB Control Number:* 7100–0244.

*Frequency:* Quarterly and annually.

*Reporters:* Holding companies.

*Estimated Number of Respondents:* FR Y–11 (quarterly): 634; FR Y–11 (annual): 230; FR Y–11S: 299.

*Estimated Average Hours per Response:* FR Y–11 (quarterly): 6.8; FR Y–11 (annual): 6.8; FR Y–11S: 1.

*Estimated Annual Reporting Hours:* FR Y–11 (quarterly): 17,244; FR Y–11 (annual): 1,564; FR Y–11S: 299.

*General Description of Information Collection:* The FR Y–11 reporting forms collect financial information for individual, non-functionally regulated U.S. nonbank subsidiaries of domestic holding companies (*i.e.,* bank holding companies, savings and loan holding companies, securities holding companies, and intermediate holding companies). Holding companies file the FR Y–11 on a quarterly or annual basis or the FR Y–11S on an annual basis, predominantly based on whether the organization meets certain asset size thresholds described in the instructions to the reports. The FR Y–11 data are used with other holding company data to assess the condition of holding companies that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

*2. Report Title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations and the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

*Agency Form Number:* FR 2314 and FR 2314S.

*OMB Control Number:* 7100–0073.

*Frequency:* Quarterly and annually.

*Reporters:* U.S. state member banks, holding companies, and Edge or agreement corporations.

*Estimated Annual Reporting Hours:* FR 2314 (quarterly): 13,807; FR 2314 (annual): 1,690; FR 2314S: 322.

*Estimated Average Hours per Response:* FR 2314 (quarterly): 6.6; FR 2314 (annual): 6.6; FR 2314S: 1.

*Number of Respondents:* FR 2314 (quarterly): 523; FR 2314 (annual): 256; FR 2314S: 322.

*General Description of Report:* The FR 2314 reporting forms collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and holding companies (*i.e.,* bank holding companies, savings and loan holding companies, securities holding companies, and intermediate holding companies). Parent organizations (SMBs, Edge and agreement corporations, or holding companies) file the FR 2314 on a quarterly or annual basis, or the FR 2314S on an annual basis, predominantly based on whether the organization meets certain asset size thresholds described in the instructions to the reports. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

*Current Actions:* On July 18, 2017, the Board published a notice in the **Federal Register** (82 FR 43367) requesting public comment on the extension for three years with revision of the FR Y–11, FR Y–11S, FR 2314, and the FR 2314S. The Board proposed to revise the instructions for Schedule IS (and related line item captions on the reporting form) to remove the term ''extraordinary items'' and replace it with ''discontinued operations,'' in accordance with revised accounting standards issued by the Financial Accounting Standards Board in ASU No. 2015–01, ''Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items.'' In addition, the terms ''Loans net of unearned income'' and ''Loans held for investment'' are being used interchangeably throughout certain regulatory reports although both descriptions are intended to have the same reported amounts. Consistent with the Call Report, the Federal Reserve is revising the captions and instructions ''Loans net of unearned income'' and replace with ''Loans held for investment'' on all reports where applicable for clarity and internal consistency. The proposal was amended September 11, 2017, to extend the proposed implementation date from September 30, 2017, to March 31, 2018. The comment period expired on September 18, 2017, and no comments were received. The revisions will be implemented as proposed.

*Legal Authorization and Confidentiality:* The Board has the authority to collect the information requested on the FR Y–11 series of reports and the FR 2314 series of reports from bank holding companies, savings and loan holding companies (SLHCs), securities holding companies, and intermediate holding companies (IHCs) under, respectively, section 5(c) of the Bank Holding Company Act (BHC Act), (12 U.S.C. 1844(c)) (BHCs and IHCs); the Homeowners' Loan Act, (12 U.S.C. 1467a(b)(2)) (SLHCs); section 165 of the Dodd-Frank Act, (12 U.S.C. 5365) (IHCs only); and section 618 of the Dodd-Frank Act, (12 U.S.C. 850a) (securities holding companies). Collection of information from non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks, Edge and agreement corporations filing the FR 2314 series of reports is authorized under sections 9(6), 25(7) and 25A(17) of the Federal Reserve Act, (12 U.S.C. 324, 602, and 625), respectively. The Federal Reserve does not consider the data collected by the FR Y–11 series of reports or FR 2314 series of reports to be confidential. However, a respondent may request confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would be determined on a case-by-case basis.

Board of Governors of the Federal Reserve System, January 18, 2018.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2018–01150 Filed 1–22–18; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 12, 2018.

*A. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Guy L. Berry and William L. Berry, both of Sapulpa, Oklahoma;* individually, to retain voting shares of American Bancorporation, Inc., Sapulpa, Oklahoma, and thereby indirectly retain shares of American Heritage Bank, Sapulpa, Oklahoma.

In addition, *James A. Dilley Jr., Jarrett Blake Dilley, Kaylee D. Berry, Hannah D. Berry, Brooklyn B. Berry, and the Guy L. Berry, Jr. Trust B–1,* all of Sapulpa, Oklahoma, to retain/acquire voting shares and be approved as members of the Berry Family Group which, acting in concert, controls American Bancorporation.

2. *Jeffrey Royal, Omaha, Nebraska;* to retain voting shares of Tri Valley Bancshares, Inc., and thereby retain voting shares of Tri Valley Bank, both of Talmage, Nebraska.

Board of Governors of the Federal Reserve System, January 18, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–01133 Filed 1–22–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the reports on Margin Credit (FR G–1, FR G–2, FR G–4; OMB No. 7100–0011. FR G–3; OMB No. 7100–0018. FR T–4; OMB No. 7100–0019. FR U–1; OMB No. 7100–0115).

**DATES:** Comments must be submitted on or before March 26, 2018.

**ADDRESSES:** You may submit comments, identified by *FR G–1, FR G–2, FR G–3,*

*FR G–4, T–4,* or *FR U–1,* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports**

*1. Report title:* Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers); Deregistration Statement for Persons Registered Pursuant to Regulation U; Annual Report.

*Agency form number:* FR G–1; FR G–2; FR G–4.

*OMB control number:* 7100–0011.

*Frequency:* FR G–1 and FR G–2: On occasion; FR G–4: annually.

*Respondents:* Lenders making loans secured by margin stock other than brokers, dealers, and banks.

*Estimated number of respondents:* 89.

*Estimated average hours per response:* FR G–1: 2.5; FR G–2: 0.25; FR G–4: 2.

*Estimated annual burden hours:* 160.

*General Description of Report:* The registration statement (FR G–1) is required to enable the Federal Reserve to identify nonbank lenders subject to Regulation U, to verify compliance with the regulation, and to monitor margin credit. In addition, registered nonbank lenders can be subject to periodic review by the Board, National Credit Union Administration, and Farm Credit Administration.

The deregistration statement (FR G–2) is used by nonbank lenders to withdraw from regulation if their margin credit activities no longer exceed the regulatory threshold found in Regulation U. Under section 221.3(b)(2) of Regulation U, a registered nonbank lender may apply to terminate its registration if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding.

The information submitted on the annual report (FR G–4) is required pursuant to Regulation U to enable the Federal Reserve to monitor the amount of credit that is secured by margin stock and that is extended by nonbank lenders.

*2. Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U.

*Agency form number:* FR G–3.

*OMB control number:* 7100–0018.

*Frequency:* On occasion.

*Respondents:* Lenders that extend credit by other lenders pursuant to the Federal Reserve's margin requirements.

*Estimated number of respondents:* 6.

*Estimated average hours per response:* 0.17.

*Estimated annual burden hours:* 20.

*3. Report title:* Statement of Purpose for an Extension of Credit by a Creditor.

*Agency form number:* FR T–4.

*OMB control number:* 7100–0019.

*Frequency:* On occasion.

*Respondents:* Brokers and dealers extending credit pursuant to the Federal Reserve's margin requirements.

*Estimated number of respondents:* 4.

*Estimated average hours per response:* 0.17.

*Estimated annual burden hours:* 14.

*4. Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock.

*Agency form number:* FR U–1.

*OMB control number:* 7100–00115.

*Frequency:* On occasion.

*Respondents:* Filers for extension of credit by banks.

*Estimated number of respondents:* 4.

*Estimated average hours per response:* 0.17.

*Estimated annual burden hours:* 51.

*General Description of Report:* The FR G–3, FR T–4, and FR U–1 purpose statements, which are completed by the borrower and the lender (brokers and dealers, in the case of the FR T–4), consist of three parts. The borrower completes Part I of the reporting form and is required to do the following: State the amount of the loan and whether the purpose of the loan is to purchase, carry, or trade in securities (pursuant to Regulation T) or purchase or carry margin stock (pursuant to Regulation U) and, if not, describe the specific purpose of the loan. FR T–4 respondents must also answer a question as to whether the securities serving as collateral will be delivered against payment. The borrower must sign and date the reporting form. The lender completes Part II, which may entail listing and valuing any collateral. The lender then signs and dates Part III of the reporting form, acknowledging that the customer's statement is accepted in good faith. The lender is required to hold the reporting forms for at least three years after the credit is extinguished. The Federal Reserve System does not collect or process this information, but as noted, the information required on the form may be used by Federal Reserve examiners to assess compliance with the Securities Exchange Act of 1934 and Regulation T.

*Proposed revisions:* The Board proposes to revise the instructions for the FR G–1, FR G–2, and FR G–4 to require respondents to submit Portable Document Format (PDF) versions of the reporting forms and attachments to a designated Federal Reserve Board email address. The Board is proposing these revisions in an effort to improve clarity as the current instructions do not contain explicit guidance on the form of submission for the reports. The revisions would be effective April 1, 2018.

The Board also proposes to consolidate all six Margin Credit Reports under one OMB control number, 7100–0011, which currently only includes the FR G–1, FR G–2, and FR G–4. This change is aimed at simplifying the tracking and clearance process for the Margin Credit Reports.

*Legal authorization and confidentiality:* The Board has determined that each of the reports is authorized by section 7 of the Act (15 U.S.C. 78g). In addition, FR T–4 is required by section 220.6 of Regulation T (12 CFR 220.6), FR U–1 is required by sections 221.3(c)(1)(i) and (2)(i) of Regulation U (12 CFR 221.3(c)(1)(i) and (2)(i)), and FR G–1, FR G–2, FR G–3, and FR G–4 are required by sections 221.3(b)(1), (2), and (3), and (c)(1)(ii) and (2)(ii) of Regulation U (12 CFR 221.3(b)(1), (2), and (3), and (c)(1)(ii) and (2)(ii)).

FR G–1 and FR G–4 collect financial information, including a balance sheet, from nonbank lenders subject to Regulation U. Some of these lenders may be individuals or nonbank entities that do not make this information publicly available; release could therefore cause substantial harm to the competitive position of the respondent or result in an unwarranted invasion of personal privacy. In those cases, the information could be withheld under exemption 4 or exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)), respectively. Confidentiality determinations must be made on a case by case basis. Because FR G–3, FR T–4, and FR U–1 are not submitted to the Federal Reserve System and FR G–2 does not contain any information considered to be confidential, no confidentiality determination is necessary for these reports.

Board of Governors of the Federal Reserve System, January 17, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–01115 Filed 1–22–18; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities (Regulation F; OMB No. 7100–0331).

**DATES:** Comments must be submitted on or before March 26, 2018.

**ADDRESSES:** You may submit comments, identified by *Regulation F,* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is

directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

*Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:*

*Report title:* Recordkeeping Requirements Associated with Limitations on Interbank Liabilities.

*Agency form number:* Regulation F.

*OMB control number:* 7100–0331.

*Frequency:* On occasion.

*Respondents:* Depository institutions insured by the Federal Deposit Insurance Corporation (FDIC).

*Estimated number of respondents:* State member banks: 829; non-member banks: 3,396; national banks: 921; state savings banks: 309; federal savings banks: 228; savings & loan associations: 195; insured federal branch of foreign banking organization: 4; insured state branch of foreign banking organization: 6; non-depository trust company member: 2; cooperative banks: 33.

*Estimated average hours per response:* 8 hours.

*Estimated annual burden hours:* State member banks: 6,632; non-member banks: 27,168; national banks: 7,368; state savings banks: 2,472; federal savings banks: 1,824; savings & loan associations: 1,560; insured federal branch of foreign banking organization: 32; insured state branch of foreign banking organization: 48; non-depository trust company member: 16; cooperative banks: 264.

*General description of report:* Section 206.3 of the Board's Regulation F, 12 CFR 206.3, requires insured depository institutions to establish and maintain policies and procedures designed to prevent excessive exposure to ''correspondents,'' which include non-affiliated U.S. insured depository institutions and non-affiliated foreign banks. Regulation F limits the risks that the failure of a correspondent would pose to insured depository institutions. Where exposure to a correspondent is significant, the policies and procedures shall require periodic reviews of the financial condition of the correspondent and shall take into account any deterioration in the correspondent's financial condition. Where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made in full or in a timely manner, the policies and procedures should limit the bank's exposure to the correspondent, either by the establishment of internal limits or by other means.

The Board has updated its burden estimate for this information collection to account for all depository institutions insured by the Federal Deposit Insurance Corporation (FDIC), all of which are potential respondents. The Board's previous burden estimate accounted only for state member banks. The increase in burden reflects the update to correct the number of potential respondents, and is not due to a change in burden for individual institutions.

*Legal authorization and confidentiality:* The Board's Legal Division has determined that the recordkeeping requirements of Regulation F are mandatory and authorized by section 23 of the Federal Reserve Act, as added by section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 371b–2). Because the Board does not collect any information, no issue of confidentiality normally arises. However, if a compliance program becomes a Board record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Board of Governors of the Federal Reserve System, January 17, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–01114 Filed 1–22–18; 8:45 am]

BILLING CODE 6210–01–P

## GOVERNMENT ACCOUNTABILITY OFFICE

### Request for Medicare Payment Advisory Commission Nominations

**AGENCY:** U.S. Government Accountability Office (GAO).

**ACTION:** Request for letters of nomination and resumes.

**SUMMARY:** The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. GAO is now accepting nominations for MedPAC appointments that will be effective in May 2018. Letters of nomination and resumes should be submitted no later than February 23, 2018 to ensure adequate opportunity for review and consideration of nominees prior to appointment of new members. Acknowledgement of submissions will be provided within a week of submission. Please contact Greg Giusto at (202) 512–8268 if you do not receive an acknowledgment.

**ADDRESSES:** Email: *MedPACappointments@gao.gov.* Mail: U.S. GAO, Attn: MedPAC Appointments, 441 G Street NW, Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** Greg Giusto, 202–512–8268, *GiustoG@gao.gov,* or the GAO Office of Public Affairs, (202) 512–4800.

**Authority:** 42 U.S.C. 1395b–6.

**Gene L. Dodaro,**

*Comptroller General of the United States.*

[FR Doc. 2018–00434 Filed 1–22–18; 8:45 am]

BILLING CODE 1610–02–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–18–0621]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC)

has submitted the information collection request titled NATIONAL YOUTH TOBACCO SURVEY to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 13, 2017 to obtain comments from the public and affected agencies. CDC received nine comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

National Youth Tobacco Surveys (NYTS) 2018–2020 (OMB Control Number 0920–0621, expires 01/31/2018)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Tobacco use is the leading cause of preventable disease and death in the United States, and nearly all tobacco use begins during youth and young adulthood. A limited number of health-risk behaviors, including tobacco use, account for the overwhelming majority of immediate and long-term sources of morbidity and mortality. Because many health-risk behaviors are established during adolescence, there is a critical need for public health programs directed towards youth, and for information to support these programs.

Since 2004, the CDC has periodically collected information about tobacco use among adolescents (National Youth Tobacco Survey (NYTS) 2004, 2006, 2009, 2011, 2012, 2013–2017, OMB Control Number 0920–0621). This surveillance activity builds on previous surveys funded by the American Legacy Foundation in 1999, 2000, and 2002.

At present, the NYTS is the most comprehensive source of nationally representative tobacco data among students in grades 9–12, moreover, the NYTS is the only source of such data for students in grades 6–8. The NYTS has provided national estimates of tobacco use behaviors, information about exposure to pro- and anti-tobacco influences, and information about racial and ethnic disparities in tobacco-related topics. CDC uses the information collected through the NYTS to identify trends over time, to inform the development of tobacco cessation programs for youth, and to evaluate the effectiveness of existing interventions and programs.

CDC plans to request OMB approval to conduct additional cycles of the NYTS in 2018, 2019, and 2020. CDC will conduct the survey among nationally representative samples of students attending public and private schools in grades 6–12, and administer to students either as an optically scannable booklet of multiple-choice questions or as a digitally-based survey.

CDC will also collect information supporting the NYTS from state-, district-, and school-level administrators and teachers. During the 2018–2020 timeframe, changes will be incorporated that reflect CDC's ongoing collaboration with FDA and the need to measure progress toward meeting strategic goals established by the Family Smoking Prevention and Tobacco Control Act.

Information collection will occur annually and may include a number of new questions, as well as increased representation of minority youth.

The survey will examine the following topics: Use of cigarettes, cigars, smokeless tobacco, electronic cigarettes, hookahs, pipes, bidis, snus, and dissolvable tobacco products; knowledge and attitudes; media and advertising; access to tobacco products and enforcement of restrictions on access; secondhand smoke including e-cigarette aerosol exposure; provision of school- and community-based interventions, and cessation.

CDC will continue to use the results of the NYTS to inform and evaluate the National Comprehensive Tobacco Control Program; provide data to inform the Department of Health and Human Service's Tobacco Control Strategic Action Plan, and provide national benchmark data for state-level Youth Tobacco Surveys. CDC also expects the information collected through the NYTS to provide multiple measures and data for monitoring progress on six of the 20 tobacco-related objectives (TU–2, 3, 7, 11, 18, and 19) for Healthy People 2020.

CDC seeks a three-year OMB approval and estimates 18,537 burden hours for this project. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| State Administrators | State-level Recruitment Script for the NYTS | 38 | 1 | 30/60 |
| District Administrators | District-level Recruitment Script for the NYTS | 153 | 1 | 30/60 |
| School Administrators | School-level Recruitment Script for the NYTS | 240 | 1 | 30/60 |
| Teachers | Data Collection Checklist | 973 | 1 | 15/60 |
| Students | National Youth Tobacco Survey | 24,000 | 1 | 45/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| | Testing Activities | 150 | 1 | 31/60 |
| Total | | | | |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2018–01101 Filed 1–22–18; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Solicitation of Nominations for Appointment to the Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on the BCCEDCAC. The BCCEDCAC consists of 14 experts in fields associated with breast cancer, cervical cancer, medicine, public health, behavioral science, epidemiology, radiology, pathology, clinical medical care, health education, and surveillance. Two members may be representatives of the general public with personal experience in issues related to breast or cervical cancer early detection and control. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of breast cancer, cervical cancer, medicine, public health, behavioral science, epidemiology, radiology, pathology, clinical medical care, health education, and surveillance. Federal employees will not be considered for membership. Members may be invited to serve for four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of BCCEDCAC objectives.

**DATES:** Nominations for membership on the BCCEDCAC must be received no later than February 23, 2018. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be mailed (regular, Express or Overnight Mail) to Ms. Jameka Reese Blackmon, MBA, CMP c/o BCCEDCAC Secretariat, CDC, 3719 North Peachtree Road, Building 100 Chamblee, Georgia 30341, electronic submissions (including attachments) to *bccedcac@cdc.gov.* Telephone and facsimile submissions cannot be accepted.

**FOR FURTHER INFORMATION CONTACT:** Jameka Reese Blackmon, MBA, CMP, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Hwy. NE, Mailstop F76, Atlanta, Georgia 30341, Telephone (770) 488–4880; Fax (770) 488–4760; Email: *bccedcac@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for BCCEDCAC membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in April 2018, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2018–01117 Filed 1–22–18; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Request for Nominations of Potential Reviewers To Serve on the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)

**ACTION:** Notice.

**SUMMARY:** The CDC is soliciting nominations for possible membership on the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) in the National

Center for Injury Prevention and Control (NCIPC), the National Center for Environmental Health (NCEH), and the Agency for Toxic Substances and Disease Registry (ATSDR).

**DATES:** Nominations for membership on the NCIPC, NCEH and ATSDR SEPs must be received no later than June 30, 2018. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be mailed to NCIPC Extramural Program Office (ERPO): Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F–63, Atlanta, GA 30341, emailed (recommended) to *NCIPC_ERPO@cdc.gov,* or faxed to (770) 488–4529.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Roberts, Public Health Analyst, CDC/NCIPC/ERPO, 4770 Buford Highway, Mailstop F–63, Atlanta, GA 30341; Telephone: (404) 498–1427; Email: *KRoberts3@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The Disease, Disability, and Injury Prevention and Control Special Emphasis Panel provides advice and guidance to the Secretary, Department of Health and Human Services (HHS); the Director, Centers for Disease Control and Prevention (CDC), and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR) regarding the concept review, scientific and technical merit of grant and cooperative agreement assistance applications, and contract proposals relating to the causes, prevention, and control of diseases, disabilities, injuries, and impairments of public health significance; exposure to hazardous substances in the environment; health promotion and education; and other related activities that promote health and well-being. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of CDC SEP objectives. Reviewers with expertise in the following research fields for injury and violence prevention are sought to serve on the NCIPC SEPs, for research and evaluation related, but not limited to: child abuse and neglect, opioid overdose, intimate partner violence, motor vehicle injury, older adult falls, self-directed violence, sexual violence, traumatic brain injury, teen dating violence and youth violence (see *www.cdc.gov/injury/researchpriorities*). Reviewers with expertise in the following research fields for prevention and reduction of adverse effects related to environmental hazards are sought to serve on the NCEH/ATSDR SEPs, for research and evaluation related, but not limited to: environmental pollutants (air/water), toxic substances most commonly found at facilities on the National Priorities List (NPL) (see *www.atsdr.cdc.gov/spl*), chemical releases, natural disasters, and other potential NCEH/ATSDR research priorities. In addition, reviewers with expertise in the following methodological fields are sought to serve on the NCIPC, NCEH and ATSDR SEPs: economic evaluation, etiology of disease, implementation and translation science, intervention research, policy evaluation, program evaluation, qualitative research design, quantitative research design, statistics, and surveillance. Members and Chairs shall be selected by the Secretary, HHS, or other official to whom the authority has been delegated, on an ''as needed'' basis in response to specific applications being reviewed with expertise to provide advice. Members will be selected from authorities in the various fields of prevention and control of diseases, disabilities, and injuries. Members of other chartered HHS advisory committees may serve on the panel if their expertise is required. Consideration is given to professional training and background, points of view represented, and upcoming applications to be reviewed by the committee. Information about nominated potential reviewers will be maintained in the NCIPC Extramural Research Program Office (ERPO) Scientific Reviewer and Advisor Database. The work of reviewers' appointed to CDC SEPs includes the initial review, discussion, and written critique and evaluation of applications. This work will enable the CDC to fulfill its mission of funding meritorious research that provides vital knowledge about underlying risk and protective factors and strategies for: violence and injury prevention (*www.cdc.gov/injury*), exposures to environmental agents and hazardous substances (*www.atsdr.cdc.gov*), and the environmental public health impact caused by intentional or unintentional events (*www.cdc.gov/nceh*).

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Reviewers appointed to the CDC SEPs are not considered Special Government Employees, and will not be required to file financial disclosure reports.

Nominees interested in serving as a potential reviewer on a CDC SEP for NCIPC, NCEH, or ATSDR programs should submit the following items:

- Current *curriculum vitae,* highlighting specific areas of research interest and expertise as well as complete contact information (name, affiliation, mailing address, telephone number, and email address).

Nomination materials must be postmarked by April 30, 2018 and sent by U.S. mail to: NCIPC Extramural Research Program Office (ERPO): Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F–63, Atlanta, Georgia 30341 or to the ERPO electronic mailbox *NCIPC_ERPO@cdc.gov.* Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2018–01116 Filed 1–22–18; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3351–PN]**

### Medicare and Medicaid Programs; Application by The Compliance Team for Continued CMS Approval of Its Rural Health Clinic Accreditation Program

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed notice with request for comment.

**SUMMARY:** This proposed notice acknowledges the receipt of an application from The Compliance Team

(TCT) for continued recognition as a national accrediting organization for rural health clinics (RHCs) that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. February 22, 2018.

**ADDRESSES:** In commenting, refer to file code CMS–3351–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3351–PN, P.O. Box 8016, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3351–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Christina Mister-Ward, (410) 786–2441.

Monda Shaver, (410) 786–3410.

Patricia Chmielewski, (410) 786–6899.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

## I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a rural health clinic (RHC) provided certain requirements are met by the RHC. Section 1861(aa) and 1905(l)(1) of the Social Security Act (the Act), establish distinct criteria for facilities seeking designation as a RHC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488, subpart A. The regulations at 42 CFR part 491, subpart A specify the conditions that a RHC must meet to participate in the Medicare program. The scope of covered services and the conditions for Medicare payment for RHCs are set forth at 42 CFR part 405, subpart X.

Generally, to enter into a provider agreement with the Medicare program, a RHC must first be certified by a state survey agency as complying with the conditions or requirements set forth in 42 CFR part 491. Thereafter, the RHC is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

There is an alternative, however, to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for CMS approval of its accreditation program under 42 CFR part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. Section 488.5(e)(2)(i) requires an accrediting organization to reapply for continued approval of its accreditation program every 6 years or as determined by CMS. The Compliance Team (TCT) current term of approval for its RHC accreditation program expires July 18, 2018.

## II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a

complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of TCT's request for continued CMS approval of its RHC accreditation program. This notice also solicits public comment on whether TCT's requirements meet or exceed the Medicare conditions for certification for RHCs.

### III. Evaluation of Accreditation Organization Request

TCT submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its RHC accreditation program. This application was determined to be complete on November 24, 2017. Under section 1865(a)(2) of the Act and § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of TCT will be conducted in accordance with, but not necessarily limited to, the following factors:

• The equivalency of TCT's standards for RHCs as compared with CMS's RHC conditions for certification.

• TCT's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of TCT's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ TCT's processes and procedures for monitoring a RHC determined to be out of compliance with TCT's program requirements. These monitoring procedures are used only when TCT identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

++ TCT's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ TCT's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of TCT's staff and other resources, and its financial viability.

++ TCT's capacity to adequately fund required surveys.

++ TCT's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ TCT's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

### IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: January 12, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2018–01178 Filed 1–22–18; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10549]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by February 22, 2018.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS); *Use:* The purpose of this OMB clearance package is to extend the approval of the generic clearance to support an effort to evaluate the operations and content of the Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries. The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics. *Form Number:* CMS–10549 (OMB control number 0938–1275); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 1,117. (For policy questions regarding this collection contact William Long at 410–786–7927.)

Dated: January 18, 2018.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018–01175 Filed 1–22–18; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Job Search Assistance (JSA) Strategies Evaluation—Extension.

*OMB No.:* 0970–0440.

*Description:* The Administration for Children and Families (ACF), is proposing the extension without changes to an existing data collection activity as part of the Job Search Assistance (JSA) Strategies Evaluation. The JSA evaluation will aim to determine which JSA strategies are most effective in moving TANF applicants and recipients into work and will produce impact and implementation findings. To date, the study has randomly assigned individuals to contrasting JSA approaches. The study will next compare participant employment and earnings to determine the relative effectiveness of these strategies. The project will also report on the implementation of these strategies, including measures of services participants receive under each approach, as well as provide operational lessons gathered directly from practitioners.

*Data collection efforts previously approved for JSA, include:* Data collection activities to document program implementation, a staff survey, a baseline information form for program participants, and a follow-up survey for JSA participants approximately 6 months after program enrollment. Approval for these activities expires on February 28, 2018.

This **Federal Register** Notice provides the opportunity to comment on the extension of the 6-month follow-up survey to allow follow-up data to be collected for all study participants. Although the enrollment period was originally estimated to span 12 months, it took 18 months to complete enrollment, leaving insufficient time to complete the 6-month follow-up survey. A four-month extension is requested in order to allow individuals randomly assigned between June and August 2017 to complete the follow-up survey in the same timeframe as earlier enrollees. The purpose of the survey is to follow-up with study participants and document their job search assistance services and experiences including their receipt of job search assistance services, their knowledge and skills for conducting a job search, the nature of their job search process, including tools and services used to locate employment, and their search outputs and outcomes, such as the number of applications submitted, interviews attended, offers received and jobs obtained. In addition, the survey will provide an opportunity for respondents to provide contact data for possible longer-term follow-up. There are no changes to the currently approved instruments.

*Respondents:* JSA study participants.

*Annual Burden Estimates:* This extension is specific to the 6-month survey and covers the remaining 766 participants that may be completing the six-month follow up survey during the four-month extension period. All other information collection under 0970–0440 will be complete by the original OMB expiration date of February 28, 2018.

| Instrument | Total/annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| Extension of Previously Approved Information Collection | | | | |
| 6-Month Follow-Up Survey | 766 | 1 | .333 | 255 |

*Estimated Total Annual Burden Hours:* 255.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the

collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

**Mary Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2018–01140 Filed 1–22–18; 8:45 am]

**BILLING CODE 4184–09–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–0045]**

### Pediatric Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

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

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Advisory Committee (PAC) and the Endocrinologic and Metabolic Drugs Advisory Committee (EMDAC). At least one portion of the meeting will be closed to the public. The general function of the committees is to provide advice and recommendations to FDA on regulatory issues. FDA is establishing a docket for public comments on this document.

**DATES:** The meeting will be held on March 22, 2018, from 8:30 a.m. to 5:30 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–0045. The docket will close on March 23, 2018. Submit either electronic or written comments on this public meeting by that date. Please note that late, untimely comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of March 23, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before March 8, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include Docket No. FDA–2018–N–0045 for ''Pediatric Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:** Marieann Brill, Office of the Commissioner, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, email: *marieann.brill@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The PAC and EMDAC will meet to discuss the major objectives of a phase 3 drug development program indicated for the treatment of children with achondroplasia (ACH). The following elements of a phase 3 program should be considered for discussion: Evidence required to establish dose-response, study design, *e.g.,* placebo control, study duration, intended population, *e.g.,* infants and toddlers and/or older children and adolescents, and endpoints that have a clinically meaningful impact on the patient's functional or psychological well-being. Comments about the upcoming advisory committee meeting should be submitted to Docket No. FDA–2018–N–0045.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* On March 22, 2018, from 10:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 15, 2018. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 7, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 8, 2017.

*Closed Committee Deliberations:* On March 22, 2018, from 8:30 a.m. to 10 a.m., the meeting will be closed to permit committee review and discussion of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) included in an Investigational New Drug application for an investigational product indicated for the treatment of children with ACH.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Marieann Brill (See, **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01120 Filed 1–22–18; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0021]**

### Watson Laboratories, Inc.; Withdrawal of Approval of Abbreviated New Drug Applications for Prescription Pain Medications Containing More Than 325 Milligrams of Acetaminophen

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA and Agency) is withdrawing approval of an abbreviated new drug application (ANDA), held by Watson Laboratories, Inc. (Watson), for prescription pain medications that contain more than 325 milligrams (mg) of acetaminophen. Watson has voluntarily requested that approval of this application be withdrawn and has waived its opportunity for a hearing.

**DATES:** Approval is withdrawn as of January 23, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jane Baluss, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6278, Silver Spring, MD 20993–0002, 301–796–3469.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 14, 2011 (76 FR 2691), FDA announced its plans to reduce the maximum dosage unit strength of acetaminophen in prescription drug products. The document announced FDA's conclusion that, based on a reevaluation of the relative risks and benefits of prescription acetaminophen products, fixed-combination prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury. Accordingly, we asked product sponsors to limit the maximum amount of acetaminophen per dosage unit to 325 mg and, for those products containing more than 325 mg of acetaminophen per dosage unit, to submit requests that FDA withdraw approval of their applications under § 314.150(d) (21 CFR 314.150(d)). FDA asked that all such requests be made before January 14, 2014, after which date the Agency planned to initiate proceedings under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)). In a **Federal Register** document dated March 27, 2014 (79 FR 17613),

FDA withdrew the approval of multiple applications containing more than 325 mg of acetaminophen whose sponsors voluntarily requested withdrawal and waived their opportunity for a hearing on or before that date.

In a letter dated November 22, 2016, Watson voluntarily requested that FDA withdraw approval of its ANDA 074699 for Pentazocine and Acetaminophen Tablets, 25 mg/650 mg, and waived its opportunity for a hearing. The letter also stated that the product was not manufactured or distributed after January 14, 2014.

Therefore, under § 314.150(d), approval of this ANDA, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

The safety issue discussed in this document and the January 14, 2011, **Federal Register** document is limited to products containing more than 325 mg of acetaminophen per dosage unit. Thus, the withdrawal of approval of this product does not change the approval status of any product with 325 mg or less of acetaminophen per dosage unit that is approved under the same application, or that refers to or relies on the withdrawn application.

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01118 Filed 1–22–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–D–0071]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Draft Guidance for Industry: Modified Risk Tobacco Product Applications

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Draft Guidance for Industry: Modified Risk Tobacco Product Applications'' (MRTPA).

**DATES:** Submit either electronic or written comments on the collection of information by March 26, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 26, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of March 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2012–D–0071 for ''Draft Guidance for Industry: Modified Risk Tobacco Product Applications'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations,

Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

**Draft Guidance for Industry: Modified Risk Tobacco Product Applications**

*OMB Control Number 0910—NEW*

In the **Federal Register** of April 3, 2012 (77 FR 20026), FDA published a notice of availability including the PRA analysis. FDA is republishing the paperwork analysis with updates to satisfy the requirements of the PRA.

This draft guidance describes the information that the Federal Food, Drug, and Cosmetic Act (FD&C Act) requires in an MRTPA submission as well as FDA's recommendations regarding the scientific evidence that should be contained in a MRTPA for FDA to make an assessment and conduct an ongoing review of modified risk tobacco products (MRTPs). The draft guidance also permits the filing of a single application for any MRTP that is also a new tobacco product under section 910 of the FD&C Act (21 U.S.C. 387k). The draft guidance discusses, among other things: (1) Who submits MRTPAs; (2) when to submit a MRTPA; (3) what information section 911 of the FD&C Act (21 U.S.C. 387j) requires applicants to submit in a MRTPA; (4) what scientific evidence FDA recommends applicants include in a MRTPA; (5) what information should be collected through postmarket surveillance and studies; and (6) how to organize and submit a MRTPA. The purpose of the proposed information collection is to allow FDA to collect statutorily mandated information regarding modified risk tobacco products and other information that will facilitate FDA's effective and efficient review of MRTPAs.

Modified risk tobacco products are tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products (section 911(b)(1) of the FD&C Act). No person may introduce or deliver for introduction into interstate commerce any MRTP unless an order issued pursuant to section 911(g) is effective with respect to that product (section 911(a) of the FD&C Act).

Under section 911(d) of the FD&C Act, a MRTPA must contain:

- A description of the proposed product and any proposed advertising and labeling;
- The conditions for using the product;
- The formulation of the product;
- Sample product labels and labeling;
- All documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;
- Data and information on how consumers actually use the tobacco product; and
- Such other information as the Secretary may require.

Further, FDA's regulation implementing the National Environmental Policy Act of 1969 requires that ''[a]ll applications or petitions requesting agency action require the submission of an [environmental assessment] or a claim of categorical exclusion'' (21 CFR 25.15(a)).

Section 911(g) of the FD&C Act describes the demonstrations applicants must make to obtain an order from FDA. Section 911(g)(1) and (2) of the FD&C Act set forth two bases for FDA to issue an order.

A ''risk modification order'' is an order permitting the introduction or delivery for introduction into interstate commerce of a tobacco product that FDA has found meets the criteria for an order under section 911(g)(1) of the FD&C Act. In order for FDA to issue a risk modification order under section 911(g)(1) of the FD&C Act, the applicant must demonstrate that the proposed modified risk tobacco product, as it is actually used by consumers, will:

- Significantly reduce harm and the risk of tobacco-related disease to individual tobacco users and
- Benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

An ''exposure modification order'' is an order permitting the introduction or delivery for introduction into interstate commerce of a tobacco product that reduces or eliminates exposure to a substance and for which the available scientific evidence suggests that a measurable and substantial reduction in morbidity and mortality is likely to be demonstrated in future studies. In order for FDA to issue an exposure modification order, the applicant must satisfy all of the criteria for issuance of an order under section 911(g)(2) of the FD&C Act.

FDA may issue an exposure modification order under section 911(g)(2) of the FD&C Act (the ''special rule'') if it determines that the applicant has demonstrated that:

- Such an order would be appropriate to promote the public health;
- Any aspect of the label, labeling, and advertising for the product that would cause the product to be a MRTP is limited to an explicit or implicit representation that the tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;
- Scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards for obtaining an order under section 911(g)(1); and
- The scientific evidence that is available without conducting long-term epidemiological studies demonstrates

that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies (section 911(g)(2)(A) of the FD&C Act).

Furthermore, for FDA to issue an exposure modification order, FDA must find that the applicant has demonstrated that:

- The magnitude of overall reductions in exposure to the substance or substances, which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;
- The product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;
- Testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product is or has been demonstrated to be less harmful, or presents or has been demonstrated to present less of a risk of disease than one or more other commercially marketed tobacco products; and
- Issuance of the exposure modification order is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products (section 911(g)(2)(B) of the FD&C Act).

In evaluating the benefit to health of individuals and of the population as a whole under section 911(g)(1) and (2) of the FD&C Act, FDA must take into account:

- The relative health risks the MRTP presents to individuals;
- The increased or decreased likelihood that existing tobacco product users who would otherwise stop using such products will switch to using the modified risk tobacco product;
- The increased or decreased likelihood that persons who do not use tobacco products will start using the modified risk tobacco product;
- The risks and benefits to persons from the use of the MRTP compared to the use of smoking cessation drug or device products approved by FDA to treat nicotine dependence; and
- Comments, data, and information submitted to FDA by interested persons (section 911(g)(4) of the FD&C Act).

Furthermore, FDA must ensure that the advertising and labeling of the MRTP enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the tobacco-related diseases and health conditions (section 911(h)(1) of the FD&C Act).

FDA intends to determine whether it will issue an order under section 911(g) within 360 days after the receipt of a complete application and will issue such an order only if the application satisfies all the applicable requirements in section 911 of the FD&C Act.

A risk modification order issued under section 911(g)(1) will be effective for the period of time specified in the order issued by FDA (section 911(h)(4) of the FD&C Act). An applicant to whom a risk modification order is issued under section 911(g)(1) must conduct postmarket surveillance and studies (section 911(i)(1) of the FD&C Act).

An exposure modification order issued under section 911(g)(2) of the FD&C Act will be effective for a term of not more than 5 years. FDA may renew an exposure modification order if the applicant files a new application, and FDA finds that the requirements for such order under section 911(g)(2) continue to be satisfied (section 911(g)(2)(C)(i) of the FD&C Act). Further, an exposure modification order will be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit the results of such surveillance and studies to FDA annually (section 911(g)(2)(C)(ii) and (iii) of the FD&C Act).

The postmarket surveillance and studies that all applicants who receive orders are required to conduct are intended to determine the effect of issuance of an order on consumer perception, behavior, and health, and enable FDA to review the accuracy of the determinations upon which an order was based (section 911(g)(2)(C)(ii) and 911(i)(1) of the FD&C Act). An applicant who receives a risk modification order must also conduct postmarket surveillance and studies that provide information FDA determines is otherwise necessary regarding the use or health risks involving the tobacco product (section 911(i)(1) of the FD&C Act).

If the proposed MRTP is a new tobacco product within the meaning of section 910(a)(1), the new tobacco product must satisfy any applicable premarket review requirements under section 910 of the FD&C Act, in addition to any requirements under section 911 of the FD&C Act. A new tobacco product must be found to be substantially equivalent, exempt from the requirement to obtain a substantial equivalence determination, or have a marketing authorization order under section 910(c)(1)(A)(i) of the FD&C Act. The collections of information relating to premarket review described in the ''Guidance for Industry: Section 905(j) Reports: Demonstrating Substantial Evidence for Tobacco Products'' (OMB control number 0910–0673), 21 CFR part 1107 (''Establishment Registration, Product Listing, and Substantial Equivalence Reports'') (OMB control number 0910–0684), and ''Deeming Tobacco Products To Be Subject to the FD&C Act '' (OMB control number 0910–0768) have been previously approved by OMB. An applicant may file the appropriate report or application to satisfy any applicable premarket review requirements and a separate application under section 911 of the FD&C Act. To the extent data or information contained in the premarket review portion of the application is also relevant to or required for the modified risk determination, FDA encourages the applicant to cross-reference that data or information rather than duplicate it in the modified risk portion of the application. Additionally, due to the many similarities between the content requirements of sections 910(b)(1) (for premarket tobacco applications (PMTAs)) and 911(d) (for MRTPAs) of the FD&C Act, we recommend submitting a single application to seek both a marketing order under section 910 of the FD&C Act and a modified risk order under section 911 of the FD&C Act. The single application must include the information required for premarket review under section 910(b) of the FD&C Act, as well as the information required to support issuance of an order under section 911(g) of the FD&C Act.

*Description of Respondents:* The respondents to this collection of information are applicants who are responsible for creating and submitting MRTP applications and who wish to obtain an FDA order to allow them to market their product. While it is expected that many of the respondents will be manufacturers, respondents could include importers, distributors, and retailers of tobacco products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| MRTPA (section 911(d) of FD&C Act) | 3 | 1 | 3 | 10,000 | 30,000 |
| Environmental analysis (21 CFR 25.15) | 3 | 1 | 3 | 320 | 960 |
| Request for a meeting prior to submitting a MRTPA | 8 | 1 | 8 | 40 | 320 |
| All activities related to postmarket surveillance studies, including submission of protocols, conduct of studies, and annual reporting (section 911(g)(2)(C)(ii), 911(i)(1) and (2)) | 5 | 1 | 5 | 5,000 | 25,000 |
| Requests for renewal (section 911(g)(2)(C)(i) and 911(h)(4)) | 1 | 1 | 1 | 1,000 | 1,000 |
| Total Hours | | | | | 57,280 |

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

Table 1 describes the annual reporting burden as a result of submitting a MRTPA. FDA estimates that it will receive three MPRTAs annually and that it will take the applicant 10,000 hours per response to conduct studies and collect the information needed to support an MRTPA. FDA is also including an estimation of the burden associated with preparing environmental analyses. FDA estimates that it will take an additional 320 hours to prepare any environmental analyses. FDA encourages persons considering developing a MRTPA to meet with the Center for Tobacco Products to discuss MRTPA submission and investigational requirements. FDA anticipates that eight respondents considering developing MRTPAs may request meetings with FDA. FDA estimates it will take 40 hours per response to prepare a meeting request, including background information.

Section 911 of the FD&C Act requires applicants to whom FDA issues orders to conduct postmarket surveillance and studies and submit relevant information to FDA on an annual basis. Applicants must submit and receive FDA approval of surveillance protocols. FDA estimates that it will take 5,000 hours per response to collect and submit the protocol information to FDA, conduct the postmarket surveillance and studies and to submit results of postmarket surveillance and studies to FDA annually. FDA expects five respondents to carry out postmarket surveillance and studies annually.

Because orders issued under section 911(g) of the FD&C Act are valid for only a set number of years, FDA expects applicants will submit requests for renewal. Because the dates on which orders are issued and the length of the period for which the order is valid will vary, FDA expects one request for renewal annually. FDA estimates that it will take 1,000 hours to prepare the request for renewal.

The estimated total burden hours for this collection of information is estimated to be 57,280. These burden estimates were computed using FDA staff expertise and by reviewing comments received from recent FDA information collections for other tobacco-related initiatives. In addition, FDA notes that due to the many similarities between the content requirements of sections 910(b)(1) (from PMTAs) and 911(d) (for MRTPAs) of the FD&C Act, and the likelihood that many respondents will submit joint PMTAs and MRTPAs, or cross-reference the applications, that part of the collection of information burden for respondents submitting an MRTPA will be captured in the preparation of the PMTA.

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01121 Filed 1–22–18; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–6879]**

### Electronic Study Data Submission; Data Standards; Timetable for Updates to the Food and Drug Administration Data Standards Catalog for Study Data Submitted Electronically Under the Federal Food, Drug, and Cosmetic Act

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the timetable for updates to the FDA Data Standards Catalog for study data submitted electronically in new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and certain investigational new drug applications (INDs) to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER). The initial implementation timetable for submitting standardized study data in electronic format was 24 months for NDAs, ANDAs, and applications, and 36 months for certain INDs after publication of the final guidance ''Providing Regulatory Submissions in Electronic Format—Standardized Study'' in December 2014. When future updates to study data standards listed in the FDA Data Standards Catalog (Catalog) occur, these updated standards will be required in studies with a start date no earlier than 12 months after a **Federal Register** notice announcing such updates is published. When future new study data standards are listed in the Catalog, these new standards will be required in studies with a start date no earlier than 24 months after a **Federal Register** notice announcing such new standards is published.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2017–N–6879 for ''Electronic Study Data Submission; Data Standards; Timetable for Updates to the FDA Data Standards Catalog for Electronic Submissions of Study Data.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1115, Silver Spring, MD 20993–0002, 301–796–5333, *cderdatastandards@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.ripley@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On December 17, 2014, FDA published final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' posted on FDA's Study Data Standards Resources web page at *https://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.* The guidance implemented the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379k–1) for study data contained in NDAs, ANDAs, applications under subsection (a) or (k) of section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), and certain INDs. The initial implementation date for the electronic submission requirement for standardized study data was 24 months after final guidance for NDAs, ANDAs, and applications under subsection (a) or (k) of section 351 of the PHS Act (December 17, 2016) and 36 months after final guidance for INDs (December 17, 2017). To provide a consistent timetable for announcing FDA's support and requirement for future version updates and new study data standards, the guidance states that a **Federal Register** notice will specify a transition date with a specific month and day for the transition date. When a **Federal Register** notice is published after March 15 of the current calendar year, the transition date will be March 15 of the next calendar year.

When future version updates to supported study data standards and new study data standards are announced in the **Federal Register**, they will be required in studies that have a start date no earlier than 12 months after the transition date for version updates and no earlier than 24 months after the transition date for new study data standards. Table 1 presents an example of timetables for the requirement to use future version updates and new study data standards after publication of **Federal Register** notices. In the example, a new study data transport format standard and a version update to the Study Data Tabulation Model Implementation Guide (SDTMIG) each have a single date listed when the standard will be required. The new study data transport format is supported as of the date of the **Federal Register** notice, but will only be required in studies that start 24 months after the transition date of March 15, 2019. The SDTMIG version update is supported as of the date of the **Federal Register** notice, but will only be required in studies that start 12 months after the transition date of March 15, 2019.

TABLE 1—EXAMPLE OF TIMETABLES FOR REQUIRED STUDY DATA STANDARDS

| FDA data standards catalog | **Federal Register** notice of FDA support (yyyy–mm–dd) | Transition date (yyyy–mm–dd) | Date requirement begins (yyyy–mm–dd) |
|---|---|---|---|
| New Study Data Transport | 2019–02–20 | 2019–03–15 | 2021–03–15 |
| SDTMIG Version Update | 2018–09–05 | 2019–03–15 | 2020–03–15 |

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01119 Filed 1–22–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–D–2343]**

### Hazard Analysis and Risk-Based Preventive Controls for Food for Animals; Draft Guidance for Industry; Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry #245 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' This draft guidance document, when finalized, will help animal food facilities comply with the requirements for hazard analysis and risk-based preventive controls under our regulation ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.''

**DATES:** Submit either electronic or written comments on the draft guidance by July 23, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2016–D–2343 for ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jenny Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246, *jenny.murphy@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public (human and animal) health by helping to ensure the safety and security of the food supply. FSMA enables FDA to focus more on preventing animal food safety problems rather than relying primarily on reacting to problems after they occur.

Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), by adding section 418 (21 U.S.C. 350g) with requirements for hazard analysis and risk-based preventive controls for establishments that are required to register as food facilities under our regulations in 21 CFR part 1, subpart H, in accordance with section 415 of the FD&C Act (21 U.S.C. 350d). We have established regulations to implement the hazard analysis and risk-based preventive controls requirements within part 507 (21 CFR part 507).

We are announcing the availability of a draft guidance for industry #245 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' This multi-chapter draft guidance for industry is intended to

explain how to comply with the requirements for hazard analysis and risk-based preventive controls for food for animals under part 507. The chapters we are announcing in this document are as follows:

- Introduction
- Chapter One—The Food Safety Plan
- Chapter Two—Conducting a Hazard Analysis
- Chapter Three—Hazards Associated with the Manufacturing, Processing, Packing, and Holding of Animal Food
- Chapter Four—Preventive Controls
- Chapter Five—Overview of Preventive Control Management Components

We intend to announce the availability for public comment of additional chapters of the draft guidance as we complete them.

## II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on how to comply with the hazard analysis and risk-based preventive controls requirements for the regulation ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 507 have been approved under OMB control number 0910–0789.

## IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01126 Filed 1–22–18; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–D–6702]**

### The Least Burdensome Provisions: Concept and Principles; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Extension of Comment Period

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

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability that appeared in the **Federal Register** of December 15, 2017. In the notice of availability, FDA requested comments on the draft guidance for industry and FDA staff entitled ''The Least Burdensome Provisions: Concept and Principles.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

**DATES:** FDA is extending the comment period on the document published December 15, 2017 (82 FR 59623), by an additional 30 days. Submit either electronic or written comments on the draft guidance by March 15, 2018, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2017–D–6702 for ''The Least Burdensome Provisions: Concept and Principles; Draft Guidance for Industry and Food and Drug Administration Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 15, 2017, FDA published a notice of availability with a 60-day comment period to request comments on draft guidance for industry and FDA staff entitled ''The Least Burdensome Provisions: Concept and Principles.''

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the guiding principles and recommended approach for FDA staff and industry to facilitate consistent application of least burdensome principles to the activities pertaining to products meeting the statutory definition of a device regulated under the Federal Food, Drug, and Cosmetic Act. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This draft guidance is not subject to Executive Order 12866.

The Agency has received a request for a 30-day extension of the comment period. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response.

FDA has considered the request and is extending the comment period for the notice of availability for 30 days, until March 15, 2018. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying guidance on these important issues.

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01122 Filed 1–22–18; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–6931]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback''

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information requirements relating to FDA's regulation of current good manufacturing practice (CGMP) and related regulations for blood and blood components; and requirements for donation testing, donor notification, and ''lookback''.

**DATES:** Submit either electronic or written comments on the collection of information by March 26, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 26, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of March 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2017–N–6931 for ''Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and 'Lookback'.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff

between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

## Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback''

*OMB Control Number 0910–0116—Extension*

All blood and blood components introduced or delivered for introduction into interstate commerce are subject to section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(a)). Section 351(a) requires that manufacturers of biological products, which include blood and blood components intended for further manufacturing into products, have a license, issued upon a demonstration that the product is safe, pure, and potent and that the manufacturing establishment meets all applicable standards, including those prescribed in the FDA regulations designed to ensure the continued safety, purity, and potency of the product. In addition, under section 361 of the PHS Act (42 U.S.C. 264), by delegation from the Secretary of Health and Human Services, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.

Section 351(j) of the PHS Act states that the Federal Food, Drug, and Cosmetic Act (FD&C Act) also applies to biological products. Blood and blood components for transfusion or for further manufacturing into products are drugs, as that term is defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)). Because blood and blood components are drugs under the FD&C Act, blood and plasma establishments must comply with the provisions and related regulatory scheme of the FD&C Act. For example, under section 501 of the FD&C Act (21 U.S.C. 351(a)), drugs are deemed ''adulterated'' if the methods used in their manufacturing, processing, packing, or holding do not conform to CGMP and related regulations.

The CGMP regulations (part 606) (21 CFR part 606) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The public health objective in testing human blood donations for evidence of relevant transfusion-transmitted infections and in notifying donors is to prevent the transmission of relevant transfusion-transmitted infections. For example, the ''lookback'' requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to consignees of blood and blood components and appropriate notification of recipients of blood components that are at increased risk for transmitting human immunodeficiency virus (HIV) or hepatitis C virus (HCV) infection.

The information collection requirements in the CGMP, donation testing, donor notification, and ''lookback'' regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections.

The recordkeeping requirements serve preventive and remedial purposes. The third-party disclosure requirements identify various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of certain information that may require immediate corrective action.

Under the reporting requirements, § 606.170(b), in brief, requires that facilities notify FDA's Center for Biologics Evaluation and Research

(CBER), as soon as possible after a complication of blood collection or transfusion is confirmed to be fatal. The collecting facility is required to report donor fatalities, and the compatibility testing facility is to report recipient fatalities. The regulation also requires the reporting facility to submit a written report of the investigation within 7 days after the fatality. In Fiscal Year 2016, FDA received 81 fatality reports.

Section 610.40(g)(2) (21 CFR 610.40(g)(2)) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing for evidence of infection due to relevant transfusion-transmitted infections.

Section 610.41(b) allows for a previously deferred donor to subsequently be found to be an eligible donor of blood and blood components by a requalification method or process found acceptable for such purposes by FDA.

Section 610.40(h)(2)(ii)(A), in brief, requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of infection due to a relevant transfusion-transmitted infection(s) or collected from a donor deferred under § 610.41(a).

In addition, § 630.35(b) (21 CFR 630.35(b)) allows for a previously deferred donor, deferred for reasons other than § 610.41(b) to become requalified for donation by a method or process found acceptable for such purpose by FDA.

Under the third-party disclosure requirements, § 606.145(c) requires transfusion services to notify certain blood collection establishments concerning bacterial contamination of platelets. In table 3, FDA estimates that for the approximately 4,961 transfusion services, there would be 1,400 total notifications per year to blood collection establishments (700 notifications that platelets are bacterially contaminated and 700 notifications per year concerning the identity or non-identity of the species of the contaminating organism).

Section 610.40(c)(1)(ii) in part 610, in brief, requires that each donation dedicated to a single identified recipient be labeled as required under § 606.121 and with a label containing the name and identifying information of the recipient. The information collection requirements under § 606.121 are part of usual and customary business practice.

Sections 610.40(h)(2)(ii)(C) and (D), in brief, require an establishment to label certain reactive human blood and blood components with the appropriate screening test results for evidence of infection due to the identified relevant transfusion-transmitted infection(s), and, if they are intended for further manufacturing use into products, to include a statement on the label indicating the exempted use specifically approved by FDA. Also, § 610.40(h)(2)(vi) requires each donation of human blood or blood components, excluding Source Plasma, that tests reactive by a screening test for syphilis and is determined to be a biological false positive to be labeled with both test results.

Section 610.42(a) requires a warning statement ''indicating that the product was manufactured from a donation found to be reactive by a screening test for evidence of infection due to the identified relevant transfusion-transmitted infection(s)'' in the labeling for medical devices containing human blood or a blood component found to be reactive by a screening test for evidence of infection due to a relevant transfusion-transmitted infection(s) or syphilis.

In addition, § 630.35(b) allows for a previously deferred donor, deferred for reasons other than § 610.41(b) to become requalified for donation by a method or process found acceptable for such purpose by FDA.

In brief, §§ 610.46 and 610.47 require blood collecting establishments to establish, maintain, and follow an appropriate system for performing HIV and HCV ''lookback'' when: (1) A donor tests reactive for evidence of HIV or HCV infection or (2) the collecting establishment becomes aware of other reliable test results or information indicating evidence of HIV or HCV infection (see §§ 610.46(a)(1) and 610.47(a)(1)). The requirement for ''an appropriate system'' requires the collecting establishment to design standard operating procedures (SOPs) to identify and quarantine all blood and blood components previously collected from a donor who later tests reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection. Within 3 calendar days of the donor testing reactive by an HIV or HCV screening test or the collecting establishment becoming aware of other reliable test results or information, the collecting establishment must, among other things, notify consignees to quarantine all identified previously collected in-date blood and blood components (§§ 610.46(a)(1)(ii)(B) and 610.47(a)(1)(ii)(B)) and, within 45 days, notify the consignees of supplemental test results, or the results of a reactive screening test if there is no available supplemental test that is approved for such use by FDA (§§ 610.46(a)(3) and 610.47(a)(3)).

Consignees also must establish, maintain, and follow an appropriate system for performing HIV and HCV ''lookback'' when notified by the collecting establishment that they have received blood and blood components previously collected from donors who later tested reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection in a donor (§§ 610.46(b) and 610.47(b)). This provision for a system requires the consignee to establish SOPs for, among other things, notifying transfusion recipients of blood and blood components, or the recipient's physician of record or legal representative, when such action is indicated by the results of the supplemental (additional, more specific) tests or a reactive screening test if there is no available supplemental test that is approved for such use by FDA, or if under an investigational new drug application (IND) or an investigational device exemption (IDE), is exempted for such use by FDA. The consignee must make reasonable attempts to perform the notification within 12 weeks of receipt of the supplemental test result or receipt of a reactive screening test result when there is no available supplemental test that is approved for such use by FDA, or if under an IND or IDE, is exempted for such use by FDA (§§ 610.46(b)(3) and 610.47(b)(3)).

Section 630.40(a) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41(a), or who has been determined not to be eligible as a donor. Section 630.40(d)(1) requires an establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Under the recordkeeping requirements, § 606.100(b), in brief, requires that written SOPs be maintained for all steps to be followed in the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and further manufacturing purposes. Section 606.100(c) requires the review of all records pertinent to the lot or unit of blood prior to release or distribution. Any unexplained discrepancy or the failure of a lot or unit of final product

to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded.

In brief, § 606.110(a) provides that the use of plateletpheresis and leukapheresis procedures to obtain a product for a specific recipient may be at variance with the additional standards for that specific product if, among other things, the physician determines and documents that the donor's health permits plateletpheresis or leukapheresis. Section 606.110(b) requires establishments to request prior approval from CBER for plasmapheresis of donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are approved under OMB control number 0910–0338 and, therefore, are not reflected in the tables of this document.

Section 606.151(e) requires that SOPs for compatibility testing include procedures to expedite transfusion in life-threatening emergencies; records of all such incidents must be maintained, including complete documentation justifying the emergency action, which must be signed by a physician.

Section 606.171 requires establishments to establish and maintain procedures related to product deviations. The burden for the recordkeeping requirements under § 606.171 are included under § 606.100.

So that each significant step in the collection, processing, compatibility testing, storage, and distribution of each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each such step be made and maintained for no less than 10 years. Section 606.160(b)(1)(viii) requires records of the quarantine, notification, testing and disposition performed under the HIV and HCV ''lookback'' provisions. Furthermore, § 606.160(b)(1)(x) requires a blood collection establishment to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup.

Section 606.165, in brief, requires that distribution and receipt records be maintained to facilitate recalls, if necessary.

Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions arising as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(a) also requires that when an investigation determines that the product caused the transfusion reaction, copies of all such written reports must be forwarded to and maintained by the manufacturer or collecting facility.

Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing.

Under § 630.15(a)(1)(ii)(B), FDA requires that for a dedicated donation based on the intended recipient's documented exceptional medical need, the responsible physician determines and documents that the health of the donor would not be adversely affected by donating.

Under § 630.20(c), a collection establishment may collect blood and blood components from a donor who is determined to be not eligible to donate under any provision of § 630.10(e) and (f) or § 630.15(a), if the donation is restricted for use solely by a specific transfusion recipient based on documented exceptional medical need and the responsible physician determines and documents that the donor's health permits the collection procedure, and that the donation presents no undue medical risk to the transfusion recipient.

In addition to the CGMP regulations in part 606, there are regulations in part 630 that include requirements for blood and blood components intended for transfusion or further manufacturing use, and part 640 that require additional standards for certain blood and blood products as follows: Sections 630.5(b)(1)(i), 630.5(d), 630.10(c)(1) and (2), 630.10(f)(2) and (4), 630.10(g)(2)(i), 630.15(a)(1)(ii)(A) and (B), 630.15(b)(2), (b)(7)(i) and (iii), 630.20(a) and (b); 640.25(b)(4) and (c)(1); 640.21(e)(4); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 630.15(b)(2); 640.65(b)(2)(i); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described in tables 1 and 2.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes, inspected by FDA, and transfusion services inspected by Centers for Medicare and Medicaid Services (CMS). Based on information received from CBER's database systems, there are approximately 569 licensed Source Plasma establishments and approximately 1,054 licensed blood collection establishments, for an estimated total of 1,623 (569 + 1,054) licensed blood collection establishments. Also, there are an estimated total of 680 unlicensed, registered blood collection establishments for an approximate total of 2,303 collection establishments (569 + 1,054 + 680 = 2,303 establishments). Of these establishments, approximately 901 perform plateletpheresis and leukopheresis. These establishments annually collect approximately 53.3 million units of Whole Blood and blood components, including Source Plasma and Source Leukocytes, and are required to follow FDA ''lookback'' procedures. In addition, there are another estimated 4,961 establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (formerly referred to as facilities approved for Medicare reimbursement) that transfuse blood and blood components.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. Based on information from industry, we estimate that there are approximately 38.3 million donations of Source Plasma from approximately 2 million donors and approximately 15 million donations of Whole Blood and apheresis Red Blood Cells including approximately 34,500 (approximately 0.23 percent of 15 million) autologous donations, from approximately 10.9 million donors. Assuming each autologous donor makes an average of 1.1 donations, FDA estimates that there are approximately 31,364 autologous donors (34,500 autologous/1.1 average donations).

FDA estimates that approximately 0.19 percent (21,000/10,794,000) of the 72,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors' testing provisions in § 610.40(c)(1)(ii).

Under §§ 610.40(g)(2) and (h)(2)(ii)(A), Source Leukocytes, a licensed product that is used in the manufacture of interferon, which requires rapid preparation from blood, is currently shipped prior to completion of testing for evidence of relevant transfusion-transmitted infections. Shipments of Source Leukocytes are approved under a biologics license application and each shipment does not have to be reported to the Agency.

Based on information from CBER's database system, FDA receives less than one application per year from manufacturers of Source Leukocytes. However, for calculation purposes, we are estimating one application annually.

According to CBER's database system, there are approximately 15 licensed manufacturers that ship known reactive human blood or blood components under §§ 610.40(h)(2)(ii)(C) and (D). FDA estimates that each manufacturer would ship an estimated 1 unit of human blood or blood components per month (12 per year) that would require two labels; one as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D).

Based on information received from industry, we estimate that approximately 7,544 donations that test reactive by a screening test for syphilis and are determined to be biological false positives by additional testing annually. These units would be labeled according to § 610.40(h)(2)(vi).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, *e.g.,* a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement indicating that the product was manufactured from a donation found to be reactive for the identified relevant transfusion-transmitted infection(s). In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a warning statement must be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

FDA estimates that approximately 3,021 repeat donors will test reactive on a screening test for HIV. We also estimate that an average of three components was made from each donation. Under §§ 610.46(a)(1)(ii)(B) and (a)(3), this estimate results in 9,063 (3,012 × 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 9,063 (3,021 × 3) notifications to consignees of subsequent test results.

We estimate that approximately 4,961 consignees will be required under § 610.46(b)(3) to notify transfusion recipients, their legal representatives, or physicians of record an average of 0.35 times per year resulting in a total number of 1,755 (585 confirmed positive repeat donors × 3) notifications. Also under § 610.46(b)(3), we estimate and include the time to gather test results and records for each recipient and to accommodate multiple attempts to contact the recipient.

Furthermore, we estimate that approximately 6,799 repeat donors per year would test reactive for antibody to HCV. Under §§ 610.47(a)(1)(ii)(B) and 610.47(a)(3), collecting establishments would notify the consignee 2 times for each of the 20,397 (6,799 × 3 components) components prepared from these donations, once for quarantine purposes and again with additional HCV test results for a total of 40,794 (2 × 20,397 notifications) as an annual ongoing burden. Under § 610.47(b)(3), we estimate that approximately 4,961 consignees would notify approximately 2,050 recipients or their physicians of record annually.

Based on industry estimates, approximately 14.3 percent of approximately 9 million potential donors (1,287,000 donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of approximately 1,734 (1,054 + 680) blood collecting establishments to notify onsite and to explain why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds (1,156) of the 1,734 blood collecting establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only approximately one-third, or 578 of the 1,734 blood collecting establishments would need to provide, under § 630.40(a), additional information and onsite counseling to the estimated 429,000 (one-third of approximately 1,287,000) ineligible donors.

It is estimated that another 4.5 percent of 10 million potential donors (450,000 donors) are deferred annually based on test results. We estimate that approximately 95 percent of the establishments that collect 99 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus, HCV, Human T-Lymphotropic Virus, and syphilis as usual and customary business practice. Consequently, 5 percent of the 1,623 licensed establishments (81) collecting 1 percent (4,050) of the deferred donors (405,000) would notify donors under § 630.40(a).

As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.40(d)(1). However, we estimate that approximately 5 percent of the 1,054 blood collection establishments (53) may not notify the referring physicians of the estimated 2 percent of 31,364 autologous donors with the initial reactive test results (627) as their usual and customary business practice.

The recordkeeping chart reflects the estimate that approximately 95 percent of the recordkeepers, which collect 99 percent of the blood supply, have developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model standards developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix), we estimate the total annual records based on the approximately 1,287,000 donors determined not to be eligible to donate and each of the estimated 1,692,000 (1,287,000 + 405,000) donors deferred based on reactive test results for evidence of infection because of relevant transfusion-transmitted infections. Under § 606.160(b)(1)(xi), only the 1,734 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 31,364 autologous donors (1,411) will be deferred under § 610.41, which in turn will lead to the notification of their referring physicians.

Under § 610.41(b), FDA estimates that there would be 25 submissions for requalification of donors each requiring 7 hours per submission. In addition, FDA estimates that there would be only 3 notifications for requalification of donors under § 630.35(b) which would also require 7 hours for each submission.

FDA permits the shipment of untested or incompletely tested human blood or blood components in rare medical emergencies and when appropriately documented (§ 610.40(g)(1). We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or fewer occurrences per year. The reporting of test results to the consignee in § 610.40(g) is part of the usual and

customary business practice of blood establishments.

The average burden per response (hours) and average burden per recordkeeping (hours) are based on estimates received from industry or FDA experience with similar reporting or recordkeeping requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 606.170(b) [2] | 81 | 1 | 81 | 20 | 1,620 |
| 610.40(g)(2) | 1 | 1 | 1 | 1 | 1 |
| 610.41(b) | 1,623 | 0.015 | 25 | 7 | 175 |
| 610.40(h)(2)(ii)(A) | 1 | 1 | 1 | 1 | 1 |
| 630.35(b) | 1,623 | 0.002 | 3 | 7 | 21 |
| Total | | | | | 1,818 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section/activity | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 606.100(b) [2] | [5] 363 | 1 | 363 | 24 | 8,712 |
| 606.100(c) | [5] 363 | 10 | 3,630 | 1 | 3,630 |
| 606.110(a) [3] | [6] 45 | 1 | 45 | .5 (30 min.) | 23 |
| 606.151(e) | [5] 363 | 12 | 4,356 | .08 (5 min.) | 348 |
| 606.160 [4] | [5] 363 | 1,055.096 | 383,000 | .75 (45 min.) | 287,250 |
| 606.160(b)(1)(viii) HIV consignee notification | 1,734 | 10.4533 | 18,126 | .17 (10 min.) | 3,081 |
| | 4,961 | 3.6537 | 18,126 | .17 (10 min.) | 3,081 |
| 606.160(b)(1)(viii) HCV consignee notification | 1,734 | 23.5259 | 40,794 | .17 (10 min.) | 6,935 |
| | 4,961 | 8.2229 | 40,794 | .17 (10 min.) | 6,935 |
| HIV recipient notification | 4,961 | 0.3538 | 1,755 | .17 (10 min.) | 298 |
| HCV recipient notification | 4,961 | 0.4132 | 2,050 | .17 (10 min.) | 349 |
| 606.160(b)(1)(ix) | 2,303 | 734.6939 | 1,692,000 | .05 (3 min.) | 84,600 |
| 606.160(b)(1)(xi) | 1,734 | 0.8137 | 1,411 | .05 (3 min.) | 71 |
| 606.165 | [5] 363 | 1,055.096 | 383,000 | .08 (5 min.) | 30,640 |
| 606.170(a) | [5] 363 | 12 | 4,356 | 1 | 4,356 |
| 610.40(g)(1) | 2,303 | 1 | 2,303 | .5 (30 min.) | 1,152 |
| 630.15(a)(1)(ii)(B) | 1,734 | 1 | 1,734 | 1 | 1,734 |
| 630.20(c) | 1,734 | 1 | 1,734 | 1 | 1,734 |
| Total | | | | | 444,930 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in §§ 606.171, 630.5(d), 630.10(c)(1) and (2), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3] The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4] The recordkeeping requirements in §§ 606.110(a)(2), 630.5(b)(1)(i), 630.109(f)(2) and (4), 630.10(g)(2)(i), 630.15(a)(1)(ii)(A) and (B), 630.15(b)(2), (b)(7)(i) and (iii), 630.20(a) and (b), 640.21(e)(4), 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 630.15(b)(2); 640.65(b)(2)(i); 640.71(b)(1); 640.72; 640.73 and 640.76(a) and (b), which address the maintenance of various records are included in the estimate for § 606.160.
[5] Five percent of establishments that fall under CLIA that transfuse blood and components and FDA-registered blood establishments ($0.05 \times 4{,}961 + 2{,}303 = 363$).
[6] Five percent of plateletpheresis and leukopheresis establishments ($0.05 \times 901 = 45$).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 606.145(c) | 4,961 | 0.2822 | 1,400 | .02 | 28 |
| 606.170(a) | [2] 363 | 12 | 4,356 | .5 (30 min.) | 2,178 |
| 610.40(c)(1)(ii) | 2,303 | 0.0595 | 137 | .08 (5 min.) | 11 |
| 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) | 15 | 12 | 180 | .20 (12 min.) | 36 |
| 610.40(h)(2)(vi) | 2,303 | 3.28 | 7,554 | .08 (5 min.) | 604 |
| 610.42(a) | 1 | 1 | 1 | 1 | 1 |
| 610.46(a)(1)(ii)(B) | 1,734 | 5.2266 | 9,063 | .17 (10 min.) | 1,541 |
| 610.46(a)(3) | 1,734 | 5.2266 | 9,063 | .17 (10 min.) | 1,541 |
| 610.46(b)(3) | 4,961 | 0.3538 | 1,755 | 1 | 1,755 |
| 610.47(a)(1)(ii)(B) | 1,734 | 11.7630 | 20,397 | .17 (10 min.) | 3,467 |

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 610.47(a)(3) | 1,734 | 11.7630 | 20,397 | .17 (10 min.) | 3,467 |
| 610.47(b)(3) | 4,961 | 0.4132 | 2,050 | 1 | 2,050 |
| 630.40(a) [3] | 578 | 742.214 | 429,000 | .08 (5 min.) | 34,320 |
| 630.40(a) [4] | 81 | 50.00 | 4,050 | 1.5 | 6,075 |
| 630.40(d)(1) | 53 | 11.83 | 627 | 1 | 627 |
| Total | | | | | 57,701 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of establishments that fall under CLIA that transfuse blood and components and FDA-registered blood establishments (0.05 × 4,961 + 2,303 = 363).
[3] Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[4] Notification of donors deferred based on reactive test results for evidence of infection due to relevant transfusion-transmitted infections.

The burden for this information collection has changed since the last OMB approval. Because of a slight decrease in the number of blood establishments during the last 3 years, FDA has decreased our recordkeeping and third party disclosure burden estimates.

Dated: January 17, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–01123 Filed 1–22–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Tick-Borne Disease Working Group

**AGENCY:** Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) announces the third meeting of the Tick-Borne Disease Working Group (Working Group) on February 12, 2018, from 12:00 p.m. to 4:00 p.m., Eastern Time. For this third meeting, the Working Group will focus on mapping out the work of the six Subcommittee Meeting Working Groups that were established on December 12, 2017. These subcommittees were established to assist the Working Group with the development of the report to Congress and the HHS Secretary as required by the 21st Century Cures Act. The subcommittees are:

1. Disease Vectors, Surveillance and Prevention (includes epidemiology of tick-borne diseases);

2. Pathogenesis, Transmission, and Treatment;

3. Testing and Diagnostics (including laboratory-based diagnoses and clinical-diagnoses);

4. Access to Care Services and Support to Patients;

5. Vaccine and Therapeutics; and

6. Other Tick-Borne Diseases and Co-infections.

**DATES:** February 12, 2018, from 12:00 p.m. to 4:00 p.m., Eastern Time.

**ADDRESSES:** This will be a virtual meeting that is held via webcast. Members of the public may attend the meeting via webcast and instructions for attending this virtual meeting will be posted one week prior to the meeting at: *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/index.html.*

**FOR FURTHER INFORMATION CONTACT:** James Berger, Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services; via email at *tickbornedisease@hhs.gov* or by phone at 202–795–7697.

**SUPPLEMENTARY INFORMATION:** At this meeting, the Working Group will also hear about one or more examples of other efforts that have been successfully undertaken to define a national or statewide approach to preventing, monitoring, diagnosing, and treating people with tick-borne diseases. In addition, federal resources, within and outside of HHS, that may be of use to the subcommittees as they do their work, such as the Department of Health and Human Services Internal Working Group on Lyme and Other Tick-Borne Diseases, will be presented.

The Working Group invites public comment on issues related to the Working Group's charge. Comments may be provided over the phone during the meeting or in writing. Persons who wish to provide comments by phone should review directions at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html* before submitting a request via email at *tickbornedisease@hhs.gov* on or before February 7, 2018. Phone comments will be limited to three minutes each to accommodate as many speakers as possible. A total of 30 minutes will be allocated to public comments. If more requests are received than can be accommodated, speakers will be randomly selected. The nature of the comments will not be considered in making this selection. Public comments may also be provided in writing. Individuals who would like to provide written comment should review directions at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html* before sending their comments to *tickbornedisease@hhs.gov* on or before February 7, 2018.

*Background and Authority:* The Tick-Borne Disease Working Group was established on August 10, 2017, in accordance with section 2062 of the *21st Century Cures Act,* and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to provide expertise and review all HHS efforts related to tick-borne diseases to help ensure interagency coordination and minimize overlap, examine research priorities, and identify and address unmet needs. In addition, the Working Group will report to the Secretary and Congress on their findings and any recommendations for the federal response to tick-borne disease prevention, treatment and research, and addressing gaps in those areas.

Dated: January 17, 2018.

**James Berger,**

*Alternate Designated Federal Officer, Office of HIV/AIDS and Infectious Disease Policy, Tick-Borne Disease Working Group.*

[FR Doc. 2018–01149 Filed 1–22–18; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

**AGENCY:** Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) announces the next meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee) regarding the development of national health promotion and disease prevention objectives for 2030. This meeting will be held online via webinar and is open to the public. The Committee will discuss the nation's health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will develop recommendations regarding: Leading Health Indicators; the setting of targets for a more focused set of measurable, nationally representative objectives; the roles of health and well-being, health equity, and law in Healthy People 2030; and the creation of a logic model for communicating the role of Healthy People 2030, disease prevention, and health promotion. Pursuant to the Committee's charter, the Committee's advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

**DATES:** The Committee will meet on February 28, 2018, from 2:00 p.m. to 5:00 p.m. Eastern Time (ET).

**ADDRESSES:** The meeting will be held online via webinar. To register to attend the meeting, please visit the Healthy People website at *http://www.healthypeople.gov.*

**FOR FURTHER INFORMATION CONTACT:** Emmeline Ochiai, Designated Federal Official, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8280 (telephone), (240) 453–8281 (fax). Additional information is available on the Healthy People website at *http://www.healthypeople.gov.*

**SUPPLEMENTARY INFORMATION:** The names and biographies of the Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee.*

*Purpose of Meeting:* Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 health objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

*Public Participation at Meeting:* Members of the public are invited to join the online Committee meeting. There will be no opportunity for oral public comments during this online Committee meeting. However, written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov.*

To join the Committee meeting, individuals must pre-register at the Healthy People website at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached and must be completed by 9:00 a.m. ET on February 28, 2018. A waiting list will be maintained should registrations exceed capacity and those individuals will be contacted as additional space for the meeting becomes available. Registration questions may be directed to *HealthyPeople@norc.org.*

**Authority:** 42 U.S.C. 300u and 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: January 17, 2018.

**Don Wright,**

*Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).*

[FR Doc. 2018–01143 Filed 1–22–18; 8:45 am]

BILLING CODE 4150–32–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the National Vaccine Advisory Committee

**AGENCY:** National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that a meeting is scheduled to be held for the National Vaccine Advisory Committee (NVAC). The meeting will be open to the public; public comment sessions will be held during the meeting.

**DATES:** The meeting will be held on February 7 and 8, 2018. The meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

**ADDRESSES:** U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW, Washington, DC 20201. The meeting can also be accessed through a live webcast on both days of the meeting. For more information, visit *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.* Participants may also register by emailing *nvpo@hhs.gov* or by calling (202) 690–5566 and providing their name, organization and email address.

**FOR FURTHER INFORMATION CONTACT:** National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Phone: (202) 690–5566; email: *nvac@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program. During the February 2018 NVAC meeting, sessions will consist of presentations on vaccine innovation, including the current status of adjuvants in vaccines, universal influenza, and an overview on the Secretary of the Department of Health and Human Services' Report to Congress on Vaccine Innovation in response to the 21st Century Cures Act; a report out on the recently approved Presidential Advisory Council on Combatting Antibiotic-Resistant Bacteria Report, ''Incentivizing the Development of Vaccines, Therapeutics, and Diagnostics to Combat Antibiotic Resistant Bacteria''; disparities in adult immunizations; and an update on strategies to support improving coverage for human papillomavirus vaccine. Please note that agenda items will be related to the charge of the Committee and are subject to change as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Public attendance at the meeting is limited to the available space. Individuals who plan to attend in person and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvpo@hhs.gov*) at least five business days prior to the meeting.

Dated: January 17, 2018.

**Roula Sweis,**

*Deputy Director, National Vaccine Program Office.*

[FR Doc. 2018–01142 Filed 1–22–18; 8:45 am]

BILLING CODE 4150–44–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Task Force on Research Specific to Pregnant Women and Lactating Women.

The meetings will be open to the public, 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.

*Name of Committee:* Task Force on Research Specific to Pregnant Women and Lactating Women.

*Date:* February 26–27, 2018.

*Time:* February 26, 2018, 8:30 a.m. to 5:00 p.m.; February 27, 2018, 8:00 a.m. to 3:00 p.m.

*Agenda:* The Task Force is charged with providing advice and guidance to the Secretary of HHS, regarding Federal activities related to identifying and addressing gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities.

**February 26th, 2018—Day 1**

8:30 a.m.—Welcome and Opening Remarks
8:40 a.m.—Introductions
8:45 a.m.—Summary and Discussion of work products from meetings 1 and 2
10:45 a.m.—Follow-up on Task Force Request regarding Lessons learned from Pediatrics
1:15 p.m.—Effective communication strategies with health care providers and the public on information relevant to pregnant women and lactating women
1:50 p.m.—Panel: Effective communication strategies with health care providers on information relevant to pregnant women and lactating women
3:30 p.m.—Panel: Effective communication strategies with the public on information relevant to pregnant women and lactating women.
4:10 p.m.—Discussion
5:00 p.m.—End of Day 1

**February 27th, 2018—Day 2**

8:00 a.m.—Recap from Day 1, Outline & Goals of Day 2
8:15 a.m.—Panel and open discussion to cover specific questions on the options for a plan or plans to identify and address gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies.
12:45 p.m.—Discussion of Key Points related to topic: *Effective communication strategies with health care providers and the public on information relevant to pregnant women and lactating women*
1:30 p.m.—Discussion of Key Points related to topic: *A plan to identify and address gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies*
2:15 p.m.—Review of Recommendations from TF1–3
2:45 p.m.—Action Items, Charge to Group
3:00 p.m.—Adjournment

*Place:* 6710B Rockledge Drive, Room 1425/1427 (1st Floor), Bethesda, MD 20817.

*Contact Person:* Ms. Lisa Kaeser, Executive Secretary, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 31 Center Drive, Room 2A03, MSC 2425, Bethesda, MD 20892, (301) 496–0536, *kaeserl@mail.nih.gov*.

Public comments are welcome either by filing written comments and/or providing oral comments at the meeting. Oral comments from the public will be scheduled on February 26, 2018, from approximately 10:00 a.m.–10:45 a.m. Any member of the public interested in presenting oral comments on February 26, 2018, should submit a letter of intent, a brief description of the organization represented, and the oral presentation to Ms. Lisa Kaeser (*Kaeserl@mail.nih.gov*) by 5:00 p.m. on Monday, February 19, 2018. Written

comments to be included at the meeting should also be sent to Lisa Kaeser by 5:00 p.m. on Monday, February 19, 2018.

The submitted presentations and any written comments will be formatted to be posted on the PRGLAC website for the record. Only one representative of an organization may be allowed to present oral comments. Presentations will be limited to three to five minutes per speaker depending on the number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received. Both printed and electronic copies are requested for the record.

Details and additional information about these meetings can be found at the NICHD website for the Task Force on Research Specific to Pregnant Women and Lactating Women (PRGLAC) *https://www.nichd.nih.gov/about/advisory/PRGLAC/Pages/index.aspx*.

Dated: January 17, 2018.

**Michelle Trout,**

*Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01082 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Epilepsy: Molecular Mechanisms.

*Date:* January 24, 2018.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 17, 2018.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01077 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

*Date:* February 12–13, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–RM–17–030: Novel and Innovative Tools to Facilitate Identification, Tracking, Manipulation, and Analysis of Glycans and their Functions.

*Date:* February 15, 2018.

*Time:* 10:00 a.m. to 3:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188 MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov*.

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

*Date:* February 15, 2018.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–RM–17–029: Innovative Adaptations to Simplify Existing Technologies for Manipulation and Analysis of Glycans.

*Date:* February 15, 2018.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188 MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Screenable Disorders: Therapeutics, Tools and Natural History.

*Date:* February 16, 2018.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cardiovascular Disorders.

*Date:* February 21, 2018.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov*.

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

*Contact Person:* Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Applications.

*Date:* February 22, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy., Arlington, VA 22202.

*Contact Person:* Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182 MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

*Contact Person:* Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

*Date:* February 22, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

*Contact Person:* Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

*Date:* February 22–23, 2018.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites—Chevy Chase Pavilion, 4300 Military Rd. NW, Washington, DC 20015.

*Contact Person:* Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

*Date:* February 22, 2018.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding Alzheimer's Disease in the Context of the Aging Brain and Integrative Research to Understand the Impact of Sex Differences on the Molecular Determinants of AD Risk and Responsiveness to Treatment.

*Date:* February 22, 2018.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

*Date:* February 22, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 17, 2018.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01076 Filed 1–22–18; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NHLBI Mentored Patient-Oriented Research Review Committee.

The meeting will be closed to the public in accordance with the provisions set forth in section 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:* Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

*Date:* February 22–23, 2018.

*Time:* 8:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–827–7992, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 17, 2018.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01079 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Trials Network Infrastructure.

*Date:* February 6–7, 2018.

*Time:* 8:00 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW, Washington, DC 20037.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Trials Network Infrastructure Panel 2.

*Date:* February 7, 2018.

*Time:* 11:30 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW, Washington, DC 20037.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

*Date:* February 19, 2018.

*Time:* 9:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Udall Center Review.

*Date:* March 7–8, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

*Contact Person:* Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 17, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01081 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Research.

*Date:* January 29, 2018.

*Time:* 3:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–16–034: NIDDK Ancillary Studies to Major Ongoing Clinical Research Studies in Digestive Sciences.

*Date:* February 7, 2018.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–16–034: NIDDK Ancillary Studies to Major Ongoing Clinical Research Studies in Digestive Diseases.

*Date:* February 14, 2018.
*Time:* 11:00 a.m. to 1:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.
*Date:* February 16, 2018.
*Time:* 8:00 a.m. to 12:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
*Contact Person:* Jian Yang, PL., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pragmatic Kidney Disease Research.
*Date:* February 27, 2018.
*Time:* 10:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Program Projects.
*Date:* February 27, 2018.
*Time:* 11:30 a.m. to 3:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nuition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: January 16, 2018.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01080 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Clinical Trials Review Committee.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.
*Date:* February 22–23, 2018.
*Time:* 8:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Garden Inn, Bethesda 7301 Waverly Street, Bethesda, MD 20814.
*Contact Person:* Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–827–7912, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 17, 2018.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–01078 Filed 1–22–18; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7001–N–01]**

### 30-Day Notice of Proposed Information Collection: Veterans Housing Rehabilitation and Modification Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* February 22, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 20, 2016 at 81 FR 39944.

### A. Overview of Information Collection

*Title of Information Collection:* Veterans Housing Rehabilitation and Modification Program.
*OMB Approval Number:* 2506-New.
*Type of Request:* New.
*Form Number:* SF–424; HUD 424–CB; HUD 424–CBW; SF–LLL; HUD–2880; HUD–2990; HUD–2991; HUD–2993; HUD–2994A; HUD–27061; and HUD–27300.

*Description of the need for the information and proposed use:* The purpose of this submission is for applications for the Veterans Housing Rehabilitation and Modification Program grant process. The Veterans Housing Rehabilitation and Modification program is funded by the Consolidated Appropriations Act of 2016, Section 1079 (Pub. L. 113–291). Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Quarterly reporting is required to monitor grant management.

*Respondents:* Public.

*Estimated Number of Respondents:* 200.

*Estimated Number of Responses:* 200.

*Frequency of Response:* Once.

*Average Hours per Response:* 12.74.

*Total Estimated Burdens:* 2,548.00.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: *January 11, 2018.*

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2018–01161 Filed 1–22–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7007–N–01]**

## 60-Day Notice of Proposed Information Collection: Rent Reform Demonstration: 36-Month Follow-Up Survey and Comprehensive Impact Analysis

**AGENCY:** Office of Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* March 26, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone (202) 402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–5000; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone (202) 402–5535 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Rent Reform Demonstration: 36-Month Follow-Up Survey and Comprehensive Impact Analysis.

*OMB Approval Number:* 2528–0306.

*Type of Request:* Revision.

*Agency Form Numbers:* No agency forms will be used.

*Description of the need for the information and proposed use:* The U.S. Department of Housing and Urban Development (HUD) is conducting the Rent Reform Demonstration under contract with MDRC and its subcontractors (The Bronner Group, Quadel Consulting Corporation, and the Urban Institute). The 36-month follow-up survey will be conducted by a survey contractor. The project is a random assignment trial of an alternative rent system. In 2015 and 2016, 6,660 families were randomly assigned to either participate in the new/alternative rent system or to continue in the current system. For voucher holders, outcomes of the alternative system are hypothesized to be increases in earnings, employment and job retention, among others. Random assignment limits the extent to which selection bias drives observed results. The demonstration will document the progress of a group of housing voucher holders, who were drawn from current residents at the four Moving to Work (MTW) Demonstration public housing agencies (PHAs) that are participating in the Rent Reform Demonstration:

(1) Lexington Housing Authority (LHA), Lexington, Kentucky;

(2) Louisville Metro Housing Authority (LMHA), Louisville, Kentucky;

(3) San Antonio Housing Authority (SAHA), San Antonio, Texas; and

(4) District of Columbia Housing Authority (DCHA), Washington, DC.

The impact evaluation's intent is to gain an understanding of the impact of the alternative rent system on the families as well as the administrative burden on Public Housing Agencies (PHAs). Data collection will include the families that are part of the treatment and control groups, as well as PHA staff. Data for this evaluation will be gathered through a variety of methods including informational interviews, direct observation, surveys, and analysis of administrative records. The work covered under this information request is for the 36-month follow-up survey that will document and contextualize administrative data findings related to employment, earnings, and hardship and study participants' experience with the demonstration.

*Respondents:* 6,660.

This includes:

• Families with housing vouchers, remaining in the current rent system (control group): up to 3,350.

• Families with housing vouchers, enrolled in the alternative rent system (treatment group): up to 3,310.

*Estimated total number of hours needed to prepare the information collection including number of respondents, frequency of response, hours of response, and cost of response time:* Based on the assumptions and table below, we calculate the annual burden hours for the study to be 4,462.20 hours and the annual cost to be $40,338.29. For the study consent form and the 36-month follow-up survey, we averaged the median hourly minimum wage across the 4 study sites: 1,904 enrolled participants, which is 28.59 percent of the study sample, in Washington, DC at $13.50 per hour expected in Q3 2018 (28.59 percent x $13.50 = $3.86), and 4,756 enrolled participants, which is 71.41 percent of the study sample, in the remaining sites at $7.25 per hour in Kentucky and Texas (71.41 percent x $7.25 = $5.18) produces a weighted average of the hourly wage rates equal to $9.04.

All assumptions are reflected in the table below.

| Information collection | Number of respondents | Frequency of response | Burden hour per response | Annual burden hours | Hourly cost per response | Total cost |
|---|---|---|---|---|---|---|
| Consent Forms | 6,660 | 1 | Up to 10 minutes (or 0.17 hours). | 1,132.2 hours (6,660 *0.17). | $9.04 [1] | $10,235.09 (6,660* $9.04 * 0.17 hours) |
| Baseline Information | 6,660 | 1 | 30 minutes, on average (or 0.50 hours). | 3,330 hours (6,660 *0.50). | 9.04 | $30,103.20 (6,660 *$9.04 * 0.50 hours) |
| Total | 6,660 | | | 4,462.20 | | $40,338,29 |

[1] We have estimated the hourly wage at the expected prevailing minimum wage, which is $7.25 per hour in Kentucky and Texas and is the same as the federal minimum wage rate. (Source: U.S. Department of Labor, *https://www.dol.gov/whd/minwage/america.htm*). The hourly minimum wage in the District of Columbia is expected to be $13.50 by Q3 of 2018. (Source: District of Columbia Department of Employment Services, *http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Minimum%20Wage%20Increase%20-%20DC%20Register%20Public%20Notice.pdf*). Accordingly, we assume an hourly rate across all sites of $9.04 that represents an average of these two rates, weighted by the enrolled sample at each site. (1,904 enrolled participants in Washington, DC and 4,756 enrolled in the remaining sites).

## B. Solicitation of Public Comment

This notice solicits comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 9, 2018.

**Todd M. Richardson,**

*Acting General Deputy Assistant Secretary for Policy Development and Research.*

[FR Doc. 2018–01160 Filed 1–22–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2017–0079; XXXXX–XXX–0000 FY18–XX]**

### Species Proposals for Consideration at the Eighteenth Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We (the U.S. Fish and Wildlife Service) invite you to provide us with information and recommendations on animal and plant species to be considered as candidates for U.S. proposals to amend Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention) at the upcoming eighteenth meeting of the Conference of the Parties (CoP18). Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendices. We also describe the U.S. approach to preparations for CoP18. We will publish a second **Federal Register** notice specifically to solicit information and recommendations on possible resolutions, decisions, and agenda items for discussion at CoP18 and to provide information on how to request approved observer status.

**DATES:** We will consider all information and comments we receive on or before March 26, 2018.

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

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2017–0079.

• *Hard copy:* Submit by U.S. mail or hand-delivery to Public Comments Processing; Attn: Docket No. FWS–HQ–IA–2017–0079; U.S. Fish and Wildlife Service Headquarters; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Rosemarie Gnam, Chief, Division of Scientific Authority, 703–358–1708 (phone); 703–358–2276 (fax); or *scientificauthority@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, hereby notify you of the convening of 18th meeting of the Conference of the Parties (CoP18) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention), which is scheduled to be held in Sri Lanka from 23 May to 3 June 2019. We invite you to provide us with information and recommendations on animal and plant species to be considered as candidates

for U.S. proposals to amend Appendices I and II of CITES at CoP18. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendices. We also describe the U.S. approach to preparations for CoP18. We will publish subsequent **Federal Register** notices to request information and recommendations on resolutions, decisions, and agenda items for discussion at CoP18 and to provide information on how to request approved observer status.

**Background**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention) is an international treaty designed to regulate international trade in certain animal and plant species that are now, or potentially may become, threatened with extinction. These species are included in the Appendices to CITES, which are available on the CITES Secretariat's website at *http://www.cites.org/eng/disc/species.php.*

Currently there are 183 Parties to CITES, 182 countries, including the United States, and one regional economic integration organization, the European Union. The Convention calls for regular meetings of the Conference of the Parties (Conference, or CoP) every 2–3 years, unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by all the Parties at the meeting.

This is our first in a series of **Federal Register** notices that, together with a public meeting (time and place to be announced), provide you with an opportunity to participate in the development of the U.S. submissions to, and negotiating positions for, the 18th regular meeting of the Conference of the Parties to CITES (CoP18). Our regulations governing this public process are found in title 50 of the Code of Federal Regulations (CFR) at § 23.87.

**U.S. Approach for the Conference of the Parties**

*What are the priorities for U.S. submissions to CoP18?*

Priorities for U.S. submissions to CoP18 continue to be consistent with the overall objective of U.S. participation in the Convention: to maximize the effectiveness of the Convention in the conservation and sustainable use of species subject to international trade. With this in mind, we plan to consider the following factors in determining issues to submit for inclusion in the agenda at CoP18:

(1) *Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?* Since our primary responsibility is the conservation of our domestic wildlife resources, we will give native species the highest priority. We will place particular emphasis on terrestrial and freshwater species with the majority of their range in the United States and its territories that are or may be traded in significant numbers; marine species that occur in U.S. waters or for which the United States is a major trader; and threatened and endangered species for which we and other Federal and State agencies already have statutory responsibility for protection and recovery. We also consider CITES listings as a proactive measure to monitor and manage trade in native species in order to preclude the need for the application of stricter measures, such as listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or inclusion in CITES Appendix I.

(2) *Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?* As a major importer of wildlife, plants, and their products, the United States has taken responsibility, by working in close consultation with range countries, for addressing cases of potential over-exploitation of foreign species in the wild. In some cases, the United States may not be a range country or a significant trading country for a species, but we will work closely with other countries to conserve species being threatened by unsustainable exploitation for international trade. We will consider CITES listings for species not native to the United States if these listings will assist in addressing cases of known or potential over-exploitation of foreign species in the wild, and in preventing illegal, unregulated trade, especially if the United States is a major importer. These species will be prioritized based on the extent of trade and status of the species, and also the role the species plays in the ecosystem, with emphasis on those species for which a CITES listing would offer the greatest conservation benefits to the species, associated species, and their habitats.

(3) *Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?* The United States will consider the inclusion of such a species under CITES when it would enhance the conservation of the species by ensuring that international trade is effectively regulated and not detrimental to the survival of the species.

**Request for Information and Recommendations for Amending Appendices I or II**

*Criteria for Inclusion*

The purpose of this notice is to request information and recommendations that will help us identify species that the United States should propose for addition to, removal from, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES specialists on zoological and botanical nomenclature. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. We encourage the submission of information on any species for possible inclusion in the Appendices if the species is subject to international trade that is, or may become, detrimental to the survival of the species. We also encourage you to keep in mind the U.S. approach to CoP18, described in this notice in the section U.S. Approach for the Conference of the Parties, when considering which species the United States should propose for inclusion in the Appendices.

We are not necessarily requesting complete proposals, but they are always welcome. However, we are asking you to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of international as well as domestic trade in the species, especially trend information. You may also provide any other relevant information, and we appreciate receiving a list of references.

The term ''species'' is defined in CITES as ''any species, subspecies, or

geographically separate population thereof.'' Each species for which trade is controlled under CITES is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES (text of the Convention is on the CITES Secretariat's website at *http://www.cites.org/eng/disc/text.php*). Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also includes species that must be subject to regulation in order that trade in other CITES-listed species may be brought under effective control. Such ''look-alike'' inclusions usually are necessary because of difficulty inspectors have at ports of entry or exit in distinguishing one species from other species.

CITES specifies that international trade in any readily recognizable parts or derivatives of animals included in Appendices I or II, or plants included in Appendix I, is subject to the same conditions that apply to trade in the whole organisms. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species included in Appendix II. Parts and derivatives often not included (*i.e.,* not regulated) for Appendix-II plants are seeds, spores, pollen (including pollinia), and seedlings or tissue cultures obtained in vitro and transported in sterile containers. You may refer to the CITES Appendices on the Secretariat's website at *http://www.cites.org/eng/app/index.php* for further exceptions and limitations.

In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24 (Rev. CoP17)). These criteria apply to all listing proposals and are available from the CITES Secretariat's website at *http://www.cites.org/eng/res/index.php* or upon request from the Division of Scientific Authority at *scientificauthority@fws.gov,* or via mail from CITES—Division of Scientific Authority; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041–3803. Resolution Conf. 9.24 (Rev. CoP17) also provides a format for proposals to amend the Appendices. This information is also available upon request from the Division of Scientific Authority or via mail (see contact information above).

*What information should be submitted?*

To provide us with information and recommendations on species subject to international trade for possible proposals to amend the Appendices, please include as much of the following information as possible in your submission:

(1) Scientific name and common name;

(2) Population size estimates (including references if available);

(3) Population trend information;

(4) Threats to the species (other than trade);

(5) The level or trend of international trade (as specific as possible, but without a request for new searches of our records);

(6) The level or trend in total take from the wild (as specific as reasonable); and

(7) A short summary statement clearly presenting the rationale for inclusion in, or removal or transfer from, one of the Appendices, including which of the criteria in Resolution Conf. 9.24 (Rev. CoP17) are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 (Rev. CoP17) for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must also be in accordance with the precautionary measures described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP17).

*What will we do with the information we receive?*

The information that you submit will help us decide if we should submit, or co-sponsor with other Parties, a proposal to amend the CITES Appendices. However, there may be qualifying species for which we may decide not to submit a proposal to CoP18. Our decision will be based on a number of factors, including available scientific and trade information; whether or not the species is native to the United States; and, for foreign species, whether or not a proposal is supported or co-sponsored by at least one range country for the species. These factors and others are included in the U.S. Approach for the Conference of the Parties section. We will carefully consider all factors of the U.S. approach when deciding which species the United States should propose for inclusion in the Appendices.

We will consult range countries for foreign species, and for species we share with other countries, after receiving and analyzing the information provided by the public in response to this notice as well as other information available to us.

One important function of the CITES Scientific Authority of each Party is monitoring the international trade in plant and animal species and ongoing scientific assessments of the impact of that trade on species. For native U.S. species included in Appendices I and II, we monitor trade and export permits authorized so that we can prevent overutilization and restrict exports if necessary. We also work closely with the States to ensure that species are correctly listed in the CITES Appendices (or not listed, if listing is not warranted). For these reasons, we actively seek information about U.S. and foreign species subject to international trade.

**Next Steps**

The next regular meeting of the Conference of the Parties (CoP18) is scheduled to be held in Sri Lanka 23 May to 3 June 2019. The United States must submit any proposals to amend Appendix I or II, or any draft resolutions, decisions, or agenda items for discussion at CoP18, to the CITES Secretariat at least 150 days prior to the start of the meeting. In order to meet this deadline and to prepare for CoP18, we have developed a tentative U.S. schedule.

We plan to publish a **Federal Register** notice approximately 16 months prior to CoP18; in that notice, we intend to request potential resolutions, decisions, and agenda items for discussion at CoP18. Approximately 12 months prior to CoP18, we intend to announce the tentative species proposals that the United States is considering submitting for CoP18 and request further information and comments. Approximately 10 months prior to CoP18, we plan to publish a **Federal Register** notice announcing proposed resolutions, decisions, and agenda items the United States is considering submitting for CoP18. Approximately 5 months prior to CoP18, we will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP18.

Through a series of additional notices and website postings in advance of CoP18, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP18, and about how to obtain observer status

from us. We will also publish an announcement of a public meeting tentatively to be held approximately 5 months prior to CoP18; that meeting will enable us to receive public input on our positions regarding CoP18 issues.

The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

**Author**

The primary author of this notice is Thomas E.J. Leuteritz, Division of Scientific Authority, U.S. Fish and Wildlife Service.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Gregory J. Sheehan,**

*Principal Deputy Director.*

[FR Doc. 2018–01128 Filed 1–22–18; 8:45 am]

**BILLING CODE 4333–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/ A0A501010.999900253G; OMB Control Number 1076–0182]**

### Agency Information Collection Activities; Sovereignty in Indian Education Grant Program

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before March 26, 2018.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to the Dr. Maureen Lesky, Bureau of Indian Education, 1011 Indian School Road NW, Albuquerque, NM 87104; or by email to *Maureen.Lesky@bie.edu.* Please reference OMB Control Number 1076–0182 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact to Dr. Maureen Lesky by email at *Maureen.Lesky@bie.edu,* or by telephone at (505) 563–5397.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Indian Tribes and Tribal Organizations may submit proposals to support their efforts to take control and operate BIE-funded schools located on the tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant.

*Title of Collection:* Sovereignty in Indian Education Grant Program.

*OMB Control Number:* 1076–0182.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Indian Tribes and/or Tribal Education Departments.

*Total Estimated Number of Annual Respondents:* 11 per year.

*Total Estimated Number of Annual Responses:* 55 per year.

*Estimated Completion Time per Response:* Ranges from 1 hour to 40 hours.

*Total Estimated Number of Annual Burden Hours:* 682 hours.

*Respondent's Obligation:* Required to Obtain a Benefit.

*Frequency of Collection:* Proposals and Annual reports once per year and Budget Reports are submitted 4 times per year.

*Total Estimated Annual Nonhour Burden Cost:* $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Elizabeth K. Appel,**

*Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.*

[FR Doc. 2018–01107 Filed 1–22–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/A0A501010.999900253G; OMB Control Number 1076–0120]**

### Agency Information Collection Activities; Bureau of Indian Education Adult Education Program

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information.

**DATES:** Interested persons are invited to submit comments on or before March 26, 2018.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW, MS 3609–MIB, Washington, DC 20240; or by email to *Juanita.Mendoza@bie.edu.* Please reference OMB Control Number 1076–0120 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Juanita Mendoza by email at *Juanita.Mendoza@bie.edu,* or by telephone at (202) 208–3559.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The Bureau of Indian Education (BIE) is seeking renewal of the approval for the information collection conducted under 25 CFR part 46 to manage program resources and for fiscal accountability and appropriate direct services documentation. Approval for this collection expires on March 31, 2018. This information includes an annual report form. No changes are being made to the approved burden hours and forms for this information collection.

*Title of Collection:* Bureau of Indian Education Adult Education Program.

*OMB Control Number:* 1076–0120.

*Form Number:* BIA Form 62123.

*Type of Review:* Extension without change of currently approved collection.

*Respondents/Affected Public:* Individuals (Tribal Adult Education Program Administrators).

*Total Estimated Number of Annual Respondents:* 70 per year, on average.

*Total Estimated Number of Annual Responses:* 70 per year, on average.

*Estimated Completion Time per Response:* 4 hours.

*Total Estimated Number of Annual Burden Hours:* 280 hours.

*Respondent's Obligation:* Required to Obtain a Benefit.

*Frequency of Collection:* Once per year.

*Total Estimated Annual Nonhour Burden Cost:* $200.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Elizabeth K. Appel,**

*Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.*

[FR Doc. 2018–01106 Filed 1–22–18; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0160]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Verification of Indian Preference for Employment in BIA and IHS

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before February 22, 2018.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4513 MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: *laurel.ironcloud@bia.gov.* Please reference OMB Control Number 1076–0160 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Ms. Laurel Iron Cloud by email at *laurel.ironcloud@bia.gov,* or by telephone at (202) 513–7641. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting

comments on this collection of information was published on October 19, 2017 (82 FR 48722). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The BIA is seeking renewal of the approval for the information collection conducted under 25 U.S.C. 43, 36 Stat. 472, inter alia, and implementing regulations, at 25 CFR part 5, regarding verification of Indian preference for employment. The purpose of Indian preference is to encourage qualified Indian persons to seek employment with the BIA and Indian Health Service (IHS) by offering preferential treatment to qualified candidates of Indian heritage. BIA collects the information to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform functions formerly performed as part of the BIA and IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendent of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States.

*Title of Collection:* Verification of Indian Preference for Employment in BIA and IHS.

*OMB Control Number:* 1076–0160.

*Form Number:* BIA 4432.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Qualified Indian persons who are seeking preference in employment with the BIA and IHS.

*Total Estimated Number of Annual Respondents:* 5,000 per year, on average.

*Total Estimated Number of Annual Responses:* 5,000 per year, on average.

*Estimated Completion Time per Response:* 30 minutes.

*Total Estimated Number of Annual Burden Hours:* 2,500 hours.

*Respondent's Obligation:* A response is required to obtain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* $6,920.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Elizabeth K. Appel,**

*Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.*

[FR Doc. 2018–01109 Filed 1–22–18; 8:45 am]

BILLING CODE 4337–15–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0114]**

### Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before February 22, 2018.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Jacquelyn Cheek, Special Assistant to the Director, Bureau of Indian Education, 1849 C Street NW, Mailstop 3609–MIB, Washington, DC 20240; facsimile: (202) 208–3312; or email to: *Jacquelyn.Cheek@bie.edu.* Please reference OMB Control Number 1076–0114 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Ms. Jacquelyn Cheek, phone: 202–631–4074. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 27, 2017 (82 FR 19382). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of

public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The BIE is requesting early renewal of OMB approval for the admission forms for Haskell and SIPI. These admission forms are used in determining program eligibility of American Indian and Alaska Native students for educational services. These forms are utilized pursuant to the Blood Quantum Act, Public Law 99–228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884. The application was revised following input from students on the form. Haskell reduced the length of the application form to a page and a half. SIPI's application did not change. Submission of these eligibility application forms is mandatory in determining a student's eligibility for educational services. The information is collected on two forms: Application for Admission to Haskell form and SIPI form.

*Title of Collection:* Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

*OMB Control Number:* 1076–0114.

*Form Number:* None.

*Type of Review:* Early revision of currently approved collection.

*Respondents/Affected Public:* Students.

*Total Estimated Number of Annual Respondents:* 4,000 per year, on average.

*Total Estimated Number of Annual Responses:* 4,000 per year, on average.

*Estimated Completion Time per Response:* 30 minutes per Haskell application; 30 minutes per SIPI application.

*Total Estimated Number of Annual Burden Hours:* 1,750 hours.

*Respondent's Obligation:* Response is required to obtain a benefit.

*Frequency of Collection:* Once per year for Haskell; each trimester for SIPI.

*Total Estimated Annual Nonhour Burden Cost:* $10,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Elizabeth K. Appel,**

*Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.*

[FR Doc. 2018–01108 Filed 1–22–18; 8:45 am]

**BILLING CODE 4337–15–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–562 and Investigation No. 332–563]**

## Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; and Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; Scheduling of Hearing

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of public hearing.

**SUMMARY:** The Commission has scheduled a public hearing for March 6, 2018, in connection with the second and third of three investigations on global digital trade: Investigation No. 332–562, *Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness;* and investigation No. 332–563, *Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness.* Procedures relating to participation are set forth below.

**DATES:**

February 20, 2018: Deadline for filing request to appear at the public hearing

February 26, 2018: Deadline for filing pre-hearing briefs and statements

March 6, 2018: Public hearing

March 20, 2018: Deadline for filing post-hearing briefs and statements

April 6, 2018: Deadline for filing all other written submissions for investigation No. 332–362

August 15, 2018: Deadline for filing all other written submissions for investigation No. 332–563

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public file for these investigations may be reviewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information relating to *Global Digital Trade 2,* contact co-Project Leaders Dan Kim (202–205–3234 or *dan.kim@usitc.gov*) and Alissa Tafti (202–205–3244 or *alissa.tafti@usitc.gov*); and for information relating to *Global Digital Trade 3,* contact Project Leader Ricky Ubee (202–205–3493 or *ravinder.ubee@usitc.gov*) or Deputy Project Leader Christopher Robinson (202–205–2602 or *christopher.robinson@usitc.gov*). For information on the legal aspects of these investigations, contact William Gearhart in the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:** In his letter of January 13, 2017, the United States Trade Representative (USTR) requested that the Commission conduct three investigations and prepare three reports relating to global digital trade. The Commission delivered the first of these reports, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions,* on August 29, 2017 and released it to the public on September 28, 2017.

The Commission invites members of the public with an interest in the matter to participate in a hearing for the second and third investigations in this series and provide information that relates to the reports that the Commission has been asked to prepare. For the second report (*Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness*) the USTR requested that the Commission, based on available information, including a survey of U.S. firms in selected industries particularly involved in digital trade:

- Provide qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply business-to-business digital products and services abroad; and

• Assess, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and services, as well as on international trade and investment flows associated with digital products and services related to significant business-to-business technologies.

The Commission expects to deliver this second report to the USTR by October 29, 2018.

For the third report (*Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness*) the USTR requested that the Commission, based on available information, including a survey of U.S firms in selected industries particularly involved in digital trade:

• Provide qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply business-to-consumer digital products and services abroad; and

• Assess, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and services, as well as on international trade and investment flows associated with digital products and services related to significant business-to-consumer technologies.

The Commission expects to deliver this third report to the USTR by March 29, 2019.

*Public Hearing:* A public hearing in connection with the second and third investigations will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on March 6, 2018. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m. on February 20, 2018, in accordance with the requirements in the ''Written Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m. on February 26, 2018; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed no later than 5:15 p.m. on March 20, 2018. In the event that, as of the close of business on February 20, 2018, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after February 20, 2018, for information concerning whether the hearing will be held.

*Written Submissions:* In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning these investigations. All written submissions should be addressed to the Secretary. Written submissions relating to investigation No. 332–562, or both investigation Nos. 332–562 and 332–563, should be received no later than 5:15 p.m. on April 6, 2018. Written submissions relating only to investigation No. 332–563 should be received no later than 5:15 p.m. on August 15, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraphs for further information regarding confidential business information or ''CBI''). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

*Confidential Business Information:* Any submissions that contain CBI must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that CBI is clearly identified by means of brackets. All written submissions, except for those containing CBI, will be made available for inspection by interested parties.

All information, including CBI, submitted in these two investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel (a) for cybersecurity purposes or (b) in monitoring user activity on U.S. government classified networks. The Commission will not otherwise disclose any CBI in a manner that would reveal the operations of the firm supplying the information.

*Reports To Be Classified and Privileged:* In his request letter, the USTR said that, in accordance with USTR policy on implementing Executive Order 13526, as amended, he was directing the Commission to mark or identify as ''Confidential,'' for a period of ten years, such portions of the Commission's second and third reports and related working papers that contain the Commission's analysis of the impact of barriers to digital trade on (1) U.S. imports and exports of digital products and services and (2) the competitiveness of U.S. companies. The USTR also indicated that he intends to treat the Commission's second and third reports as interagency memoranda containing predecisional advice subject to the deliberative process privilege.

*Summaries of Written Submissions:* The Commission intends to include summaries of the written submissions filed by interested persons in the second and third reports. Persons wishing to have a summary of their submission included in the reports should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any CBI. The summary will be included in the reports as provided if it meets requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

Notice of institution of the second and third investigations in this series was published in the **Federal Register** on May 8, 2017 (82 FR 21404); notice of institution of the first investigation in this series was published in the **Federal Register** on February 10, 2017 (82 FR 10397).

By order of the Commission.

Issued: January 18, 2018.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–01156 Filed 1–22–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–593–596 and 731–TA–1401–1406 (Preliminary)]**

## Large Diameter Welded Pipe From Canada, China, Greece, India, Korea, and Turkey; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–593–596 and 731–TA–1401–1406 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of large diameter welded pipe from Canada, China, Greece, India, Korea, and Turkey, provided for in subheadings 7305.11, 7305.12, 7305.19, 7305.31, and 7305.39 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China, India, Korea, and Turkey. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 5, 2018. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 12, 2018.

**DATES:** January 17, 2018.

**FOR FURTHER INFORMATION CONTACT:** Abu Kanu ((202) 205–2597), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on January 17, 2018, by American Cast Iron Pipe Company (Birmingham, Alabama), Berg Steel Pipe Corp. (Panama City, Florida), Berg Spiral Pipe Corp. (Mobile, Alabama), Dura-Bond Industries, Inc. (Export, Pennsylvania), Skyline Steel (Newington, Virginia), and Stupp Corporation (Baton Rouge, Louisiana).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, February 07, 2018, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *tyrell.burch@usitc.gov* (DO NOT FILE ON EDIS) on or before February 5, 2018. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 12, 2018, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating

to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 18, 2018.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–01157 Filed 1–22–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1071]**

### Certain Wireless Audio Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating Investigation Based on Settlement and License Agreements

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) of the presiding administrative law judge (''ALJ''), granting a joint motion to terminate the above-captioned investigation based on settlement and license agreements.

**FOR FURTHER INFORMATION CONTACT:** Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov* . Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 15, 2017, based on a complaint filed by Broadcom Limited of San Jose, California; and Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore (collectively, ''Broadcom''). 82 FR 43404 (Sep. 15, 2017). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless audio systems and components thereof by reason of infringement of claim 20 of U.S. Patent No. 6,684,060. The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). The notice of investigation named DTS, Inc. of Calabasas, California; Phorus, Inc. of Calabasas, California; MartinLogan, Ltd. of Lawrence, Kansas; Paradigm Electronics Inc. of Ontario, Canada; Anthem Electronics, Inc. of Ontario, Canada; Wren Sound Systems, LLC of Phoenixville, Pennsylvania; McIntosh Laboratory, Inc. of Binghamton, New York; Definitive Technology of Owings Mills, Maryland; and Polk Audio Inc. of Vista, California, as respondents. The Office of Unfair Import Investigations is also a party in this investigation.

On December 18, 2017, Broadcom and Respondents filed a joint motion to terminate the investigation in its entirety on the basis of settlement and license agreements. The ALJ issued the subject ID granting the motion on December 20, 2017. The ALJ found that the motion complies with Commission Rules and termination of the investigation will not adversely affect the public interest. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 18, 2018.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–01129 Filed 1–22–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1060]**

### Certain Consumer Electronic Devices, Including Televisions, Gaming Consoles, Mobile Phones and Tablets, and Network-Enabled DVD and Blu-Ray Players; Termination of Investigation on the Basis of Settlement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 27), which terminated the investigation on the basis of settlement.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 13, 2017, based upon a complaint filed by ARRIS Enterprises LLC of Sewanee, Georgia (''ARRIS''). 82 FR 27078 (June 13, 2017). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain consumer electronic devices, including televisions, gaming consoles, mobile phones and tablets, and network-enabled DVD and Blu-ray players by reason of the infringement of certain claims of U.S. Patent No. 6,473,858; U.S. Patent No. 6,934,148;

U.S. Patent No. 7,113,502; U.S. Patent No. 7,752,564; U.S. Patent No. 8,300,156; and U.S. Patent No. 9,521,466. The notice of investigation named as respondents: Sony Corporation of Tokyo, Japan; Sony Corporation of America, of New York, New York; Sony Electronics Inc. of San Diego, California; Sony Interactive Entertainment, Inc. of Tokyo, Japan; as well as Sony Mobile Communications (USA), Inc., Sony Interactive Entertainment LLC, and Sony Interactive Entertainment America LLC, each of San Mateo, California (collectively, ''Sony''). The Office of Unfair Import Investigations was also named as a party.

On December 15, 2017, ARRIS and Sony filed a joint motion to terminate the investigation in view of a patent cross license agreement between the parties that settles this investigation. On December 18, 2017, the Commission investigative attorney responded in support of the motion.

On December 20, 2017, the presiding ALJ granted the motion as the subject ID. The ID finds that the motion complies with Commission Rules, and that granting the motion is not contrary to the public interest. ID at 1–3; *see* 19 CFR 210.21(b), 210.50(b)(2).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 18, 2018.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–01155 Filed 1–22–18; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Organix, Inc.

*Correction*

Notice document 2017–28180, appearing on page 539, in the issue of January 4, 2018 was inadvertently published in error and should not have appeared in the **Federal Register**.

[FR Doc. C1–2017–28180 Filed 1–22–18; 8:45 am]

**BILLING CODE 1301–00–D**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Labor Certification Process for the Temporary Employment of Aliens in Non-Agricultural Employment in the United States

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce to employers and other interested stakeholders about a process change to better assure fairness regarding the issuance of H–2B temporary labor certifications due to the unprecedented volume of applications received on January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Box #12–200, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202–513–7350 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627.

**SUPPLEMENTARY INFORMATION:**

#### H–2B Visas: Statutory Background and OFLC Process

The Immigration and Nationality Act (INA) sets the annual number of aliens who may be issued H–2B visas or otherwise provided H–2B nonimmigrant status by the Department of Homeland Security (DHS) to perform temporary non-agricultural work at 66,000. Up to 33,000 H–2B visas may be issued in the first half of a fiscal year (October 1 to March 31), and the remaining semi-annual allocation of 33,000 visas will be available for employers seeking to hire H–2B workers during the second half of the fiscal year (April 1 to September 30). This announcement concerns the processing of the H–2B temporary labor certification applications for the April 1–September 30, 2018 period of need.

The Employment and Training Administration's Office of Foreign Labor Certification (OFLC) process for obtaining an H–2B certification is a two-step process for employers. Employers must first file a complete and accurate *Application for Temporary Employment Certification* (ETA Form 9142B). Following review and acceptance from OFLC, the employer must then conduct recruitment of U.S. workers and file a recruitment report. The Department reviews those reports and issues final labor certification decisions to employers who comply with all regulatory requirements as they are returned to OFLC by employers. Employers granted temporary labor certification are then eligible to file a petition with the United States Citizenship and Immigration Services (USCIS) at the DHS.

#### Process Change for Granting Temporary Labor Certification

Because of the intense competition for H–2B visas in recent years, the semi-annual visa allocation, and the regulatory requirement that employers apply with OFLC for a temporary labor certification 75 to 90 days before the start date of work, employers who wish to obtain visas for their workers under the semi-annual allotment for periods of need beginning from April 1–September 30, 2018, must promptly apply for a temporary labor certification and then file a petition with USCIS before the cap is reached. As a result, OFLC typically experiences a significant ''spike'' in labor certification applications at the beginning of January for temporary or seasonal jobs during the U.S.'s early spring and summer weather months.

Thus, on January 1, 2017 (FY 2017), OFLC received 1,538 applications covering approximately 26,673 worker positions for a work start date of April 1, 2017; approximately 80% of the entire semi-annual visa allocation of 33,000. By contrast, on January 1, 2018, OFLC received approximately 4,498 applications covering 81,008 worker positions requesting an April 1, 2018, start date of work. This unprecedented level of employer requests for H–2B workers on January 1, 2018 is approximately three times greater than the number of applications received on January 1, 2017, and more than two and one-half times greater than the 33,000 semi-annual visa allotment for FY 2018 permitted under the INA. In previous years, OFLC processed applications as expeditiously as possible in a manner irrespective of the time of day the application was filed, only focusing on processing applications by the day they were filed. Although OFLC is working as expeditiously as possible to issue first actions, review responses to Notices of Deficiency, and issue Notices of Acceptance, the overwhelming workload this year has strained OFLC's processing system and resulted in delays for the majority of all applications filed on January 1. OFLC

expects the first 2,400 applications filed on January 1 (which represent approximately 40,000 worker positions) will be processed for first actions by next week, with the remainder of all filed applications processed for first actions in the weeks that follow.

Employers receiving Notices of Acceptance can proceed to meet the additional regulatory requirements, including recruitment of U.S. workers and submission of recruitment reports. Employers receiving Notices of Deficiency that are corrected, and who then receive a Notice of Acceptance, can also proceed to meet the additional regulatory requirements. In order to promote fairness for employers in accessing the H–2B program and due to the unprecedented volume of applications on January 1, OFLC is making a change to its process regarding the issuance of final labor certification decisions. This process change will better reflect the sequential order in which employers filed applications. Thus, OFLC will not begin releasing certified H–2B applications (Form ETA–9142B *Application for Temporary Employment Certification*) until February 20, 2018. On that day, OFLC will release certified H–2B applications that have met all regulatory requirements as of that day *in sequential order based on the original calendar day and time the application was filed (i.e., receipt time).* Thereafter, OFLC will continue to release certified H–2B applications in a sequential manner until all applications are released. OFLC will continue to issue rejections, withdrawals, and denials of labor certification applications in accordance with standard procedures. This process change will allow employers who filed promptly on January 1, 2018, sufficient time to meet regulatory requirements, including the recruitment and hiring of qualified and available U.S. workers, thus preserving the sequential order of filing that took place on January 1, 2018, to the extent possible.

As required, OFLC will grant temporary labor certification only after the employer's H–2B application has met all the requirements for approving labor certification under 20 CFR 655.50 and the subpart. In accordance with regulatory requirements, OFLC will send all certified H–2B applications to the employer, or the employer's authorized attorney or agent, by means normally assuring next day delivery.

Signed in Washington, DC, this 18th day of January 2018.

**William W. Thompson, II,**

*Administrator, Office of Foreign Labor Certification.*

[FR Doc. 2018–01166 Filed 1–18–18; 4:15 pm]

**BILLING CODE 4510–FP–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

**TIME AND DATE:** Open meeting of the Executive Committee of the National Science Board, to be held Monday, January 29, 2018, from 4:00–5:00 p.m. EST.

**PLACE:** This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Committee Chair's Opening Remarks; approval of Executive Committee Minutes of October 10, 2017; discuss issues and topics for an agenda of the NSB Meeting scheduled for February 21–22, 2018.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: James Hamos, 2415 Eisenhower Ave., Alexandria, VA 22314. Telephone: (703) 292–8000.

You may find meeting information and updates (time, place, subject matter or status of meeting) at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

**SUPPLEMENTARY INFORMATION:** An audio listening line will be available for the public. Members of the public must contact the Board Office to request the number by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

**Chris Blair,**

*Executive Assistant to the NSB Office.*

[FR Doc. 2018–01303 Filed 1–19–18; 4:15 pm]

**BILLING CODE 7555–01–P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Regular Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** 1:00 p.m., Wednesday, February 14, 2018.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington DC 20002.

**STATUS:** Open (with the exception of Executive Sessions).

**CONTACT PERSON:** Rutledge Simmons, Acting EVP & General Counsel/Secretary, (202) 760–4105; *RSimmons@nw.org.*

**AGENDA**

I. Call to Order
II. Approval of Minutes
III. Executive Session: External Audit Presentation
IV. Executive Session: CEO Search Update
V. Executive Session: Internal Audit Update
VI. Executive Session: Report from Interim CEO
VII. Approval of External Audit
VIII. Approval of LIFT Funding Increase
IX. CMS Next Generation
X. Management Program Background and Updates
XI. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(2) and (4) permit closure of the following portion(s) of this meeting:

- External Audit Update
- Audit Committee Report
- Report from CEO

**Rutledge Simmons,**

*Acting EVP & General Counsel/Corporate Secretary.*

[FR Doc. 2018–01280 Filed 1–19–18; 4:15 pm]

**BILLING CODE 7570–02–P**

## NUCLEAR REGULATORY COMMISSION

### [NRC–2018–0001]

### Sunshine Act Meeting Notice

**DATES:** Weeks of January 22, 29, February 5, 12, 19, 26, 2018.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of January 22, 2018**

*Tuesday, January 23, 2018*

9:00 a.m.—Hearing on Construction Permit for Northwest Medical Isotopes Production Facility: Section 189a of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Michael Balazik: 301–415–2856)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

*Thursday, January 25, 2018*

10:00 a.m.—Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams: 301–415–1322)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

**Week of January 29, 2018—Tentative**

There are no meetings scheduled for the week of January 29, 2018.

**Week of February 5, 2018—Tentative**

*Thursday, February 8, 2018*

9:00 a.m.—Discussion of Potential Changes to the 10 CFR 2.206 Enforcement Petition Process (Public Meeting) (Contact: Doug Broaddus: 301–415–8124)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

**Week of February 12, 2018—Tentative**

There are no meetings scheduled for the week of February 12, 2018.

**Week of February 19, 2018—Tentative**

There are no meetings scheduled for the week of February 19, 2018.

**Week of February 26, 2018—Tentative**

There are no meetings scheduled for the week of February 26, 2018.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Patricia.Jimenez@nrc.gov or Jennifer.BorgesRoman@nrc.gov.*

Dated: January 19, 2018.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2018–01260 Filed 1–19–18; 4:15 pm]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on February 15, 2018, to discuss the revised draft report of the ACMUI Nursing Mother Guidelines for the Medical Administration of Radioactive Materials and the revised draft report of the ACMUI Physical Presence Requirements for the Leksell Gamma Knife® Icon™. The Nursing Mother Guidelines report will include the subcommittee's recommendations on the cessation of breastfeeding for various radionuclides. The Physical Presence Requirements report will include the subcommittee's recommendations for the physical presence of authorized users and authorized medical physicists during treatments using the Icon™ unit.

The NRC will also convene another teleconference meeting on March 1, 2018, to discuss the draft report of the Standing ACMUI Training and Experience Subcommittee. This report will include the subcommittee's recommendation for the total number of training and experience hours for authorized users under title 10 *Code of Federal Regulations* (10 CFR) 35.300 that is necessary for safety. Meeting information, including a copy of the agendas and handouts, will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2018.html.* The agenda and handouts may also be obtained by contacting Ms. Sophie Holiday using the information below.

**DATES:** The teleconference meetings will be held on Thursday, February 15, 2018, 9:00 a.m. to 11:00 a.m. Eastern Time and Thursday, March 1, 2018, 2:00 p.m. to 4:00 p.m. Eastern Time.

*Public Participation* Any member of the public who wishes to participate in the teleconference should contact Ms. Holiday using the contact information below or may register for the GoToWebinar at *https://attendee.gotowebinar.com/register/3949525319846343681* for the February 15, 2018, meeting or at *https://attendee.gotowebinar.com/register/2515173918506311939* for the March 1, 2018, meeting.

**FOR FURTHER INFORMATION CONTACT:** Sophie Holiday, email: *Sophie.Holiday@nrc.gov,* telephone: (301) 415–7865.

**Conduct of the Meeting**

Dr. Philip Alderson, ACMUI Chairman, will preside over the meeting. Dr. Alderson will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by February 12, 2018, and February 26, 2018, three business days prior to the February 15, 2018, meeting and the March 1, 2018, meeting, and must pertain to the topic(s) on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meetings, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2018.html* on or about March 30, 2018, for the February 15, 2018, meeting and April 12, 2018, for the March 1, 2018, meeting.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland, this 18th day of January, 2018.

For the Nuclear Regulatory Commission.

**Russell E. Chazell,**

*Advisory Committee Management Officer.*

[FR Doc. 2018–01139 Filed 1–22–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 72–1014, 72–59, and 50–271; NRC–2017–0134]**

## Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering an exemption request from Entergy Nuclear Operations, Inc. (ENO) to allow the Vermont Yankee Nuclear Power Station (VYNPS) to use a new regionalized loading pattern, load fuel that has been cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 megawatt days per metric ton of uranium (MWD/MTU) in HI–STORM 100 multi-purpose canister (MPC)-68M using Certificate of Compliance (CoC) No. 1014, Amendment No. 10. The NRC prepared an environmental assessment (EA) documenting its finding. The NRC concluded that the proposed action would have no significant environmental impact. Accordingly, the NRC staff is issuing a finding of no significant impact (FONSI) associated with the proposed exemption.

**DATES:** The EA and FONSI referenced in this document are available on January 23, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2017–0134 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0134. 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 document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *Yen-ju.Chen@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC is reviewing an exemption request from ENO, dated May 16, 2017 (ADAMS Accession No. ML17142A358), and supplemented by letters dated September 7, 2017 (ADAMS Accession No. ML17255A236) and December 7, 2017 (ADAMS Accession No. ML17346A685). ENO is requesting an exemption from the requirements of title 10 of the *Code of Federal Regulations* (10 CFR) §§ 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of the Certificate of Compliance (CoC) No. 1014, for spent fuel storage at the VYNPS independent spent fuel storage installation (ISFSI).

Specifically, ENO is requesting an exemption from certain requirements in Amendment No. 10 of the Holtec International (Holtec) CoC No. 1014 for the HI–STORM 100 Cask System (ADAMS Accession No. ML16144A177) to allow VYNPS to use a new regionalized loading pattern as described in Figure 2.4–1 of the exemption request, to load fuel that has been cooled for at least 2 years, and to establish a per-cell maximum average burnup limit at 65,000 megawatt days per metric ton of uranium (MWD/MTU) in a HI–STORM 100 MPC–68M canister. This would allow VYNPS to load fuel assemblies which have not been cooled for at least 3 years, as approved in the current CoC, but have been cooled for 2 years, into the MPC–68M.

### II. Environmental Assessment Summary

Under the requirements of §§ 51.21 and 51.30(a), the NRC staff developed an EA (ADAMS Accession No. ML17249A160) to evaluate the proposed action, which is for the NRC to grant an exemption to ENO to allow the use of a new regionalized loading pattern as described in Figure 2.4–1 of the exemption request, to load fuel that has been cooled for at least 2 years, and to establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in a HI–STORM 100 MPC–68M at the VYNPS site.

The EA defines the NRC's proposed action (*i.e.,* to grant ENO's exemption request per 10 CFR 72.7) and the purpose of and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action are presented, followed by the NRC's conclusion.

This EA evaluates the potential environmental impacts of granting the exemption to allow the use of a new regionalized loading pattern as described in Figure 2.4–1 of the exemption request, loading fuel that has been cooled for at least 2 years, and establishing a per-cell maximum average burnup limit at 65,000 MWD/MTU in a HI–STORM 100 MPC–68M at the VYNPS site. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the rulemaking to provide for the storage of spent fuel under a general license on July 18, 1990 (55 *FR* 29181). The EA for using the HI–STORM 100, Amendment No. 10, cask system (81 *FR* 13265) tiers off of the EA for the 1990 final rule.

NRC staff finds that this exemption request is bounded by CoC No. 1014, Amendment No. 10, and that there will be no significant environmental impacts of the proposed action. The proposed action does not change the types or quantities of effluents that may be released offsite, and it does not increase occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. There is no change to the non-radiological effluents. The proposed action will take place within the site boundary, and does not have other environmental impacts. Thus, the proposed action will not have a significant effect on the quality of the human environment. Therefore, the environmental impacts of the proposed

action are no greater than those described in the EA for the rulemaking to add the HI–STORM 100, Amendment No. 10, cask system to 10 CFR 72.214.

### III. Finding of No Significant Impact

The NRC staff has prepared an EA and associated FONSI in support of the proposed action. The NRC staff has concluded that the proposed action, for the NRC to grant the exemption requested for VYNPS, allowing the use of a new regionalized loading pattern as described in Figure 2.4–1 of the exemption request, and to load fuel that has been cooled for at least 2 years, and establishing a per-cell maximum average burnup limit at 65,000 MWD/MTU in a HI–STORM 100 MPC–68M, will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative. The environmental impacts are bounded by the previous NRC EA for the rulemaking to add the HI–STORM 100, Amendment No. 10, cask system to 10 CFR 72.214.

The NRC provided the Vermont Department of Health with a draft copy of the EA for a 30-day review on October 16, 2017 (ADAMS Accession No. ML17289A422).

The NRC staff has determined that this exemption would have no impact on historic and cultural resources or ecological resources and therefore no consultations are necessary under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act, respectively.

Therefore, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated at Rockville, Maryland, this 16th day of January, 2018.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

*Acting Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–01176 Filed 1–22–18; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2018.

**SUMMARY:** As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2018 annual adjustment of civil penalties for inflation.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092, (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than July 1, 2016, and annual adjustments thereafter.

For the 2018 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's regulations at title 20, Code of Federal Regulations, part 356. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the CPI–U for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2017 and October 2016, as provided by Office of Management and Budget Memorandum M–18–03 (December 15, 2017) is 1.02041 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is $11,181 (the 2017 maximum penalty of $10,957 multiplied by 1.02041, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is $11,181 (the 2017 minimum penalty of $10,957 multiplied by 1.02041, rounded to the nearest dollar), and the new maximum penalty is $22,363 (the 2017 maximum penalty of $21,916 multiplied by 1.02041, rounded to the nearest dollar). The adjustments in penalties will be effective January 23, 2018.

For The Board.

Dated: January 18, 2018.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2018–01144 Filed 1–22–18; 8:45 am]

**BILLING CODE 7905–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### National Nanotechnology Initiative Meetings

**ACTION:** Notice of public meetings.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will facilitate stakeholder discussion of targeted nanotechnology topics through workshops, webinars, and Community of Interest meetings between the publication date of this Notice and December 31, 2018.

**DATES:** The NNCO will hold one or more workshops, webinars, networks, and Community of Interest teleconferences between the publication date of this Notice and December 31, 2018.

**ADDRESSES:** Attendance information, including addresses, will be posted on nano.gov. For information about upcoming workshops and webinars, please visit *http://www.nano.gov/meetings-workshops* and *http://www.nano.gov/PublicWebinars.* For more information on the Communities of Interest, please visit *http://www.nano.gov/Communities.*

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Marlowe Newman at *info@nnco.nano.gov* or (202) 517–1050 ext. 107.

**SUPPLEMENTARY INFORMATION:** These public meetings address the charge in the 21st Century Nanotechnology Research and Development Act for NNCO to provide ''for public input and outreach . . . by the convening of regular and ongoing public discussions''. Workshop and webinar topics may include technical subjects; environmental, health, and safety issues related to nanomaterials (nanoEHS); business case studies; or other areas of potential interest to the nanotechnology community. Areas of focus for the Communities of Interest may include research on nanoEHS; nanotechnology education; nanomedicine; nanomanufacturing; or other areas of potential interest to the nanotechnology community. For example, the

longstanding U.S.-EU NanoEHS Communities of Research provide a platform for scientists to develop a shared repertoire of protocols and methods to overcome research gaps and barriers in nanosafety-specific focus areas such as human toxicity or risk assessment. The Communities of Interest are not intended to provide any government agency with advice or recommendations; such action is outside of their purview.

*Registration:* Due to space limitations, pre-registration for workshops is required. Workshop registration is on a first-come, first-served basis, and will be capped as space limitations dictate. Registration information will be available at *http://www.nano.gov/meetings-workshops.* Registration for the webinars will open approximately two weeks prior to each event and will be capped at 500 participants or as space limitations dictate. Individuals planning to attend a webinar can find registration information at *http://www.nano.gov/PublicWebinars.* Written notices of participation for workshops, webinars, or Communities of Interest should be sent to by email to *info@nnco.nano.gov.*

*Meeting Accommodations:* Individuals requiring special accommodation to access any of these public events should contact *info@nnco.nano.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2018–01067 Filed 1–22–18; 8:45 am]

**BILLING CODE 3270–F8–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82520; File No. SR–CboeEDGX–2018–001]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*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 the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe BZX Exchange, Inc. (''BZX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.[5] In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of ''Non-Professional User'' to harmonize it with that of its affiliates, Cboe and C2. The EDGX Option's fee schedule currently defines ''Non-Professional User'' as:

> a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, ''Non-Professional User'' would be defined as:

> a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of ''Non-Professional User' included within the Cboe and C2 fee schedules.[6] The Exchange's current definition of ''Non-

[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)(6)(iii).

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR–BatsEDGX–2016–60; SR–BatsEDGA–2016–24; SR–BatsBYX–2017–29; and SR–BatsBYX–2016–68).

[6] *See* the Cboe fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule and* the C2 fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule.*

Professional User'' does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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, 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.[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: (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–CboeEDGX–2018–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number CboeEDGX–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CboeEDGX–2018–001 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01091 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82523; File No. SR–MRX–2018–02]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Orders

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The text of the proposed rule change is set forth below. Proposed new language is *italicized;* deleted text is in [brackets].

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX Rule 805 to permit Market Makers[3] to enter additional order types in the options classes to which they are appointed.

* * * * *

**Nasdaq MRX Rulebook**

* * * * *

**Rule 805. Market Maker Orders**

(a) *Options Classes to Which Appointed.* Market makers may *enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.*[not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders, immediate-or-cancel orders, market orders, fill-or-kill orders, sweep orders, and block-size orders executed through the Block Order Mechanism pursuant to Rule 716(c).] Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(iii) upon the entry of such orders if they were not previously quoting in the series.

(b) *Options Classes Other Than Those to Which Appointed.*

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, *except for Reserve Orders,* provided that:

(i) and (ii) No change.

(2) and (3) No 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to permit Market Makers to enter principal orders to buy or sell options in the options classes to which they are appointed under Rule 802[4] for all order types listed in Rule 715 except for Stopped Orders,[5] Reserve Orders[6] and Customer Cross Orders.[7] This filing is intended to permit Market Makers to execute most of the same order types, which today they are permitted to enter on other options markets.[8] In addition, this filing is intended to amend MRX Rule 805(b)(1) to indicate that Reserve Orders are not permitted to be entered by MRX Market Makers in non-

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Makers refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* MRX Rule 100(a)(25).

[4] MRX Rule 802 concerns the appointment of Market Makers.

[5] A stopped order is a limit order that meets the requirements of Rule 1901(b)(8). To execute stopped orders, Members must enter them into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Rule 716. *See* MRX Rule 715(b)(6).

[6] A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. A non-marketable Reserve Order will rest on the order book. The displayed portion of a Reserve Order shall be ranked at the specified limit price and the time of order entry. The displayed portion of a Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. If the displayed portion is refreshed in part, the new displayed portion shall include the previously displayed portion. Upon any refresh, the entire displayed portion shall be ranked at the specified limit price and obtain a new time stamp, *i.e.,* the time that the new displayed portion of the order was refreshed. The new displayed portion will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. The initial non-displayed portion of a Reserve Order rests on the order book and is ranked based on the specified limit price and time of order entry. Thereafter, non-displayed portions, if any, always obtain the same time stamp as that of the new displayed portion in subparagraph 4 above. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest has been executed. The non-displayed portion of any Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. *See* MRX Rule 715(g).

[7] A Customer Cross Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* MRX Rule 715(i).

[8] NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') do not limit the types of orders that can be entered by market makers. *See* NYSE Arca Rule 6.37C–O and NYSE American Rule 925.2NY.

appointed options classes. Today, MRX Market Makers may not enter Reserve Orders in either appointed or non-appointed options classes. Today, while the System prohibits MRX Market Makers from entering Reserve Orders, MRX Rule 805(b)(1) does not indicate the restriction.

Appointed Options Classes

Today, as noted in MRX Rule 805(a), a Market Maker may not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders,[9] immediate-or-cancel orders,[10] market orders, fill-or-kill orders,[11] sweep orders,[12] and block-size orders [13] executed through the Block Order Mechanism [14] pursuant to Rule 716(c). At this time, the Exchange proposes to expand the order types which Market Makers are permitted to enter on MRX.[15] The Exchange is amending MRX Rule 805(a) to make clear which order types a Market Maker in an appointed options class may submit. Additionally, ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, Opening Sweep Orders, Cancel and Replace Orders,[16] and Add Liquidity Orders are accepted on MRX today from Market Makers as principal orders as modifiers of the allowable non-resting order types, although they are not specifically detailed in the rule. This rule change will further detail and align the rule text with the system functionality by making clear that Maker Makers may enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.

Today, MRX Market Makers, who are appointed and non-appointed in a particular options class, may submit orders without limitation, unless otherwise restricted by the order type as discussed herein. The Exchange proposes to permit Market Makers to enter all order types, which are listed in MRX Rule 715, except for Stopped Orders, Reserve Orders and Customer Cross Orders. The Exchange notes that today Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.[17] With respect to Reserve Orders, the Exchange proposes to continue to restrict Market Makers from entering Reserve Orders in their appointed options class. The Exchange believes that Market Maker liquidity should be displayed liquidity. For these reasons, and to remain competitive with other markets, the Exchange proposes to permit Market Makers to enter all orders they are eligible to submit in their appointed class with the exception of Reserve Orders and also restrict Reserve Orders in the non-appointed classes.

Non-Appointed Options Classes

Today, for the reasons noted above, the Exchange does not permit Market Makers to enter Reserve Orders in non-appointed options classes. However, the current rule text does not provide this limitation. The Exchange proposes to amend the current rule text at MRX Rule 805(b)(1) to codify this limitation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing Market Makers access to trade order types which are currently permissible to be traded in on other options exchanges today.[20] The Exchange believes that permitting Market Makers to enter all eligible order types, except Reserve Orders, in both appointed and non-appointed options classes offers no advantage to Market Makers under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules in MRX Rule 713 and various risk protection mechanism rules applicable to Market Makers in MRX Rule 804.[21] Today, other non-Market Maker participants may submit these order types on MRX.

The Exchange notes that previously, Nasdaq ISE, LLC prohibited non-customer trading by Electronic Access Members (''EAMs'') for principal or agent transactions.[22] At that time, ISE represented that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until their order is fully executed. ISE further noted that, without this restriction, non-customers would be able to use large-size orders to quickly take out ISE's entire order book without giving other market participants an

[9] An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* MRX Rules 717(o).

[10] An immediate-or-cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An immediate-or-cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the Limit Order Price Protection and Size Limitation Protection as defined in MRX Rule 714(b)(2) and (3). *See* MRX Rule 715(b)(2).

[11] A fill-or-kill order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. *See* MRX Rule 715(b)(2).

[12] A Sweep Order is a limit order that is to be executed in whole or in part on the Exchange and the portion not so executed shall be routed pursuant to Supplementary Material .05 to Rule 1901 to Eligible Exchange(s) for immediate execution as soon as the order is received by the Eligible Exchange(s). Any portion not immediately executed by the Eligible Exchange(s) shall be canceled. If a Sweep Order is not marketable when it is submitted to the Exchange, it shall be canceled. *See* MRX Rule 715(s).

[13] Block-size orders are orders for fifty (50) contracts or more. *See* MRX Rule 716(a).

[14] The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. *See* MRX Rule 716(c).

[15] This expansion would include Good-Till-Date Orders, GTC Orders, Limit Orders, and Stop Limit Orders as new acceptable order types.

[16] Cancel and Replace Orders shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, size is not increased, or in the case of Reserve Orders, size is not changed. If the replacement portion of a Cancel and Replace order does not satisfy the system's price or other reasonability checks (*e.g.,* MRX Rule 710; MRX Rule 711(c); MRX Rule 714(b)(2); and MRX Rule 722(b)(1) and Supplementary Material .07 (b), (c) and (d) to Rule 722) the existing order shall be cancelled and not replaced. *See* Supplementary Material .02 to MRX Rule 715.

[17] MRX Rule 1901(b)(8) states, ''The transaction that constituted the Trade-Through was the execution of an order for which, at the time of receipt of the order, a Member had guaranteed an execution at no worse than a specified price (a ''stopped order''), where: (i) The stopped order was for the account of a Customer; (ii) the Customer agreed to the specified price on an order-by-order basis; and (iii) the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution . . .''

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* note 8 above.

[21] Today, Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.

[22] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

opportunity to react.[23] Today, EAMs on ISE may submit non-customer limit orders regardless of the size of the order where previously EAMs were prohibited from submitting orders for non-customers that caused ISE's best bid and offer to be for less than 10 contracts.[24]

The Exchange notes that these restrictions never existed on MRX. MRX believes that these restrictions should not exist today because there is no reason to restrict Market Makers in entering order types, except for the restriction related to Reserve Orders, in options classes in which they are appointed. Unlike other order types, the Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion.[25] Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. The Exchange believes that because a Reserve Order contains a non-displayed portion, Market Makers should not be permitted to enter this order. Market Makers are required to make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the market maker is appointed.[26] The Exchange believes that these markets should be transparent. Today, MRX Market Makers are not permitted to enter Reserve Orders in either appointed or non-appointed options classes. The Exchange proposes to specifically note this limitation in both Rule 805(a) and (b) as an exception. The Exchange notes that this limitation is specifically not noted in Rule 805(b) today despite the fact that the limitation exists in the System today.

The Exchange is also amending MRX Rule 805(a) to detail the types of non-resting order types and their modifiers with respect to ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, Opening Sweep Orders, Cancel and Replace Orders, and Add Liquidity Orders. This rule change will detail and align the rule text with the system functionality and make clear which order types a Market Maker may submit in appointed options classes.

MRX Market Makers continue to be obligated to add liquidity on MRX. The Exchange also notes that MRX Rule 805(b)(2) and (3) restricts the number of contracts that a Market Maker may enter in an options class to which the Market Maker is not appointed.[27] The Exchange notes that it also requires Market Makers to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to MRX Rule 802, in order to maintain the status of a Market Maker.[28] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on MRX and effectively compete with other market makers on other options exchanges. Quotes and orders entered by a Market Maker may not interact against quotes and orders entered on the opposite side of the market by the same Market Maker.[29]

*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. Today, NYSE Arca and NYSE American place no limitation on the types of orders that can be entered by market makers in their appointed class.[30] Accordingly, the Exchange believes that this proposal does not impose an undue burden on inter-market competition because each options exchange generally determines permissible order types for market makers in its trading environment based on the exchange's individual business policy, objectives, and trading system. The Exchange's proposal reflects its policy and objectives, and does not impose an undue burden on intra-market competition because it treats all market makers uniformly with respect to permissible order types. Further, this rule change will align the system functionality with the rule text to reflect the types of orders a Market Maker in both appointed and non-appointed options class may submit. The current rule text is not accurate. This rule filing is intended to detail and align the rule text with the system functionality in the current text of Rule 805(a) and (b). This proposal will make clear which order types a Market Maker may submit in both appointed and non-appointed options classes.

Further, Market Makers, unlike other market participants, are required to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to MRX Rule 802, in order to maintain the status of a Market Maker.[31] The Exchange also notes that MRX Rule 805(b)(2) and (3) restricts the number of orders that a Market Maker may enter in an options class to which the Market Maker is not appointed.[32] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on MRX and effectively compete with other market makers on other options exchanges.

*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[33] and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

[23] *Id.* When the restriction was adopted, there were various limitations imposed on non-customer trading. For example, displayed quotes were firm only for public customer orders. Since that time, electronic options trading has evolved. With the adoption of trade-through protection under the intermarket linkage, every order must be executed at the best quoted price. Further, ISE has also removed restrictions on non-customer trading.

[24] *See* Securities Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (SR–ISE–2003–26).

[25] *See* MRX Rule 715(g).

[26] *See* MRX Rule 803(b)(2).

[27] The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Rule 804(e)(2). *See* MRX Rule 805(b)(2).

The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership. *See* MRX Rule 805(b)(3).

[28] *See* MRX Rule 804(e) and Supplementary Material .01 to Rule 804. Orders do not count toward meeting continuous quoting obligations.

[29] *See* MRX Rule 804(b).

[30] *See* note 8 above.

[31] *See* note 28 above.

[32] *See* note 27 above.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to

A proposed rule change filed under Rule 19b–4(f)(6) [35] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [36] 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change will permit Market Makers additional latitude to conduct business on MRX and effectively compete with other market makers on other options exchanges. The Exchange further states that the proposed rule will detail and align the rule text with the system functionality. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[37]

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–2018–02 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–MRX–2018–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–02 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01094 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] 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).

[38] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82521; File No. SR–ISE–2018–04]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Orders

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 805 to permit Market Makers [3] to enter additional order types in the options classes to which they are appointed.

The text of the proposed rule change is set forth below. Proposed new language is *italicized;* deleted text is in brackets.

* * * * *

### Nasdaq ISE Rulebook

* * * * *

### Rule 805. Market Maker Orders

(a) *Options Classes to Which Appointed.* Market makers may *enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.*[not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders, immediate-or-cancel orders, market orders, fill-or-kill orders, sweep orders, complex orders, and block-size orders executed through the Block Order Mechanism pursuant to Rule 716(c).] Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(iii) upon

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Makers refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

the entry of such orders if they were not previously quoting in the series.

(b) *Options Classes Other Than Those to Which Appointed.*

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, *except for Reserve Orders,* provided that:

(i) and (ii) No change.

(2) and (3) No 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 Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The purpose of this rule change is to permit Market Makers to enter principal orders to buy or sell options in the options classes to which they are appointed under Rule 802 [4] for all order types listed in Rule 715 except for Stopped Orders,[5] Reserve Orders [6] and Customer Cross Orders.[7] This filing is intended to permit Market Makers to execute most of the same order types, which today they are permitted to enter on other options markets.[8] In addition, this filing is intended to amend ISE Rule 805(b)(1) to indicate that Reserve Orders are not permitted to be entered by ISE Market Makers in non-appointed options classes. Today, ISE Market Makers may not enter Reserve Orders in either appointed or non-appointed options classes. Today, while the System prohibits ISE Market Makers from entering Reserve Orders, ISE Rule 805(b)(1) does not indicate the restriction.

Appointed Options Classes

Today, as noted in ISE Rule 805(a), a Market Maker may not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders,[9] immediate-or-cancel orders,[10] market orders, fill-or-kill orders,[11] sweep orders,[12] complex orders,[13] and block-size orders [14] executed through the Block Order Mechanism [15] pursuant to Rule 716(c). At this time, the Exchange proposes to expand the order types which Market Makers are permitted to enter on ISE.[16] The Exchange is amending ISE Rule 805(a) to make clear which order types a Market Maker in an appointed options class may submit. Additionally, ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, QCC with Stock Orders, Opening Sweep Orders, Cancel and Replace Orders,[17] and Add Liquidity Orders are accepted on ISE today from Market Makers as principal orders as modifiers of the allowable non-resting order types, although they are not specifically detailed in the rule. This rule change will further detail and align the rule text with the system functionality by making clear that Maker Makers may enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.

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[4] ISE Rule 802 concerns the appointment of Market Makers.

[5] A stopped order is a limit order that meets the requirements of Rule 1901(b)(8). To execute stopped orders, Members must enter them into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Rule 716. *See* ISE Rule 715(b)(6).

[6] A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. A non-marketable Reserve Order will rest on the order book. The displayed portion of a Reserve Order shall be ranked at the specified limit price and the time of order entry. The displayed portion of a Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. If the displayed portion is refreshed in part, the new displayed portion shall include the previously displayed portion. Upon any refresh, the entire displayed portion shall be ranked at the specified limit price and obtain a new time stamp, *i.e.,* the time that the new displayed portion of the order was refreshed. The new displayed portion will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. The initial non-displayed portion of a Reserve Order rests on the order book and is ranked based on the specified limit price and time of order entry. Thereafter, non-displayed portions, if any, always obtain the same time stamp as that of the new displayed portion in subparagraph 4 above. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest has been executed. The non-displayed portion of any Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. *See* ISE Rule 715(g).

[7] A Customer Cross Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* ISE Rule 715(i).

[8] NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') do not limit the types of orders that can be entered by market makers. *See* NYSE Arca Rule 6.37C–O and NYSE American Rule 925.2NY.

[9] An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* ISE Rules 717(o).

[10] An immediate-or-cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An immediate-or-cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the (i) Limit Order Price Protection and Size Limitation Protection as defined in ISE Rule 714(b)(2) and (3); or (ii) Limit Order Price Protection as defined in Supplementary Material .07(d) to ISE Rule 722. *See* ISE Rule 715(b)(2).

[11] A fill-or-kill order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. *See* ISE Rule 715(b)(2).

[12] A Sweep Order is a limit order that is to be executed in whole or in part on the Exchange and the portion not so executed shall be routed pursuant to Supplementary Material .05 to Rule 1901 to Eligible Exchange(s) for immediate execution as soon as the order is received by the Eligible Exchange(s). Any portion not immediately executed by the Eligible Exchange(s) shall be canceled. If a Sweep Order is not marketable when it is submitted to the Exchange, it shall be canceled. *See* ISE Rule 715(s).

[13] A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See* ISE Rule 722(a)(1).

[14] Block-size orders are orders for fifty (50) contracts or more. *See* ISE Rule 716(a).

[15] The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. *See* ISE Rule 716(c).

[16] This expansion would include Good-Till-Date Orders, GTC Orders, Limit Orders, and Stop Limit Orders as new acceptable order types.

[17] Cancel and Replace Orders shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, size is not increased, or in the case of Reserve Orders, size is not changed. If the replacement portion of a Cancel and Replace order does not satisfy the system's price or other reasonability checks (*e.g.,* ISE Rule 710; ISE Rule 711(c); ISE Rule 714(b)(2); and ISE Rule 722(b)(1) and Supplementary Material .07 (b), (c) and (d) to Rule 722) the existing order shall be cancelled and not replaced. *See* Supplementary Material .02 to ISE Rule 715.

Today, ISE Market Makers, who are appointed and non-appointed in a particular options class, may submit orders without limitation, unless otherwise restricted by the order type as discussed herein. The Exchange proposes to permit Market Makers to enter all order types, which are listed in ISE Rule 715, except for Stopped Orders, Reserve Orders and Customer Cross Orders. The Exchange notes that today Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.[18] With respect to Reserve Orders, the Exchange proposes to continue to restrict Market Makers from entering Reserve Orders in their appointed options class. The Exchange believes that Market Maker liquidity should be displayed liquidity. For these reasons, and to remain competitive with other markets, the Exchange proposes to permit Market Makers to enter all orders they are eligible to submit in their appointed class with the exception of Reserve Orders and also restrict Reserve Orders in the non-appointed classes.

Non-Appointed Options Classes

Today, for the reasons noted above, the Exchange does not permit Market Makers to enter Reserve Orders in non-appointed options classes. However, the current rule text does not provide this limitation. The Exchange proposes to amend the current rule text at ISE Rule 805(b)(1) to codify this limitation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing Market Makers access to trade order types which are currently permissible to be traded in on other options exchanges today.[21] The Exchange believes that permitting Market Makers to enter all eligible order types, except Reserve Orders, in both appointed and non-appointed options classes offers no advantage to Market Makers under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules in ISE Rule 713 and various risk protection mechanism rules applicable to Market Makers in ISE Rule 804.[22] Today, other non-Market Maker participants may submit these order types on ISE.

The Exchange notes that previously, ISE prohibited non-customer trading by Electronic Access Members (''EAMs'') for principal or agent transactions.[23] At that time, ISE represented that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until their order is fully executed. ISE further noted that, without this restriction, non-customers would be able to use large-size orders to quickly take out ISE's entire order book without giving other market participants an opportunity to react.[24] When the restriction was adopted, there were various limitations imposed on non-customer trading. For example, displayed quotes were firm only for public customer orders. Since that time, electronic options trading has evolved. With the adoption of trade-through protection under the intermarket linkage, every order must be executed at the best quoted price. Further, ISE has also removed restrictions on non-customer trading. For example, EAMs may now submit non-customer limit orders regardless of the size of the order where previously EAMs were prohibited from submitting orders for non-customers that caused ISE's best bid and offer to be for less than 10 contracts.[25]

The Exchange does not believe there is any reason to restrict Market Makers in entering order types, except for the restriction related to Reserve Orders, in options classes in which they are appointed. Unlike other order types, the Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion.[26] Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. The Exchange believes that because a Reserve Order contains a non-displayed potion, Market Makers should not be permitted to enter this order. Market Makers are required to make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the market maker is appointed.[27] The Exchange believes that these markets should be transparent. Today, ISE Market Makers are not permitted to enter Reserve Orders in either appointed or non-appointed options classes. The Exchange proposes to specifically note this limitation in both Rule 805(a) and (b) as an exception. The Exchange notes that this limitation is specifically not noted in Rule 805(b) today despite the fact that the limitation exists in the System today.

The Exchange is also amending ISE Rule 805(a) to detail the types of non-resting order types and their modifiers with respect to ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, QCC with Stock Orders, Opening Sweep Orders, Cancel and Replace Orders, and Add Liquidity Orders. This rule change will detail and align the rule text with the system functionality and make clear which order types a Market Maker may submit in appointed options classes.

ISE Market Makers continue to be obligated to add liquidity on ISE. The Exchange also notes that ISE Rule 805(b)(2) and (3) restricts the number of contracts that a Market Maker may enter in an options class to which the Market Maker is not appointed.[28] The Exchange

[18] ISE Rule 1901(b)(8) states, ''The transaction that constituted the Trade-Through was the execution of an order for which, at the time of receipt of the order, a Member had guaranteed an execution at no worse than a specified price (a ''stopped order''), where: (i) The stopped order was for the account of a Customer; (ii) the Customer agreed to the specified price on an order-by-order basis; and (iii) the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution . . .''

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* note 8 above.

[22] Today, Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.

[23] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

[24] *Id.*

[25] *See* Securities Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (SR–ISE–2003–26).

[26] *See* ISE Rule 715(g).

[27] *See* ISE Rule 803(b)(2).

[28] The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Rule 804(e)(2). *See* ISE Rule 805(b)(2).

The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership. *See* ISE Rule 805(b)(3).

notes that it also requires Market Makers to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to ISE Rule 802, in order to maintain the status of a Market Maker.[29] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on ISE and effectively compete with other market makers on other options exchanges. Quotes and orders entered by a Market Maker may not interact against quotes and orders entered on the opposite side of the market by the same Market Maker.[30]

*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. Today, NYSE Arca and NYSE American place no limitation on the types of orders that can be entered by market makers in their appointed class.[31] Accordingly, the Exchange believes that this proposal does not impose an undue burden on inter-market competition because each options exchange generally determines permissible order types for market makers in its trading environment based on the exchange's individual business policy, objectives, and trading system. The Exchange's proposal reflects its policy and objectives, and does not impose an undue burden on intra-market competition because it treats all market makers uniformly with respect to permissible order types. Further, this rule change will align the system functionality with the rule text to reflect the types of orders a Market Maker in both appointed and non-appointed options class may submit. The current rule text is not accurate. This rule filing is intended to detail and align the rule text with the system functionality in the current text of Rule 805(a) and (b). This proposal will make clear which order types a Market Maker may submit in both appointed and non-appointed options classes.

Further, Market Makers, unlike other market participants, are required to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to ISE Rule 802, in order to maintain the status of a Market Maker.[32] The Exchange also notes that ISE Rule 805(b)(2) and (3) restricts the number of orders that a Market Maker may enter in an options class to which the Market Maker is not appointed.[33] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on ISE and effectively compete with other market makers on other options exchanges.

*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[34] and subparagraph (f)(6) of Rule 19b–4 thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6)[36] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[37] 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change will permit Market Makers additional latitude to conduct business on ISE and effectively compete with other market makers on other options exchanges. The Exchange further states that the proposed rule will detail and align the rule text with the system functionality. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[38]

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–2018–04 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–ISE–2018–04. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[29] *See* ISE Rule 804(e) and Supplementary Material .01 to Rule 804. Orders do not count toward meeting continuous quoting obligations.

[30] *See* ISE Rule 804(b).

[31] *See* note 8 above.

[32] *See* note 29 above.

[33] *See* note 28 above.

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] 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).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–04 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01092 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82518; File No. SR–CboeEDGA–2018–001]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2018, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*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 the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGX Exchange, Inc. (''EDGX''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe BZX Exchange, Inc. (''BZX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.[5] In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of ''Non-Professional User'' to harmonize it with that of its affiliates, Cboe and C2.

The EDGX Option's fee schedule currently defines ''Non-Professional User'' as:

> a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, ''Non-Professional User'' would be defined as:

> a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of ''Non-Professional User' included within the Cboe and C2 fee schedules.[6] The Exchange's current definition of ''Non-Professional User'' does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that

[39] 17 CFR 200.30–3(a)(12).

[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)(6)(iii).

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR–BatsEDGX–2016–60; SR–BatsEDGA–2016–24; SR–BatsBYX–2017–29; and SR–BatsBYX–2016–68).

[6] *See* the Cboe fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule and* the C2 fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule.*

receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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, 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.[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: (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–CboeEDGA–2018–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number CboeEDGA–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CboeEDGA–2018–001 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01089 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82522; File No. SR–BatsBZX–2017–34]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28

January 17, 2018.

### I. Introduction

On May 5, 2017, Bats BZX Exchange, Inc. (now known as Cboe BZX Exchange, Inc.) (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Bats Market Close, a closing match process for non-BZX Listed Securities. The proposed rule change was published for comment in the **Federal Register** on May 22, 2017.[3] On July 3, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] The Commission received 54 comment letters on the proposed rule change, including a response from the Exchange.[5] On August 18, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] Thereafter, the Commission received nine more comment letters, including three responses from the Exchange.[8] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (''Notice'').

[4] *See* Securities Exchange Act Release No. 81072, 82 FR 31792 (July 10, 2017).

[5] *See* Letters to Brent J. Fields, Secretary, Commission, from: (1) Donald K. Ross, Jr., Executive Chairman, PDQ Enterprise, LLC, dated June 6, 2017 (''PDQ Letter''); (2) Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc., dated June 12, 2017 (''Nasdaq Letter 1''); (3) Ray Ross, Chief Technology Officer, Clearpool Group, dated June 12, 2017 (''Clearpool Letter''); (4) Venu Palaparthi, SVP, Compliance, Regulatory and Government Affairs, Virtu Financial, dated June 12, 2017 (''Virtu Letter''); (5) Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated June 13, 2017 (''SIFMA Letter 1''); (6) Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange (''NYSE''), dated June 13, 2017 (''NYSE Letter 1''); (7) John M. Bowers, Bowers Securities, dated June 14, 2017 (''Bowers Letter''); (8) Jonathan D. Corpina, Senior Managing Partner, Meridian Equity Partners, dated June 16, 2017 (''Meridian Letter''); (9) Fady Tanios, Chief Executive Officer, and Brian Fraioli, Chief Compliance Officer, Americas Executions, LLC, dated June 16, 2017 (''Americas Executions Letter''); (10) Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC, dated June 22, 2017 (''GTS Securities Letter 1''); (11) John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated June 23, 2017 (''IEX Letter''); (12) Jay S. Sidhu, Chairman, Chief Executive Officer, Customers Bancorp, Inc., dated June 27, 2017 (''Customers Bancorp Letter''); (13) Joanne Freiberger, Vice President, Treasurer, Masonite International Corporation, dated June 27, 2017 (''Masonite International Letter''); (14) David B. Griffith, Investor Relations Manager, Orion Group Holdings, Inc., dated June 27, 2017 (''Orion Group Letter''); (15) Kieran O'Sullivan, Chairman, President and CEO, CTS Corporation, dated June 28, 2017 (''CTS Corporation Letter''); (16) Sherri Brillon, Executive Vice-President and Chief Financial Officer, Encana Corporation, dated June 29, 2017 (''Encana Letter''); (17) Steven C. Lilly, Chief Financial Officer, Triangle Capital Corporation, dated June 29, 2017 (''Triangle Capital Letter''); (18) Robert F. McCadden, Executive Vice President and Chief Financial Officer, Pennsylvania Real Estate Investment Trust, dated June 29, 2017 (''Pennsylvania REIT Letter''); (19) Andrew Stevens, General Counsel, IMC Financial Markets, dated June 30, 2017 (''IMC Letter''); (20) Daniel S. Tucker, Senior Vice President and Treasurer, Southern Company, dated July 5, 2017 (''Southern Company Letter''); (21) Cole Stevens, Investor Relations Associate, Nobilis Health, dated July 6, 2017 (''Nobilis Health Letter''); (22) Mehmet Kinak, Head of Global Equity Market Structure & Electronic Trading, et al., T. Rowe Price Associates, Inc., dated July 7, 2017 (''T. Rowe Price Letter''); (23) David L. Dragics, Senior Vice President, Investor Relations, CACI International Inc., dated July 7, 2017 (''CACI Letter''); (24) Mark A. Stegeman, Senior Vice President & CFO, Turning Point Brands, Inc., dated July 12, 2017 (''Turning Point Letter''); (25) Jon R. Moeller, Vice Chair and Chief Financial Officer, and Deborah J. Majoras, Chief Legal Officer and Secretary, The Proctor & Gamble Company, dated July 12, 2017 (''P&G Letter''); (26) Christopher A. Iacovella, Chief Executive Officer, Equity Dealers of America, dated July 12, 2017 (''EDA Letter''); (27) Rob Bernshteyn, Chief Executive Officer, Chairman Board of Directors, Coupa Software, Inc., dated July 12, 2017 (''Coupa Software Letter''); (28) Sally J. Curley, Senior Vice President, Investor Relations, Cardinal Health, Inc., dated July 14, 2017 (''Cardinal Health Letter''); (29) Mickey Foster, Vice President, Investor Relations, FedEx Corporation, dated July 14, 2017 (''FedEx Letter''); (30) Alexander J. Matturri, CEO, S&P Dow Jones Indices, dated July 18, 2017 (''SPDJI Letter''); (31) John L. Killea, Chief Legal Officer, Stewart Information Services, dated July 19, 2017 (''Stewart Letter''); (32) M. Farooq Kathwari, Chairman, President & CEO, Ethan Allen Interiors, Inc., dated July 24, 2017 (''Ethan Allen Letter''); (33) Jeff Green, Founder, Chief Executive Officer and Chairman of the Board of Directors, The Trade Desk Inc., dated July 26, 2017 (''Trade Desk Letter''); (34) James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, dated July 30, 2017 (''Angel Letter''); (35) Jon Stonehouse, CEO, and Tom Staab, CFO, BioCryst Pharmaceuticals, Inc., dated July 31, 2017 (''BioCryst Letter''); (36) Peter Campbell, Chief Financial Officer, Mimecast, dated July 31, 2017 (''Mimecast Letter''); (37) Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., dated August 2, 2017 (''BZX Letter 1''); (38) David M. Weisberger, Head of Equities, ViableMkts, dated August 3, 2017 (''ViableMkts Letter''); (39) Charles Beck, Chief Financial Officer, Digimarc Corporation, dated August 3, 2017 (''Digimarc Letter''); (40) Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated August 9, 2017 (''NYSE Letter 2''); (41) Representative Sean P. Duffy and Representative Gregory W. Meeks, dated August 9, 2017 (''Duffy/Meeks Letter''); (42) Michael J. Chewens, Senior Executive Vice President & Chief Financial Officer, NBT Bancorp Inc., dated August 11, 2017 (''NBT Bancorp Letter''); (43) Barry Zwarenstein, Chief Financial Officer, Five9, Inc., dated August 11, 2017 (''Five9 Letter''); (44) William A. Backus, Chief Financial Officer & Treasurer, Balchem Corporation, dated August 15, 2017 (''Balchem Letter''); (45) Raiford Garrabrant, Director, Investor Relations, Cree, Inc., dated August 15, 2017 (''Cree Letter''); (46) Steven Paladino, Executive Vice President & Chief Financial Officer, Henry Schein, Inc., dated August 16, 2017 (''Henry Schein Letter''); (47) Theodore Jenkins, Senior Director, Investor Relations and Communications, Corbus Pharmaceuticals, Inc., dated August 17, 2017 (''Corbus Letter''); (48) Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC, dated August 17, 2017 (''GTS Securities Letter 2''); (49) Cameron Bready, Senior Executive VP, Chief Financial Officer, Global Payments Inc., dated August 17, 2017 (''Global Payments Letter''); (50) Mike Gregoire, CEO, CA Technologies, dated August 17, 2017 (''CA Technologies Letter''); (51) Patrick L. Donnelly, Executive Vice President & General Counsel, Sirius XMHoldings Inc., dated August 17, 2017 (''Sirius Letter''); (52) Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated August 18, 2017 (''SIFMA Letter 2''); (53) Donald Bollerman, dated August 18, 2017 (''Bollerman Letter''); and (54) Sarah A. O'Dowd, Senior Vice President, Chief Legal Officer and Secretary, Lam Research Corporation, dated August 18, 2017 (''Lam Letter'').

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 81437, 82 FR 40202 (August 24, 2017) (''OIP''). In the OIP, the Commission specifically requested comment on eight series of questions. *See id.* at 40210–11.

[8] *See* Letters to Brent J. Fields, Secretary, Commission, from: (1) Gabrielle Rabinovitch, VP, Investor Relations, PayPal Holdings, Inc., dated September 12, 2017 (''PayPal Letter''); (2) Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc., dated September 18, 2017 (''Nasdaq Letter 2''); (3) Joanne Moffic-Silver, Executive Vice President, General Counsel, and

Continued

November 17, 2017, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.[10] On December 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, renaming ''Bats Market Close'' as ''Cboe Market Close.'' [11] This order approves the proposed rule change.

## II. Summary of the Proposal

As described in more detail in the Notice,[12] the Exchange proposes to introduce Cboe Market Close, a closing match process for non-BZX listed securities. For non-BZX listed securities, the Exchange's System [13] would seek to match buy and sell Market-On-Close (''MOC'') [14] orders designated for participation in Cboe Market Close at the official closing price for such security published by the primary listing market.

Members [15] would be able to enter, cancel or replace MOC orders designated for participation in Cboe Market Close beginning at 6:00 a.m. Eastern Time up until 3:35 p.m. Eastern Time (''MOC Cut-Off Time'').[16] Members would not be able to enter, cancel or replace MOC orders designated for participation in the proposed Cboe Market Close after the MOC Cut-Off Time.

At the MOC Cut-Off Time, the System would match for execution all buy and sell MOC orders entered into the System based on time priority.[17] Any remaining balance of unmatched shares would be cancelled back to the Member(s). The System would disseminate, via the Bats Auction Feed,[18] the total size of all buy and sell orders matched per security via Cboe Market Close. All matched buy and sell MOC orders would remain on the System until the publication of the official closing price by the primary listing market. Upon publication of the official closing price by the primary listing market, the System would execute all previously matched buy and sell MOC orders at that official closing price.[19]

The Exchange would utilize the official closing price published by the exchange designated by the primary listing market in the case where the primary listing market suffers an impairment and is unable to perform its closing auction process.[20] In addition, proposed Interpretation and Policy .03 specifies that up until the closing of the applicable securities information processor at 8:00 p.m. Eastern Time, the Exchange intends to monitor the initial publication of the official closing price, and any subsequent changes to the published official closing price, and adjust the price of such trades accordingly. If there is no initial official closing price published by 8:00 p.m. Eastern Time for any security, the Exchange would cancel all matched MOC orders in such security.

The Exchange states that it is proposing to adopt Cboe Market Close in response to requests from market participants, particularly buy-side firms, for an alternative to the primary listing markets' closing auctions that still provides an execution at a security's official closing price.[21] Moreover, the Exchange contends that the proposal would not compromise the price discovery function performed by the primary listing markets' closing auctions because Cboe Market Close would only accept MOC orders, and not limit orders, and the Exchange would only execute those matched MOC orders that naturally pair off and effectively cancel each other out.[22]

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposal, including the comments received, and finds that approval of the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, as

Corporate Secretary, Bats Global Markets, Inc., dated October 11, 2017 (''BZX Letter 2''); (4) Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated November 3, 2017 (''NYSE Letter 3''); (5) Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated December 8, 2017 (''SIFMA Letter 3''); (6) Jeffrey S. Davis, Deputy General Counsel, Nasdaq, Inc., dated December 21, 2017 (''Nasdaq Letter 3''); (7) Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Cboe Global Markets, Inc., dated January 3, 2018 (''BZX Letter 3''); (8) Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Cboe Global Markets, Inc., dated January 12, 2018 (''BZX Letter 4''); and (9) Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated January 12, 2018 (''NYSE Letter 4''). All comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm.* In addition, the Commission's Division of Economic and Risk Analysis (''DERA'') released in the public comment file for this proposal a memorandum setting forth its analysis examining the relationship between the proportion of MOC orders executed off-exchange and closing price discovery and efficiency (''DERA Analysis''). *See* Memorandum to File from DERA, Bats Market Close: Off-Exchange Closing Volume and Price Discovery, dated December 1, 2017 (''DERA Analysis''), available at: *https://www.sec.gov/files/bats_moc_analysis.pdf*; *see also infra* note 129 and accompanying discussion. NYSE Letter 4 included an assessment of the DERA Analysis conducted by D. Timothy McCormick, Ph.D., dated January 11, 2018 (''NYSE Report''). *See* NYSE Letter 4, at 1 and NYSE Report, cover page (stating that the research was funded by NYSE Group). For purposes of this order, statements in the NYSE Report are attributed to NYSE.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 82108, 82 FR 55894 (November 24, 2017).

[11] The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Because Amendment No. 1 is a technical amendment and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. For purposes of consistency and readability, all references to the proposed closing match process made herein will be to ''Cboe Market Close.''

[12] *See* Notice, *supra,* note 3.

[13] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa).

[14] The term ''Market-On-Close'' or ''MOC'' means a BZX market order that is designated for execution only in the Closing Auction. *See* Exchange Rule 11.23(a)(15). The Exchange proposed to amend the description of Market-On-Close orders to include orders designated to execute in the proposed Cboe Market Close.

[15] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[16] Currently, the NYSE designates the cut-off time for the entry of Market At-the-Close Orders as 3:45 p.m. Eastern Time. *See* NYSE Rule 123C. Nasdaq, in turn, designates the ''end of the order entry period'' as 3:50 p.m. Eastern Time. *See* Nasdaq Rule 4754.

[17] As set forth in proposed Interpretation and Policy .02, the Exchange would cancel all MOC orders designated to participate in Cboe Market Close in the event the Exchange becomes impaired prior to the MOC Cut-Off Time and is unable to recover within 5 minutes from the MOC Cut-Off Time. The Exchange states that this would provide Members time to route their orders to the primary listing market's closing auction. Should the Exchange become impaired after the MOC Cut-Off Time, proposed Interpretation and Policy .02 states that it would retain all matched MOC orders and execute those orders at the official closing price once it is operational.

[18] The Bats Auction Feed disseminates information regarding the current status of price and size information related to auctions conducted by the Exchange and is provided at no charge. *See* Exchange Rule 11.22(i). The Exchange also proposed to amend Exchange Rule 11.22(i) to reflect that the Bats Auction Feed would also include the total size of all buy and sell orders matched via Cboe Market Close.

[19] The Exchange would report the execution of all previously matched buy and sell orders to the applicable securities information processor and will designate such trades as ''.P'', Prior Reference Price. *See* Notice, *supra* note 3, at 23321.

[20] *See* proposed Interpretation and Policy .01.

[21] *See* Notice, *supra* note 3, at 23321. The Exchange intends, should the Commission approve the proposed rule change, to file a separate proposal to offer executions of MOC orders at the official closing price, to the extent matched on the Exchange, at a rate less than the fee charged by the applicable primary listing market. The Exchange also intends for such fee to remain lower than the fee charged by the applicable primary listing market. *See id.*

[22] *See id.*

[23] In approving this proposed rule change, the Commission has considered the proposed rule

discussed below, the Commission finds that the proposal is consistent with: Section 6(b)(5) of the Act,[24] which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and Section 6(b)(8) of the Act,[25] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission received sixty-three comment letters from fifty-two commenters on the proposal, including four response letters from the Exchange.[26]

*Price Discovery and Fragmentation*

The majority of commenters addressed the potential impacts of the proposal on price discovery in the closing auctions on the primary listing markets. Eight commenters stated that the proposal would not negatively impact price discovery in the primary listing markets' closing auctions.[27] These commenters asserted that because Cboe Market Close would only execute paired MOC orders, and not limit-on-close orders, it would not impede the price discovery mechanisms of the primary listing markets' closing auctions. Five commenters referenced the current Nasdaq and NYSE Arca closing auction processes for securities listed on other exchanges, stating that these competing closing auction processes, which have been permitted by the Commission, may attract limit orders from the primary listing market and impede price discovery, unlike the BZX proposal which is limited to market orders.[28] In addition, five commenters argued that, because BZX will publish the size of matched MOC orders in advance of the primary market's cut-off time, market participants would have available information needed to make further decisions regarding order execution and thus price discovery would not be impaired.[29] Two commenters also asserted that many brokers already provide market-on-close pricing to customers through products that match orders internally, and the proposal may provide incentives for brokers to send such orders to an exchange, thereby increasing transparency, reliability and price discovery at the close.[30]

Thirty-eight commenters stated that the proposal would further fragment the markets and harm price discovery in the closing auctions on the primary listing markets.[31] For example, Nasdaq argued that BZX's MOC orders would be incapable of contributing to price discovery, and instead would further fragment the market by drawing orders and quotations away from primary closing auctions and undermine the mechanisms used to set closing prices.[32] Nasdaq asserted that any attempt to divert trading interest from its closing auction would be detrimental to investors as it would inhibit Nasdaq's closing auction from functioning as intended and would negatively affect the price discovery process and consequently, the quality of the official closing price.[33]

Specifically, Nasdaq expressed concern that the availability of Cboe Market Close could cause a reduction in the number of limit-on-close orders submitted to the primary listing markets' closing auctions, which Nasdaq asserted would harm price discovery at the market close.[34] Nasdaq asserted that the impact of the proposal on the use of limit-on-close orders that may be submitted to NYSE and Nasdaq should be studied and carefully analyzed.[35] In the OIP, the Commission specifically solicited comments on the potential impact of the proposal on the use of limit-on-close orders, including requesting any available data, analyses or studies.[36] In response, Nasdaq explained that reducing MOC orders would impact the behavior of limit orders by reducing the ability of continuous book limit orders and LOC orders to compete with each other and to interact with MOC orders, which it asserted is essential to its closing auction.[37] Specifically, Nasdaq contended that if BZX were to disseminate a paired shares amount at 3:35pm, but Nasdaq published little or

change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the proposed rule change, including competitive effects, below.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(8).

[26] *See supra* notes 5 and 8.

[27] *See* PDQ Letter; Clearpool Letter, at 3; Virtu Letter, at 2; SIFMA Letter, at 2; IEX Letter, at 1–2; Angel Letter, at 4; ViableMkts Letter, at 3–4; and Bollerman Letter, at 1. *See also* SIFMA Letter 2, at 1–2.

[28] *See* Clearpool, at 3; IEX Letter, at 2; Angel Letter, at 4; SIFMA Letter 2, at 2; and Bollerman Letter, at 3.

[29] *See* Clearpool Letter, at 3; SIFMA Letter 1, at 2; IEX Letter, at 2; Angel Letter, at 4; ViableMkts Letter, at 3; and SIFMA Letter 2, at 1.

[30] *See* Clearpool, at 3–4; and ViableMkts Letter, at 4–5. One commenter further argued that to the extent BZX accrues market share as a result of the proposal it will likely result from less MOC pairing executed off-exchange. *See* Angel Letter, at 4.

[31] *See* Nasdaq Letter 1; NYSE Letter 1; Bowers Letter; Meridian Letter; Americas Executions Letter; GTS Securities Letter 1; Customers Bancorp Letter; Masonite International Letter; Orion Group Letter; CTS Corporation Letter; Encana Letter; Triangle Capital Letter; Pennsylvania REIT Letter; IMC Letter; Southern Company Letter; Nobilis Health Letter; T. Rowe Price Letter; CACI Letter; Turning Point Letter; P&G Letter; EDA Letter; Coupa Software Letter; Cardinal Health Letter; FedEx Letter; Trade Desk Letter; BioCryst Letter; Mimecast Letter; Digimarc Letter; NYSE Letter 2; NBT Bancorp Letter; Balchem Letter; Cree Letter; Henry Schein Letter; Corbus Letter; GTS Securities Letter 2; Global Payments Letter; CA Technologies Letter; Sirius Letter; Lam Letter; PayPal Letter; Nasdaq Letter 2; NYSE Letter 3. *See also* Duffy/Meeks Letter, at 1 (stating that public companies are expressing concern that the proposal will further fragment the market and cause harm to the pricing of their companies' shares at the close and, as such, they are concerned the proposal may disrupt the process for determining the closing price on the primary listing market, which is viewed as ''an incredibly well-functioning part of the capital markets''). In addition, one commenter urged the Commission to conduct a close analysis of the proposal and stated that if the Bats proposal would seriously degrade the quality of the closing price, then it should be rejected. *See* Angel Letter.

[32] *See* Nasdaq Letter 1, at 5 and 8 (stating that, for this reason Nasdaq did not believe the proposal promotes fair and orderly markets in accordance with Sections 6 and 11A of the Exchange Act); and Nasdaq Letter 2, at 3–7.

[33] *See* Nasdaq Letter 1, at 11 and Nasdaq Letter 2, at 5–6. Nasdaq also stated that while BZX does not have a responsibility to contribute to price discovery in Nasdaq's closing auction, it also is obligated to avoid affirmatively undermining price discovery. *See* Nasdaq Letter 1, at 5. In addition, Nasdaq stated that it considered, but chose not to, disclose segmented information, such as matched MOC or LOC shares, for its closing auction in a piece-meal fashion, because Nasdaq believed it would lead to unintended consequences and undermine price discovery in the closing auction. *See id.,* at 4 and Nasdaq Letter 2, at 6.

[34] *See* Nasdaq Letter 1, at 5 and 11.

[35] *See id.* at 11.

[36] *See* OIP, *supra* note 7, at 40210. Specifically, the Commission asked, ''To what extent, if at all, would the availability of the Bats Market Close impact market participants' use of limit-on-close orders in the closing auction processes on the primary listing exchanges, including with respect to size and price? Please explain. Would market participants use MOC orders in the Bats Market Close as a substitute for using limit orders to participate in the closing auction processes at the primary listing exchanges? Would any such impacts be the same for each of the primary listing exchanges? Are there differences between the closing auction processes at each of the primary listing exchanges whereby the proposed Bats Market Close would have differing effects on each primary listing exchange? If so, please explain. How does information available in the closing auction process affect market participants' order submissions and/or determination of the closing price? Would the proposed rule change affect market participants' trading strategies in closing auctions? If so, how? If commenters believe the proposal would impact the use of limit-on-close orders in closing auctions, to the extent possible please provide specific data, analyses, or studies for support.''

[37] *See* Nasdaq Letter 2, at 5–6. Nasdaq did not submit any specific data regarding the impact of the proposal on the use of limit on close orders.

no paired or imbalance shares in its imbalance publications, it would discourage further participation in the continuous market leading up to the closing auction and the closing cross, and thus there would be little ongoing price discovery, because market participants would know they would not have the ability to interact with market orders.[38] Nasdaq contrasted the BZX proposal with its own closing auction process, arguing that after it disseminates an imbalance notification that combines MOC and LOC orders, market participants can continue to submit orders to interact with existing auction interest.[39]

Moreover, Nasdaq argued that even if the proposal only resulted in fewer market-on-close orders submitted to Nasdaq closing auctions, investors would be harmed because the official closing price could potentially represent a stale or undermined price.[40] Nasdaq asserted that its closing cross is designed to maximize the number of shares that can be executed at a single price and that the number of market-on-close orders impacts the number of shares able to execute in a closing cross.[41] Further, in its second comment letter, Nasdaq elaborated on the impact it believed reducing MOC orders could have on Nasdaq's closing auction. In particular, Nasdaq argued that the proposal would harm price discovery because fragmentation of MOC orders would directly impact closing auctions for which Nasdaq only received MOC orders and that, in cases where all MOC orders were removed from the Nasdaq closing auction, the last sale price would become the official closing price, as opposed to the price being determined through the price discovery process of its closing auction.[42] Nasdaq discussed several hypothetical examples where removal of all MOC orders from certain of its previously conducted closing auctions would have resulted in use of the last sale price as the official closing price and provided aggregated statistics denoting the differential between the last sale price and the official closing price in such situations.[43]

NYSE similarly argued that even though Cboe Market Close would only accept MOC orders, it could materially impact official closing prices determined through a NYSE closing auction.[44] NYSE emphasized the importance of the centralization of orders during the closing auction on the primary listing exchange, stating that it is ''an iterative process'' that provides ''periodic information about order imbalances, indicative price, matched volume, and other metrics'' to help market participants anticipate the likely closing price, and that allows for investors to find contra-side liquidity and assess whether to offset imbalances, and for orders to be priced based on the true supply and demand in the market.[45] NYSE asserted that information on the lack of matched MOC orders in the closing process could discourage liquidity providers from participating in the closing process because their order would be less likely to interact with market orders.[46] NYSE also explained that its designated market makers (''DMMs''), which have an obligation to facilitate the close of trading in their assigned securities, factor in the size of paired-off volume, and the composition of the closing interest in assessing the appropriate closing price.[47] NYSE asserted that, under the proposal, DMMs would lose full visibility into the size and composition of MOC interest, and thus would likely have to make more risk-adverse closing decisions, resulting in inferior price formation.[48]

NYSE also argued that the proposal would detrimentally impact price discovery on the NYSE Arca and NYSE American automated closing auctions. NYSE stated that in the last six months there were 130 instances where the official closing price determined through a NYSE Arca closing auction was based entirely on paired-off market order volume.[49] In those instances, pursuant to NYSE Arca rules, ''the Official Closing Price for that auction is the midpoint of the Auction NBBO as of the time the auction is conducted.''[50] NYSE stated that if all market orders for a NYSE Arca listed security were sent to BZX, the official closing price would instead be the consolidated last sale price, which can differ from the midpoint of the auction NBBO by as much as 3.2%.[51]

In arguing that additional fragmentation of closing auction interest would detrimentally impact price discovery, both Nasdaq and NYSE distinguished the Cboe Market Close from competing closing auctions currently operated by Nasdaq and NYSE Arca for securities listed on other markets. Nasdaq stated that the BZX proposal is a price-matching order type and not a competitive single-priced

[38] *See id.* at 6.

[39] *See id.*

[40] *See* Nasdaq Letter 1, at 12. *See also* Nasdaq Letter 2, at 6 (providing an example of how the proposal could cause a stale closing price). Nasdaq also stated that a credible independent study of the potential risk to price discovery is essential in order to consider whether the proposal is consistent with the Act. *See* Nasdaq Letter 1, at 12.

[41] *See id.,* at 11. Nasdaq subsequently submitted a memorandum providing, among other things, data relating to the level of matched MOC volume in Nasdaq closing auctions spanning the period of January 1, 2017 through September 30, 2017 (''Nasdaq Data Memo''). Nasdaq requested protection under the Freedom of Information Act for its memorandum.

[42] *See* Nasdaq Letter 2, at 3.

[43] *See id.* at 3–5. Specifically, Nasdaq identified 1,653 closing crosses between January 1, 2016 and August 31, 2017 where removal of all MOC orders would have changed the closing prices. Nasdaq asserts that this would have changed the closing valuation of Nasdaq issuers ''by nearly $870,000,000 of aggregate impact.''

[44] *See* NYSE Letter 1, at 3. While NYSE's arguments focused primarily on the potential for MOC orders to migrate to Cboe Market Close as described below, NYSE also asserted that, if the fees for the Cboe Market Close were set lower than the fees charged by the primary listing exchanges, it could induce some market participants to use MOC orders rather than sending LOC orders to the primary listing market. *See* NYSE Report, at 23.

[45] *See* NYSE Report, at 12. *See also* NYSE Letter 1, at 4. NYSE, as well as Nasdaq, also asserted that the proposal contradicts the Commission's approval of recent amendments to the National Market System Plan to Address Extraordinary Market Volatility (the ''LULD Plan'') which, they argue, centralize re-opening auction liquidity at the primary listing exchange by prohibiting other market centers from re-opening following a trading pause until the primary listing exchange conducts a re-opening auction. These commenters asserted that it would be inconsistent for the Commission to find it in the public interest to consolidate trading in a re-opening auction, while sanctioning fragmentation of trading in a closing auction. *See* Nasdaq Letter 1, at 6; NYSE Letter 1, at 3; and Nasdaq Letter 2, at 12. In response, commenters asserted the amendment to the LULD Plan cited by NYSE and Nasdaq granted the primary listing market the ability to set the re-opening price but did not mandate the consolidation of orders at the primary listing market following a trading halt. BZX believes the proposal is consistent with the LULD Plan as it seeks to avoid producing a ''bad'' or ''outlier'' closing price and does not affect the centralization of price-setting closing auction orders. *See* BZX Letter 1, at 8–9. *See also* Bollerman Letter, at 3.

[46] *See* NYSE Report, at 13 and 23. *See also* NYSE Report, at 12 (arguing that ''[a]nticipation that there will be MOC orders in the closing auction is a critical component feeding into the decisions of liquidity providers and other market participants'' trading in the closing auction).

[47] *See* NYSE Letter 1, at 4. In response to this assertion, ViableMkts argues that use of Cboe Market Close is voluntary. Accordingly, if a market participant wanted a DMM to be aware of their closing activity they could still send their orders to the NYSE closing auction. *See* ViableMkts Letter, at 4.

[48] *See* NYSE Letter 1, at 4.

[49] *See* NYSE Letter 1, at 5. *See also* NYSE Report, at 11–12. NYSE represented that once NYSE American transitions to Pillar technology, it will conduct a closing auction in an identical manner to NYSE Arca.

[50] *See id.*

[51] *See id.* In its third comment letter, NYSE also asserts that, in contrast to the data NYSE provided in its first letter, BZX failed to provide any data in response to the requests for comment in the OIP to support the claim that there would be no impact on price discovery. *See* NYSE Letter 3, at 2. *But see* BZX Letter 3, at 2–4, 7–9 and *infra* notes 99–106 and accompanying text discussing data and analysis provided by BZX.

auction that offers price discovery.[52] In contrast, Nasdaq states that its single-priced auction for non-Nasdaq listed stocks was designed to maximize order interaction and improve price discovery for issuers, not to siphon orders away from the primary market without seeking to improve price discovery.[53] Accordingly, Nasdaq argued that the fact that it and NYSE offer competing closing auctions is irrelevant because those auctions are fundamentally different from the BZX proposal.[54] Similarly, NYSE argued that it believed it was misleading to compare the proposal to the competing closing auctions because BZX would be offering neither a competing closing auction nor a facility to establish the official closing price should a primary listing exchange invoke its closing auction contingency plan.[55]

Nasdaq and NYSE further argued that competing closing auctions cause minimal fragmentation, as volumes in those auctions are ''miniscule.'' [56] For example, Nasdaq stated that volumes in all competing auctions in Nasdaq-listed corporate securities in the month of June 2017 were less than 0.5% of Nasdaq's closing volume.[57] Similarly, NYSE stated that for the period January 1, 2017 through October 13, 2017, closing auctions in NYSE and Nasdaq-listed securities on NYSE Arca represent 0.5% of the notional value traded in the NYSE and Nasdaq closing auctions.[58] Nasdaq further asserted that less than half of Nasdaq-listed corporate issues experience price dislocations in competing closing auctions.[59] Moreover, Nasdaq and NYSE stated that on multiple occasions when they received closing interest for securities listed on another exchange, they have contacted the firms associated with those orders and encouraged them to route their orders directly to the primary listing exchange.[60]

Nasdaq and NYSE also addressed price-matching services in the over-the-counter market. Nasdaq stated that the proposal would introduce a new category of price-matching venues, which would exacerbate the harm caused by fragmentation.[61] Both Nasdaq and NYSE stated that over-the-counter price-matching services should not be considered a precedent for the Cboe Market Close proposal. Nasdaq stated that, as a neutral trading platform, an exchange is capable of attracting and aggregating more liquidity than a broker-dealer.[62] Moreover, according to Nasdaq, trades resulting from broker-dealer price-matching services are often also involved in the closing auction on the primary listing exchange, thus contributing to price discovery despite operating a price-matching service.[63] Nasdaq explained that a broker may accept a MOC order and trade as either agent or principal against that order by entering limit orders into either the closing auction on the primary listing exchange or the continuous market leading up to the closing auction. After receiving an execution in the primary market closing auction, the broker would then trade with the customer off-exchange at a price determined by the primary market closing auction.[64] Similarly, NYSE argued that it should not be assumed that the current level of MOC orders executed away from the primary market is a reasonable proxy for the impact of the BZX proposal.[65] Specifically, NYSE asserted that market makers that cross orders on behalf of clients at the closing price could be risking capital on such transactions, which would likely be a constraining force on the magnitude of orders crossed away from primary markets, while BZX would have no such obligation to commit capital in Cboe Market Close.[66] As such, NYSE argued that the BZX proposal, if successful, could result in a much higher percentage of MOC orders diverted away from the primary market than what occurs today.[67]

In addition, NYSE stated that existing off-exchange matching services have a negative impact on the validity and integrity of price discovery in the closing auctions.[68] NYSE stated that data it analyzed from certain closing auctions with large imbalances [69] shows that, for securities with 1,000 shares or less reported at the official closing price (on and off-exchange), volatility in the last 10 minutes of trading leading into the close is 52% higher when more than 75% of a security's closing share volume is reported to a trade reporting facility (''TRF'') (*i.e.,* paired off-exchange), compared to when less than 25% of a security's closing share volume is reported to a TRF. In addition, NYSE asserted that its data showed that the official closing price generated in auctions for securities with 1,000 shares or less reported at the official closing price (on and off-exchange) where more than 75% of a security's share volume is reported to a TRF was more than twice as far away from the last consolidated sale price and nearly twice as far away from the market volume weighted average price (''VWAP'') of the last two minutes of trading leading into the close.[70] Accordingly, NYSE concluded that existing fragmentation degrades the quality of the closing price.[71]

Several other commenters also discussed how the proposal may impact the integrity of official closing prices. In particular, GTS, a DMM on NYSE, argued that market-on-close orders are a vital component of closing prices and, should those orders be diverted away from the primary listing markets as a result of the proposal, it could undermine the official closing prices.[72] GTS stated that, in pricing a closing auction on NYSE, it considers a variety of inputs and stated that it considers ''the size of . . . matched shares and the time those matched shares are consumed by each individual book [to be] essential data points for

[52] *See* Nasdaq Letter 2, at 8–9.

[53] See *id.* at 9.

[54] *See id.*

[55] *See* NYSE Letter 2, at 3.

[56] *See* Nasdaq Letter 2, at 9–10; *see also* NYSE Letter 3, at 5–6.

[57] *See* Nasdaq Letter 2, at 11.

[58] *See* NYSE Letter 3, at 6. NYSE also stated that it does not have a business interest in running closing auctions for securities listed on other markets. It operates the NYSE Arca closing auction for resiliency purposes, which it believes outweighs any modest negative impact on fragmentation. *See id.; see also infra* note 239.

[59] *See* Nasdaq Letter 2, at 11. In response to BZX's claim that a large percentage of competing closing auctions conducted by Nasdaq and NYSE resulted in closing prices different from the official closing price, Nasdaq also stated that many of the examples cited in BZX Letter 1 are from competing auctions in ETFs, which, Nasdaq stated, have a fundamentally different price discovery process. Nasdaq argued that if ETFs were removed from the analysis, less than half of Nasdaq-listed corporate issues see a price difference when closing on NYSE Arca. *See id.*

[60] *See id.* at 13; NYSE Letter 3, at 6. *See also infra* note 87 and accompanying text.

[61] *See* Nasdaq Letter 2, at 13.

[62] *See id.*

[63] *See id.*

[64] *See id.* The Nasdaq Data Memo also provided data and analysis arguing that a portion of the broker-dealer volume executed off-exchange after the close at the primary listing market's closing price reflects brokers submitting customers' interest to the closing cross and subsequently reporting an over-the-counter trade between the broker and its customers.

[65] *See* NYSE Report, at 10.

[66] *See* NYSE Report, at 10.

[67] *See* NYSE Report, at 10. The NYSE Report asserted that this was one of the limitations of drawing conclusions from the DERA Analysis regarding how the BZX proposal would impact the market close. See discussion of DERA Analysis, *infra* notes 133–134 and accompanying text.

[68] *See* NYSE Letter 3, at 3.

[69] *See id.* at 3. NYSE stated that it reviewed closing auctions with imbalances of 50% of paired shares as of 3:50 p.m. *See id.* at 4.

[70] *See id.* at 3–4. NYSE provided data that they asserted illustrates that the same degradation in the quality of the official closing price also occurs in closes for securities with 10,000 shares or more reported at the official closing price. *See id.* at 4.

[71] *See id.* at 3–4.

[72] *See* GTS Securities Letter 1, at 2–3.

consideration.'' [73] If this information is fragmented across multiple venues, according to GTS, the closing price will change and will become less reliable.[74] Eighteen commenters asserted that the proposal would make it more difficult for Designated Market Makers to facilitate an orderly close of NYSE listed securities as they would lose the ability to continually assess the composition of market-on-close interest.[75] Many of these commenters are issuers listed on NYSE and asserted that one of the reasons they chose to list on NYSE was the ability to have access to a DMM that is responsible for facilitating an orderly closing auction.[76]

Multiple commenters stated that one of the benefits of a centralized closing auction conducted by the primary listing market is that it allows market participants to fairly assess supply and demand such that the closing prices reflect both market sentiment and total market participation.[77] Because they believed that the proposal may cause orders to be diverted away from the primary listing exchanges, these commenters argued that it would negatively affect the reliability and value of closing auction prices. Several commenters further argued that centralized closing auctions provide better opportunities to fill large orders with relatively little price impact.[78]

In response to concerns regarding the impact of the proposal on the price discovery process, BZX argued that, because the proposal would only match MOC orders and would require the Exchange to publish the number of matched shares in advance of the primary listing markets' cut-off times, BZX believes it would avoid any impact on price discovery.[79] BZX also stated that it does not believe the proposal would impact the use of LOC orders on the primary listing markets as LOC orders provide price protection and the lower fees charged to MOC orders that participate in Cboe Market Close would not outweigh the risk of receiving an execution at an unfavorable price.[80] BZX further challenged commenters' concerns that Cboe Market Close could pull all MOC orders away from the primary listing markets and alter the calculation of the closing price, stating that such a scenario could occur today as a result of competing closing auctions and broker-dealers that offer internal MOC order matching solutions.[81] Accordingly, BZX contends that the proposal would not impose fragmentation on the market at the close that does not already exist today.[82]

In particular, with regard to competing closing auctions, BZX argued that such competing auctions could not only pull all MOC interest away from the primary listing markets but could also divert all price-setting limit-on-close interest from those markets as well.[83] Further, BZX argued that Nasdaq and NYSE's assertions that they currently attract low trading volumes in their competing closing auctions are irrelevant to an analysis of their potential impact on fragmentation.[84] Should these auctions see an increase in order flow, BZX argued they would increase existing market fragmentation.[85] BZX also asserted that such competing closing auctions often may produce bad auction prices on the non-primary market, as compared to the proposed Cboe Market Close which would ensure that market participants receive the official closing price.[86] In addition, in response to NYSE's assertion that it contacted firms that submitted orders to NYSE Arca's competing closing auction and encouraged them to instead submit orders to the primary listing market, BZX provided data that it stated evidences that NYSE has not, in fact, discouraged order flow to their competing auctions and that NYSE Arca's competing auction ''continues to maintain not insignificant monthly volume'' in at least two securities.[87]

With regard to off-exchange matching processes, BZX stated that several off-exchange venues currently offer executions at the official closing price and therefore provide a forum to which participants may choose to send MOC orders in lieu of sending MOC or LOC orders to the primary listing market.[88] BZX stated, however, that it was not aware of any concerns raised by NYSE, Nasdaq, or the Commission regarding the impact of such venues on the use of LOC orders in the closing auctions of the primary listing exchanges.[89]

BZX also provided certain data regarding current trading volume at the close on venues other than primary listing exchanges to show that the proposal would ''not introduce a new

[73] *See* GTS Securities Letter 2, at 3. GTS also stated that the types of orders submitted to the closing auction, such as limit or market, also impact its pricing determinations. *See id.*

[74] *See id.* at 4.

[75] *See* NYSE Letter 1, at 4; GTS Securities Letter 1, at 2–3; Customers Bancorp Letter; Masonite International Letter; Orion Group Letter; CTS Corporation Letter; Encana Letter; Triangle Capital Letter; Pennsylvania REIT Letter; IMC Letter, at 1–2; Southern Company Letter; Nobilis Health Letter; CACI Letter; Turning Point Letter; P&G Letter; Cardinal Health Letter; FedEx Letter; Stewart Letter; Global Payments Letter. *See also supra* notes 45–48 and accompanying text. Four commenters also asserted that the proposal would have potentially detrimental impacts on NYSE floor brokers. *See* Bowers Letter; Meridian Letter; Americas Executions Letter; and GTS Securities Letter 2, at 4.

[76] *See* GTS Securities Letter 1, at 2–3; Masonite International Letter; Encana Letter; Triangle Capital Letter; Pennsylvania REIT Letter; Nobilis Health Letter; CACI Letter; Turning Point Letter; P&G Letter; Cardinal Health Letter; FedEx Letter; and Stewart Letter.

[77] *See* Bowers Letter; Americas Executions Letter; and FedEx Letter. *See also* Coupa Software Letter; Trade Desk Letter; Mimecast Letter (arguing that gathering liquidity in a single venue ensures that the market reaches an accurate and reliable closing price for their stocks); Global Payments Letter.

[78] *See e.g.,* Bowers Letter; Americas Executions Letter; Customers Bancorp Letter; Orion Group Letter; and Southern Company Letter.

[79] *See* BZX Letter 1, at 3–4 and BZX Letter 2, at 2 and 10. In addition, BZX offered to disseminate more information with regard to Cboe Market Close and to disseminate such information via the applicable securities information processor, in addition to the Bats Auction Feed. *See* BZX Letter 1, at 4 and 12–13, and BZX Letter 2, at 2. BZX further asserted that it believed modern software can easily and simply add this data to data disseminated by the primary listing markets. *See* BZX Letter 1, at 4 and BZX Letter 2, at 3.

[80] *See* BZX Letter 2, at 3.

[81] *See* BZX Letter 1, at 4–5 (stating that neither NYSE nor Nasdaq prohibits their members from withholding MOC orders from their closing auctions) and BZX Letter 2, at 2–3. In response, NYSE stated that it believed such broker-dealer services degrade the public price and size discovery of the primary listing exchanges' closing auctions, but that such activities are not held to the same standards under the Act as national securities exchanges and against which the BZX proposal must be evaluated. *See* NYSE Letter 2, at 4. GTS further stated in response that it believes such broker-dealer services deprive the DMM of content that is critical to pricing a closing auction and the Commission should study the impact of this activity on closing auctions. *See* GTS Securities Letter 2, at 4. *See infra* note 129 and accompanying text discussing the DERA analysis of the relationship between the proportion of MOC orders currently executed off-exchange and closing price discovery and efficiency.

[82] *See* BZX Letter 1, at 4 and BZX Letter 2, at 2.

[83] *See* BZX Letter 1, at 5; BZX Letter 2, at 2; and BZX Letter 3, at 4. BZX provided evidence of 14 instances in June 2017 where a Nasdaq-listed security had no volume in Nasdaq's closing auction but did have volume in NYSE Arca's closing auction. *See* BZX Letter 1, at 5.

[84] *See id.* at 6.

[85] *See id.* BZX also stated that, despite their potential utility as a back-up in case of a market impairment, Nasdaq and NYSE Arca run these competing auctions on a daily basis, regardless of whether there is an impairment at a primary listing exchange. *See id.* BZX further questioned why these exchanges do not utilize test symbols and test data in order to confirm the operational integrity of the auction processes without potentially harming the price discovery process by the primary's closing auction. *See* BZX Letter 3, at 5.

[86] *See* BZX Letter 1, at 4 and BZX Letter 2, at 2. BZX asserted that 86% of closing auctions conducted by Nasdaq for NYSE-listed securities in June 2017 resulted in closing prices different from the official closing price and 84% of competing closing auctions conducted by NYSE Arca for Nasdaq-listed securities in June 2017 resulted in closing prices different from the official closing price. BZX Letter 1, at 4.

[87] BZX Letter 3, at 4.

[88] BZX Letter 2, at 3.

[89] *Id.,* at 3.

type of fragmentation at the close.'' [90] Specifically, BZX argued that off-exchange venues ''siphon significant order flow at the close from the primary listing markets,'' as over the first nine months of 2017, off-exchange volume at the official closing price represented approximately 30% of Nasdaq closing volume for Nasdaq-listed securities and 23% of NYSE closing volume for NYSE-listed securities.[91] Moreover, BZX argued that the proposal ''could increase transparency by incentivizing market participants to re-direct their MOC orders from off-exchange venues to a public exchange,'' whose processes are subject to the requirements of the Act, would be included in BZX's rules, and would be subject to the proposed rule change requirements of Section 19(b) of the Act before any changes could be made to the operation of Cboe Market Close.[92] In addition, BZX argued that attracting order flow away from off-exchange venues would have the additional benefit of increasing the amount of volume at the close executed on systems subject to Regulation SCI's resiliency requirements.[93]

In response to NYSE's data regarding the impact of off-exchange activity at the close on closing auction price formation, BZX presented several critiques of the analysis. First, BZX asserted that NYSE provided selective data that supported their conclusion that existing fragmentation at the close has a negative impact on price discovery in closing auctions. In particular, BZX stated that NYSE did not indicate the number of closing auctions included in its data set.[94] BZX also stated that NYSE's data set was limited to auctions with less than 1,000 shares, imbalances of 50% or more of the paired shares as of 3:50 p.m., and securities for which more than 75% of the volume was reported to the TRF. Based on its own analysis, discussed below, BZX estimated that the number of auctions included in NYSE's data set for auctions with 1,000 shares or less to be less than 100th of 1% of all auctions.[95] Therefore, BZX argued that NYSE's findings are ''of no statistical significance.'' [96]

BZX further argued that it is possible that such low volume securities with severe imbalances would be subject to price variations between the last sale and the official closing price, regardless of the amount of off-exchange closing activity.[97] In addition, BZX stated that the data that NYSE provided for auctions with more than 10,000 shares shows that the ''impact on closing prices is dampened in more actively traded securities,'' which it believes undercuts NYSE's conclusions and ''further highlights the selective and limited nature of NYSE's data set.'' [98]

Furthermore, BZX stated that it conducted its own analysis of data from all primary auctions in NYSE-listed securities for which there was a closing auction and a last sale regular way trade, regardless of size, from January 2, 2017 through September 29, 2017.[99] BZX stated that it reviewed auctions with imbalances of 50% or more of paired shares at 3:55 p.m. BZX also stated that it compared auctions where less than 25%, 25% to 50%, 50% to 75%, and more than 75%, of the closing volume was reported to the TRF.[100] BZX also grouped its data amongst auctions with 1,000,000 shares or more, 100,000 shares to 1,000,000 shares, 10,000 to 100,000 shares, 1,000 to 10,000 shares, and less than 1,000 shares.[101] BZX stated that its analysis shows that ''the average price gap between the last sale and the official closing price was 9.09 basis points across all groups.'' [102] BZX stated that it also found that ''price gaps are greater amongst auctions with less than 25% of closing volume reported to the TRF.'' [103] BZX concluded that its analysis contradicts NYSE's conclusions, asserting that it shows that ''the amount of TRF closing volume has little to no relationship to the primary listing market's closing auction process.'' [104]

In addition, BZX stated that it also found similar patterns ''when it analyzed securities based on their ADV instead of auction size.'' [105] BZX acknowledged that, while securities with less than 10,000 shares appear to have the most volatility, these securities account for a small percentage of overall auction volume, and argued that such volatility ''is more likely indicative of the applicable security's trading characteristics.'' [106]

In response to NYSE's arguments regarding the impact on a DMM's ability to price the close, BZX argued that this point highlights what it believes to be an additional benefit of allowing it to compete with NYSE's closing auction.[107] Specifically, BZX argued that NYSE's assertion that DMMs consider the composition of closing interest in making pricing decisions ''suggests that the NYSE closing auction is not a true auction and can be an immediate detriment to users sending MOC orders of meaningful size to the NYSE.'' [108] Accordingly, BZX stated that it believed this ''highlights an additional benefit'' of Cboe Market Close as it ''would provide an alternative pool of liquidity and a mechanism for large order senders to avoid the subjective decision making of the DMMs who are free to make closing price decisions to their profit benefit at the client's expense.'' [109]

As the Commission stated in the OIP, it has consistently recognized the importance of the closing auctions of the primary listing markets.[110] In particular, the Commission has previously stated that ''reliable . . . closings on the primary listing markets are key to the establishment of fair and orderly markets.'' [111] Accordingly, the Commission has carefully analyzed and considered the proposal's potential impact, if any, on the primary listing markets' closing auctions, including their important price discovery functions, and the reliability and integrity of closing prices. After careful consideration of the proposal and all of the comments received and for the reasons discussed throughout, the Commission believes that Cboe Market Close is reasonably designed not to disrupt the price discovery process in the closing auctions of the primary listing exchanges and is consistent with the Act and the rules and regulations thereunder.[112]

Importantly, Cboe Market Close will only accept MOC orders and not LOC orders. Contrary to some commenters' assertions that MOC orders contribute to the closing price, the Commission

[90] *See id.* at 4–5.

[91] *See* BZX Letter 2, at 4. BZX further asserted that, over the course of 2017, the amount of off-exchange closing volume has been increasing. *See id.* at 5.

[92] *See id.* at 5–6.

[93] *See id.* at 11.

[94] *See* BZX Letter 3, at 2.

[95] *See id.* at 2–3.

[96] *See id.* at 3.

[97] *See id.*

[98] *See id.*

[99] *See id.*

[100] *See id.*

[101] *See id.*

[102] *See id.*

[103] *See id.*

[104] *See id.* at 3–4.

[105] *See id.* at 3.

[106] *See id.* at 4.

[107] *See* BZX Letter 1, at 10.

[108] *Id. See also supra* note 47–48 and accompanying text.

[109] *Id.* In response, NYSE argued that BZX's claims regarding the role of the DMM were not germane to whether the proposal is consistent with the Act and stated that it believed the scale of its closing auction and the low levels of volatility observed in the auction demonstrate its effectiveness. *See* NYSE Letter 2, at 4.

[110] *See* OIP, *supra* note 7, at 40210.

[111] *See id.* (citing to Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72255, 72278 (December 5, 2014)).

[112] Accordingly, for the reasons discussed throughout, the Commission believes the proposal is consistent with the maintenance of fair and orderly markets. *See* Sections 6 and 11A of the Act; see *supra* note 32.

believes that MOC orders, which do not specify a target price and seek to be executed at the closing price at the end of the trading day are, by their nature, the recipients of price formation information and generally do not directly contribute to setting the official closing price of securities on the primary listing markets.[113] In particular, the Commission believes that paired-off MOC interest, such as that would be matched and executed in the Cboe Market Close, does not fundamentally affect the determination of the closing price. As many commenters stated, the price determined in a closing auction is designed to be a reflection of market supply and demand, and key considerations in setting the closing price are maximizing the number of shares executed and minimizing the amount of the imbalance between buy and sell interest. The Commission believes that matching paired-off MOC orders in the manner BZX proposes would not affect the net imbalance of closing eligible trading interest in the market. As such, the orders that actively participate in, and contribute to, the price formation process in a closing auction—including limit orders and unpaired MOC orders—would not be executed in the Cboe Market Close and could continue to be submitted to the primary listing exchange. Accordingly, the Commission believes that the proposal is reasonably designed to not disrupt the price discovery process and closing auction price formation.

The Commission recognizes that several commenters made assertions that matched MOC order flow provides informational content regarding the depth of the market that indicates true supply and demand and contributes to market participants' decisions regarding order submission and ultimately price formation.[114] As such, these commenters argued that removing matched MOC orders from the primary listing market would impact price formation. However, the Commission believes that, while the proposal may result in the execution of some MOC orders on a venue other than the primary listing exchange, BZX's proposal, because it would require the size of matched MOC orders to be published well in advance of the order entry cut-off times for the primary listing exchanges' closing auctions, is reasonably designed to allow market participants to, in conjunction with the information disseminated by the primary listing exchanges, ascertain closing auction liquidity demand. Accordingly, the Commission believes that the information disseminated by BZX could be used by market participants in conjunction with the information disseminated by the primary listing exchange to make order submission decisions. Although some commenters also asserted that DMMs would no longer have full visibility into the size and composition of MOC interest, DMMs will have access to the amount of paired-off MOC volume on BZX well in advance of NYSE's order entry cut-off time and the start of the NYSE closing auction. An NYSE DMM could, for example, use such information to determine the total amount of MOC interest for a given security in Cboe Market Close and NYSE's closing auction, in establishing the relevant context for any imbalances in NYSE closing auctions and calculating appropriate closing prices.[115] Further, the Commission believes that, as BZX stated, the Cboe Market Close could benefit market participants that do not wish to disclose information regarding their orders to certain other market participants such as DMMs by providing another venue to which they may send their orders for execution at the closing price. In addition, the Commission does not agree with those commenters that argued that the proposal contradicts the Commission's approval of Amendment 12 to the LULD Plan, as the LULD Plan does not mandate that market participants consolidate their orders at the primary listing exchanges, but rather requires that a trading pause continue until the primary listing exchange has reopened trading.[116] While pursuant to the LULD Plan trading may not begin until the reopening on the primary listing exchange, market participants continue to have the choice as to where to submit their orders.

As discussed above, NYSE and Nasdaq argued that if the proposed rule change resulted in the removal of all MOC orders from the primary listing exchanges' closing auctions, that result would impact closing prices in instances where no auction could be held in accordance with their rules. In such scenarios, NYSE and Nasdaq assert that, pursuant to the primary listing exchanges' rules, the resulting closing price would be the consolidated last sale price.[117] NYSE and Nasdaq both sought to quantify the extent to which last consolidated sale prices would have differed from closing prices determined through closing auctions. The data and counterfactual examples provided in this regard assume that the BZX proposal would result in *no* market participants choosing to send any MOC orders to the primary listing markets' closing auctions. However, the commenters did not assert how likely it was for such a scenario to occur or provide data in support thereof, nor did they provide any other data regarding what the impact would be should fewer than all MOC orders be diverted from the primary listing markets. While NYSE further asserted that one ''plausible outcome'' of the BZX proposal is that the majority of MOC orders would migrate to Cboe Market Close, it acknowledged that it was ''hard to predict what would happen if the [BZX] proposal were to be approved.'' [118] Further, NYSE explained that this outcome would likely be the case if the fees set by BZX for Cboe Market Close were lower than the primary listing markets and there was no competitive response by the primary listing exchanges.[119] The Commission believes it may be possible that there would be instances in which no MOC orders participate in a primary listing market's closing auction following implementation of the Cboe Market Close. However, such instances can occur today, and the Commission believes that the more likely scenario is that, if Cboe Market Close were to be approved and implemented, it would draw some, though not all, MOC orders from the primary listing markets, because many market participants likely base decisions regarding where to send closing orders not solely on fees, but rather on many other factors, including the reliability, stability, technology and surveillance associated with such auctions,[120] and because currently there

[113] *See supra* notes 40–48 (discussing Nasdaq's and NYSE's arguments of how MOCs can contribute to the closing price).

[114] *See supra* notes 45–48, 72–75 and 77 and accompanying text.

[115] The proposal would not alter the information DMMs would have relating to off-exchange MOC interest. In addition, one commenter that is supportive of the proposal is a DMM on NYSE and stated that the proposal ensures that the price discovery process remains intact because BZX would only match buy and sell MOC orders and not limit orders, which it stated, ultimately lead to price formation. *See* Virtu Letter, at 2.

[116] *See* Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551, 8552 (January 26, 2017). *See also* BZX Letter 1, at 8–9 and Bollerman Letter at 3.

[117] *See* Nasdaq Letter 2, at 3; NYSE Letter 1, at 5. *See also, e.g.,* NYSE Rule 123C(1)(e); NYSE Arca Rule 1.1(ll)1.

[118] *See* NYSE Report, at 22.

[119] *Id.*

[120] *See generally,* Nasdaq Letter 1, at 3–4 (asserting that the Nasdaq closing cross has been successful due to its integrity, stability, reliability, and regulation). Furthermore, in assessing whether to utilize Cboe Market Close, market participants may evaluate other attributes of the functionality, such as the need to monitor whether they were matched on BZX and potentially having to send

exist competitive alternatives to execute MOC orders off-exchange, yet the majority of MOC orders continue to be executed in the closing auctions on the primary listing exchanges.[121] While the Commission acknowledges that, as some commenters argued, current levels of off-exchange MOC activity are not a perfect measure of the potential resulting impact of the proposal, the Commission believes that they do provide some limited insight, as discussed further below. Further, the Commission believes that, should market participants choose to send a substantial portion of MOC orders to the Cboe Market Close, the primary listing exchanges have various other options available to them to try to compete for such orders, and it is unlikely that such exchanges would choose to accept the complete loss of MOC order market share and make no attempt at a competitive response.

Further, while the commenters' analyses examined price differentials in various contexts, differences in prices alone are not dispositive with respect to price discovery or efficiency. First, a large difference between a reference price (*e.g.,* the last sale price) and the closing price may reflect genuine information if the price change persists, or may reflect a temporary price pressure if the price change subsequently reverses.[122] Because the data and analyses that commenters provided did not analyze subsequent price changes, it is unclear whether the pre-close price differentials indicate better or worse price discovery or efficiency. Second, when comparing price differences across securities, the analyses did not distinguish whether the observed differences were due to the removal of MOC orders from the primary listing exchange or due to liquidity differences. As described above, NYSE provided an analysis comparing price differences between securities in which 75% of the total closing volume was reported to a TRF, to securities in which 25% of the total closing volume was reported to a TRF, and argued that securities with more off-exchange MOC activity have more closing price volatility. However, the Commission believes that closing price volatility and off-exchange activity may be correlated with unobserved liquidity factors. For example, small stocks tend to have high trading costs (*e.g.,* wider spreads, thinner order books) and more volatility on average.[123] Therefore, it is possible that the price differences observed by the commenter could be due to differences in liquidity or other factors not controlled for in the analysis, rather than the levels of off-exchange MOC activity.[124] Nasdaq's analysis involved 1,653 closing crosses that occurred between January 1, 2016 and August 31, 2017, which the Commission estimates accounts for approximately 0.44% of all Nasdaq auctions over that time period. As such, the Nasdaq analysis may not be a representative sample.[125] Moreover, Nasdaq did not address whether the securities analyzed are highly illiquid. If they are highly illiquid, price differences between the last sale price and the closing auction price may be large for reasons unrelated to the specifics of the auction mechanism.[126] Given these limitations, including that Nasdaq's estimate may overstate the impact, the data and analysis provided in these comments do not persuade the Commission that the proposal is inconsistent with the Act.

Further, while NYSE and Nasdaq implied that use of the consolidated last sale price as the official closing price is inferior to the price discovery process of the closing auction, the use of the consolidated last sale price as the official closing price when a primary listing exchange does not conduct a closing auction is not mandated by the Act or rules thereunder, but rather is established by the rules of that exchange. Therefore, if a primary listing exchange believes that such prices no longer reflect an appropriate closing price in certain scenarios, it is within the exchange's discretion to reevaluate whether reliance on the last consolidated sale price is the appropriate means for determining the official closing price in such scenarios, and may file proposed rule changes to amend its rules to establish alternative methods of determining the official closing price should no auction be held that it believes to be more appropriate.[127]

Some commenters also argued that the proposal would impact the submission of LOC orders to the primary listing markets. As BZX stated in its response letter, LOC orders provide price protection, whereas MOC orders are submitted by market participants who may be less price sensitive and who may prioritize other aspects of a closing execution over price. As such, the Commission does not believe that it is likely that market participants would be more inclined to assume the risk of submitting MOC orders to the Cboe Market Close in circumstances where they otherwise would have submitted price-protected LOC orders into the primary markets' closing auctions, solely to pay lower fees. As discussed above, Nasdaq and NYSE also asserted that the Cboe Market Close could discourage submission of orders in the continuous market and closing cross if there were a large amount of paired MOC orders in Cboe Market Close and a subsequent lack of imbalance information disseminated on the primary listing markets.[128] However, the Commission believes this risk is not unique to the availability of the Cboe Market Close and, indeed, exists today. Specifically, the Commission believes that the submission of orders would similarly be discouraged today if such large amount of MOC orders in a listed security had been paired on the primary listing exchange and accordingly, there was little or no resulting imbalance disseminated by such exchange. Irrespective of the exchange upon which the MOC orders are paired, the net imbalance published by the primary listing exchange would be expected to be the same. In addition, because Cboe Market Close would publish the volume of MOC orders paired prior to the start of the closing auctions on the primary

their MOC orders to more than one venue if not matched, as well as having to commit to transact at the closing price at an earlier time than they otherwise would have had they chosen to send their MOC orders to the primary listing exchanges.

[121] See DERA Analysis, *supra* note 8 (finding that, on average, approximately 9.3 percent of closing volume is matched off-exchange at the primary listing exchange's closing price); NYSE Report, at 22 (stating that closing auctions on the listing exchanges currently process the vast majority of the MOC and LOC orders in the market); and Nasdaq Data Memo, *supra* note 41 (providing data relating to the level of matched MOC volume in Nasdaq closing auctions).

[122] *See e.g.,* Joel Hasbrouck, ''Measuring the Information Content of Stock Trades,'' *Journal of Finance* 46, 179–207 (1991), *available at www.jstor.org/stable/2328693.*

[123] For example, one study examined fragmentation in the U.S. equities markets and showed that small cap stocks are more fragmented than large cap stocks for Nasdaq-listed issues. It also found that fragmentation is correlated with higher short-term volatility, but increased market efficiency. *See* Maureen O'Hara and Mao Ye, ''Is Market Fragmentation Harming Market Quality?,'' *Journal of Financial Economics* 100, 459–474 (2011), *available at http://www.sciencedirect.com/science/article/pii/S0304405X11000390.*

[124] *See also* notes 94–106 and accompanying text (discussing BZX's comments with respect to NYSE's analysis and BZX's own analysis of such data).

[125] *See supra* note 43.

[126] *See id. See also* NYSE Report, at 12 (''The difference between the last sale price in the continuous market and the closing auction price, particularly for less active securities where the last sale price may be stale, can be significant.'').

[127] For example, like all market participants, the primary listing exchanges could determine if and how to utilize the information BZX disseminates regarding paired MOC interest in the Cboe Market Close for determining the official closing price should they choose to do so.

[128] *See supra* notes 37–38 and 46 and accompanying text.

listing exchanges, market participants should have sufficient time to incorporate such information relating to the levels of MOC interest in the Cboe Market Close in a given security into their decisions about order submissions into the closing auctions.

In addition, as discussed above, many commenters addressed the existence of fragmentation at the close today due to off-exchange matching processes and competing closing auctions. With regard to broker-dealer matching services, the Commission's consideration and analysis of whether BZX's proposal is consistent with the Act as an exchange is subject to differing requirements and standards than those that apply to broker-dealers under the Act. At the same time, how such existing off-exchange services impact closing auctions on the primary listing markets may provide some limited insight into the potential impact of the proposal on the price discovery function of the primary closing markets, particularly to the extent the proposed Cboe Market Close is similar to such off-exchange services.

The staff from the Commission's Division of Economic and Risk Analysis analyzed the relationship between the proportion of MOC orders executed off-exchange and closing price discovery and efficiency.[129] The DERA Analysis made several findings that the Commission believes, while not dispositive, are relevant to commenters' claims regarding Cboe Market Close's potential impact on price discovery and other data and assertions presented regarding current off-exchange matching services. In particular, the DERA Analysis found that, on average, closing auction volume accounts for approximately 5.2 percent of daily volume, and on average, approximately 9.3 percent of closing volume is executed off-exchange at the primary listing exchange's closing price. The DERA Analysis also found that, in a sample spanning the first quarter of 2017, variation in off-exchange MOC share is not significantly correlated with closing price discovery or efficiency, controlling for primary auction activity, off-exchange trading activity during regular trading hours, average market capitalization, average daily trading volume, average daily stock return volatility, and closing price volatility.[130] In further sample splits (*e.g.,* by listing venue, security type, and index inclusion), the DERA Analysis finds some mixed evidence of statistically significant correlations, but no consistent or conclusive evidence that contradicts the full-sample analysis.

NYSE provided several critiques of the DERA Analysis' methodology and argued that the DERA Analysis' findings should not be interpreted as providing evidence that BZX's proposal would have no negative impact on price discovery or the efficiency of closing prices.[131] NYSE also asserted that the DERA Analysis does not adequately address the concerns raised by commenters that the BZX proposal might undermine price discovery, have a negative effect on the quality of official closing prices, and introduce new concerns related to market manipulation and ''gaming.'' [132]

As discussed above, NYSE stated that because the bulk of the volume accounted for in the DERA Analysis is market maker volume crossed on behalf of clients, it may not be a good proxy for evaluating the potential impact of the proposal.[133] In addition, NYSE stated that if BZX's proposal is successful, it could divert a higher percentage of MOC orders away from the primary listing markets than is currently observed in an analysis of existing off-exchange MOC activity. Accordingly, NYSE argued that the DERA Analysis does not have sufficient data to measure the effects when off-exchange MOC volume is high, which is likely to yield greater power to find an effect.[134] NYSE also claimed that the DERA Analysis failed to account for instances when there is no closing auction, which could result in not considering instances where, according to NYSE, price discovery in the closing auction would be most impacted by diverting MOC orders away from the primary listing market.[135]

In criticizing the methodology of the DERA Analysis, NYSE further asserted that ''widely accepted'' alternative approaches for analyzing potential behavior and incentives under alternative market structures could be useful in considering the impact of BZX's proposal on closing price discovery and efficiency.[136] In addition, NYSE stated that it may be possible to use a simulation approach to investigate the degree to which routing MOC orders away from the primary listing exchanges impacts price discovery.[137]

Concluding that the methodology used by the DERA Analysis does not provide meaningful evidence of the extent to which off-exchange MOC trading currently impacts the informational efficiency of the official closing price, NYSE discussed the metrics used in the DERA Analysis.[138] With respect to the Price Contribution metric, NYSE argued that the metric is not suitable for evaluating the quality of the closing auction because it is a ''simplistic measure'' of the degree of price discovery that would classify ''large arbitrary swings'' in prices as good price discovery.[139] Concerning the Price Reversal metric, NYSE stated that as a measure of the efficiency of official closing prices, it is a ''noisy and imprecise'' metric that makes it unlikely that one would find a significant result, even if one exists, and that it also has no clear interpretation.[140] NYSE further

[129] *See* DERA Analysis, *supra,* note 8.

[130] Though the DERA Analysis' findings suggest ''that existing levels of fragmentation do not, on average, correlate with price discover or price efficiency,'' the DERA Analysis makes clear that ''the data we have does not allow us to predict how [Cboe Market Close] would affect price discovery in the closing auction process, and market participants' use of limit-on-close orders in the closing auction processes.'' In addition, the DERA Analysis states that it does not attempt to establish a causal link between off-exchange activity and closing price discovery and efficiency. *See* DERA Analysis, *supra,* note 8, at 1–2.

[131] *See* NYSE Report, at 1 and 9.

[132] *See id.* at 9. To provide context for these assertions, the NYSE Report included background information summarizing the existing closing auction processes, including both the procedures for the primary listing exchanges' closing auctions as well as the competing closing auctions operated by Nasdaq and NYSE Arca. NYSE also summarized BZX's proposal and the DERA Analysis. *See id.* at 3–9.

[133] *See id.* at 10; *see also supra* notes 65–66 and accompanying text.

[134] *See id.* at 10–11.

[135] *See id.* at 13.

[136] *See id.* at 14. The author of the NYSE Report also stated that a study he conducted providing evidence that higher levels of off-market trading under certain market structures can harm market quality may be relevant to the analysis of the potential impacts of BZX's proposal. *See id.* at 11. However, as the study the author cited analyzes continuous trading in Nasdaq stocks prior to the implementation of Regulation NMS (adopted in 2005 and which implemented significant changes to the regulatory framework of the equity markets), the Commission does not believe in this instance that it can be relied upon to make inferences regarding current market structure. *See generally* 70 FR 27496 (June 29, 2005).

[137] *See id.*

[138] *See id.* at 17. NYSE also argued that while the DERA Analysis cited to two published papers by Barclay and Hendershott to support using a regression-based approach to study the information content of closing prices, the DERA Analysis does not use the Barclay and Hendershott methodology.

[139] *See id.* at 14–15. NYSE suggested that an alternative approach to examine price continuity measures could provide some pertinent information regarding price discovery at the close. NYSE also stated that controlling for the size of the auction and the auction's initial imbalance may be important because price deviations that are the result of large imbalances or large demand are more likely to be indicative of informationally-driven price moves, which would be an indication of good price discovery, rather than liquidity-driven price moves, which would be an indication of bad price discovery. *See id.* at 15–16.

[140] *See id.* at 16. NYSE provided several examples that it stated illustrated the imprecision of the Price Reversal metric. *See id.* at 16–17.

asserted the Price Reaction metric is likewise ''imprecise and problematic'' because it is ''just an indicator-variable version'' of price reversal and thus ''imprecisely measures the imprecise Price Reversal metric.'' [141] NYSE asserted that the DERA Analysis' lack of a finding of statistically significant results ''is not surprising'' because the power of the Price Reaction test to find significant results is severely hampered.[142]

The Commission has considered the criticisms of NYSE with respect to the DERA Analysis. Importantly, the DERA Analysis was explicit regarding the limited scope of its analysis and does not assert that BZX's proposal would have no negative impact on price discovery of official closing prices. The DERA Analysis sought to explore the correlation of closing price discovery and efficiency with existing off-exchange MOC activity. It did not make any findings with respect to establishing a causal link between off-exchange MOC activity and closing price discovery and efficiency.[143] In addition, it was not designed to, nor does it purport to, opine on or address other aspects of BZX's proposal, including the potential impact on manipulation.[144] While NYSE also criticized the scope of the DERA Analysis for not considering instances where there was no closing auction, the sample in Table 4 of the DERA Analysis did, in fact, include all symbol-day observations, including those days where there was no closing auction, and this sample showed results consistent with DERA's overall findings.[145]

NYSE noted that the DERA Analysis ''cites to two published papers by Barclay and Hendershott as support for using a regression-based approach to study the information content of the closing price. However, the DERA Analysis does not actually use the Barclay-Hendershott methodology.'' [146] The DERA Analysis explains that, in order to maintain a consistent sample size across the different regression specifications, rather than take time-series weighted averages and running pure cross-sectional regressions, the DERA Analysis uses weighted panel regressions to perform the same estimation.[147] The DERA Analysis explains that the weighted panel regression approach produces the same Price Contribution estimates as the time-series weighted averages.[148] Furthermore, the panel regression approach allows for the analysis of within-stock—day-to-day—variation in Price Contributions, off-exchange MOC activity, as well as the controls.[149] Finally, the NYSE, in its critique of the DERA Analysis, does not explain how any differences in regression specifications would affect coefficient estimates or change the interpretation of these estimates.

With respect to NYSE's critique of the Price Contribution metric, the DERA Analysis controlled for contemporaneous absolute price volatility to account for the precise concerns identified by NYSE. Accordingly, the regression utilized in the DERA Analysis sought to isolate variations in Price Contributions that were not merely ''large arbitrary price swings'' that happened to be correlated with off-exchange MOC activity.[150] While NYSE also argues that the imprecision of the Price Reversal and Price Reaction metrics render it unlikely to yield statistically significant results, the Commission believes that the DERA Analysis included a sufficient sample size and variables to achieve statistical power.[151] Regarding the Price Reversal metric, the DERA Analysis used the same definition as Barclay and Hendershott, which found statistical relations using this measure, and the DERA Analysis used all stock-days over a quarter so as to not limit the analysis to a small sample.[152] Concerning the Price Reaction measurements, the Commission acknowledges that they may be imprecise, but many of the variables included in the regression, including auction share and market capitalization, are statistically correlated with price reactions, which suggests that, in this case, the definition of the dependent variable does not, on its own, create a lack of statistical power.[153]

Moreover, NYSE suggested that there are alternative approaches that would be useful in considering how market participants are likely to behave under alternative market structures and for analyzing how potential structures create incentives for market manipulation, as well as alternative measures that could provide pertinent information regarding price discovery at the close.[154] However, NYSE did not, in fact, provide any data or studies employing any of these methods. In the OIP, the Commission requested data, analyses or studies on a variety of relevant issues including arguments that BZX's proposal would harm price discovery in the primary listing exchanges' closing auctions, that BZX's proposal would affect the integrity or reliability of the official closing auction and the resulting closing price, and that BZX's proposal would increase the potential for manipulative activity.[155] However, despite asserting that it believed there are other relevant approaches for studying and analyzing matters relevant to these points that it could have used to respond to the Commission's solicitation of comments, NYSE did not do so.[156]

As discussed above, Nasdaq and NYSE concluded that existing over-the-counter price matching should not be considered a precedent for the proposal and described how they believed some over-the-counter MOC trades differed from those that would occur through Cboe Market Close.[157] While the utility of any consideration of the impact of off-exchange MOC execution services on price discovery on the primary listing exchanges may be more limited to the extent that such existing activity and services are not identical to the proposed Cboe Market Close, the Commission nonetheless believes that the DERA Analysis, while not conclusive, provides some insights in

[141] *See id.* at 17.

[142] *See id.*

[143] *See* DERA Analysis, *supra* note 8, at 1. *See also supra* note 130.

[144] *See infra* notes 204–211 and 213–226 and accompanying text (discussing in more detail NYSE's arguments relating to manipulation and the Commission's response).

[145] *See id.* at 11 and 16. *See also supra* notes 117–121 (discussing the Commission's response to NYSE and other commenters arguments relating to the potential scenario of all MOC orders being diverted to Cboe Market Close and the primary listing markets conducting no auction).

[146] *See* NYSE Report, at 15. *See also supra* note 138.

[147] *See* DERA Analysis, *supra* note 8, at 6, note 20.

[148] *See* DERA Analysis, *supra* note 8, at 6, note 20 and accompanying text.

[149] Footnote 22 of the DERA Analysis describes a robustness check using stock and day fixed effects. *See* DERA Analysis, *supra* note 8, at 8. Controlling for unobserved heterogeneity at the stock level using stock fixed effects would not be possible using pure cross-sectional regressions.

[150] *See* NYSE Report, at 14–15.

[151] Statistical power is the ability for statistical tests to identify differences across samples when those differences are indeed significant.

[152] In fact, Table 2 of the DERA Analysis finds strong statistically significant correlations between Price Reversals and contemporaneous closing price volatility. *See* DERA Analysis, *supra* note 8, at 15.

[153] The DERA Analysis included this metric to account for price continuations, which would also indicate a lack of price efficiency. *See* DERA Analysis, *supra* note 8, at 6–7.

[154] *See* NYSE Report at 14 and 15–16.

[155] *See* OIP, supra *note* 7, at 40210–40211.

[156] *See supra* note 154. *See also infra* note 209 (stating that NYSE did not provide any data, studies, or analyses supporting its arguments regarding the potential impacts of BZX's proposal on manipulative activity in response to the Commission's specific solicitation in this regard).

[157] *See supra* notes 61–66 and accompanying text (stating that Nasdaq asserted that broker-dealers may accept MOC orders and trade against them as principal and that NYSE asserted that market makers crossing orders on behalf of clients may be risking capital on such transactions).

considering whether there would likely be potential negative impacts on the price discovery process in the closing auctions of the primary listing exchanges that would occur from executing MOC orders on a venue other than the primary listing market. Accordingly, the Commission believes that the DERA Analysis lends support for the argument that there is no strong evidence to suggest that existing levels of fragmentation of closing auctions through off-exchange MOC activity negatively impacts the price discovery process on the primary listing exchanges. In addition, as a general matter, commenters failed to provide data, studies or analyses, as requested in the OIP,[158] that persuasively supported their assertions regarding the proposal's negative impact on price discovery on the closing auctions of the primary listing markets.

With regard to competing closing auctions, BZX's proposed Cboe Market Close is not a closing auction and the Commission believes, as do some commenters, that there are certain fundamental differences between BZX's proposed Cboe Market Close and existing competing closing auctions, such as those identified by NYSE and Nasdaq regarding the price discovery mechanisms of their competing, single-priced closing auctions, which produce closing prices independent from those determined through the primary listing exchanges' closing auctions.[159] Nevertheless, the Commission believes that considering such competing closing auctions, which already exist today, is useful to an analysis of the current proposal. Importantly, in such competing closing auctions, market participants may choose not only to submit MOC orders, but also price-setting LOC orders. As pointed out by BZX, this could affect the closing price on the primary listing market by potentially diverting LOC orders that contribute to price discovery away from the primary listing market's closing auction.[160] In contrast, BZX's proposal would not accept LOC orders, but rather only matches MOC orders, and thus is reasonably designed to not impact the closing price formation process.

Several commenters stated that the proposal could harm issuers, particularly small and mid-cap companies.[161] Many of these commenters argued that because of their view that the proposal undermines the reliability of the closing process and/or the official closing price it also poses a risk to listed companies and its shareholders.[162] Many of these commenters, some of which are issuers, stated that the current centralized closing auctions on the primary listing markets contribute meaningful liquidity to a company's stock, facilitates investment in the company, and helps to lower the cost of capital. Accordingly, these commenters expressed concern that the potential additional fragmentation caused by the proposal could negatively impact liquidity during the closing auction, causing detrimental effects to listed issuers.[163]

In addition, one commenter, SPDJI, argued that the proposal may also impact confidence in the pricing of benchmark indices as confidence in closing prices is a prerequisite for market participants to maintain confidence in the pricing of benchmark indices.[164] Accordingly, SPDJI asserted that because the closing price is a critical data point for investors, great caution should be taken in any changes to the closing auction.[165]

Moreover, some commenters argued that the centralization of liquidity at the open and close of trading, and how primary listing markets perform during the opening and closing, are important factors for issuers in determining where to list their securities, and the additional risk posed to listed companies from an unreliable or unrepresentative closing price and/or process could impact an issuer's decision where to list and/or cause companies to forgo going public.[166]

With regard to concerns about the impact of the proposal on issuers and their shareholders, BZX stated that the proposal ''would not adversely impact the trading environment for issuers and their securities'' because it ''specifically designed the [p]roposal so that it would not impact the very important price discovery function performed by the primary listing markets' closing auction'' by only matching paired MOC orders and not LOC orders and ensuring executions at the closing price.[167] BZX further stated that unlike the competing closing auctions run by NYSE Arca and Nasdaq, the proposal would not create

[158] *See* OIP, supra *note* 7, at 40210–40211.

[159] *See supra* notes 52–55 and accompanying text.

[160] Competing auctions could also potentially reduce the centralization of orders at the primary listing market's closing auction, which NYSE and Nasdaq argued was a critical element of the primary listing markets' closing auctions.

[161] *See* Nasdaq Letter 1, at 6–7; Nasdaq Letter 2, at 1–2 (asserting that as a result of fragmentation, small- and mid-cap companies are more susceptible to abrupt and disruptive price swings and therefore, centralizing liquidity at the close is important for these issuers and their investors); NYSE Letter 1, at 3; GTS Securities Letter 1, at 2–5; Customers Bancorp Letter; Orion Group Letter; CTS Corporation Letter; IMC Financial Letter, at 1–2; Southern Company Letter; Nobilis Health Letter; EDA Letter, at 1–2; Coupa Software Letter; Trade Desk Letter; Duffy/Meeks Letter, at 1; and Henry Schein Letter.

[162] *See* NYSE Letter 1, at 3 (arguing that the proposal is indifferent to the potential risks to public companies and that the closing is the most important data point for shareholders); IMC Financial Letter, at 1–2; Nobilis Health Letter; EDA Letter, at 1–2; Coupa Software Letter; Ethan Allen Letter; Trade Desk Letter; BioCryst Letter; Digimarc Letter; Duffy/Meeks Letter, at 1–2 (stating that public companies are concerned the proposal will have an unforeseen effect on the pricing of their companies' shares at the close, ultimately harming a critical measure of the company's value and harming its shareholders and asking the Commission to carefully consider the impacts of the proposal and whether such impacts would be necessary and helpful to public companies); NBT Bancorp Letter; Five9 Letter; Balchem Letter; Cree Letter; Henry Schein Letter; Corbus Letter; Global Payments Letter; CA Technologies Letter; Sirius Letter; Lam Letter; and PayPal Letter. Several issuers also asserted that decentralizing closing auctions will increase volatility, reduce visibility, and negatively impact liquidity for equity securities. *See e.g.,* Customers Bancorp Letter; Orion Group Letter; Nobilis Health Letter; Cardinal Health Letter; and Stewart Letter.

[163] *See* Customers Bancorp Letter; Orion Group Letter; CTS Corporation Letter; Southern Company Letter; Duffy/Meeks Letter, at 1–2 (stating that the proposal could cause a disruption to the closing auction process, which could lead to discouraging investors from participating in and having confidence in our markets); and Five9 Letter. In contrast, one commenter argued that the proposal would improve aggregate liquidity at the official closing price because the lower aggregate cost of trading would likely spur incremental increases in trading volumes. In addition, this commenter stated that the ability to enter MOC orders into Cboe Market Close with little risk of information leakage may attract an additional source of liquidity. *See* ViableMkts Letter, at 2.

[164] *See* SPDJI Letter, at 1–2 (stating that it relies solely on primary market auction prices to calculate the official closing index values, and that these closing index values play an important role in the markets, including use by portfolio managers to measure their funds' value and for use in calculating settlement prices for certain products); *see also* Coupa Software Letter; Trade Desk Letter; and Henry Schein Letter (stating that the official closing price is used to value their stocks for purposes of various indexes and mutual funds).

[165] *See* SPDJI Letter, at 2; *see also* NYSE Report, at 23–24. In contrast, one commenter acknowledged that while impacting the quality of the closing price is an objection that deserves close analysis, as the closing price is ''the most important price of the day,'' and would warrant rejection of the proposal, the commenter does not believe the proposal would harm the quality of the closing price. *See* Angel Letter, at 4.

[166] *See* NYSE Letter 1, at 3 and 9 (stating that no single data point is more important than the closing price to the company or its shareholders); GTS Securities Letter 1, at 3–5; EDA Letter, at 1; Duffy/Meeks Letter, at 1 (stating that the closing price is a critical measure of a company's value and that public companies view the closing auction on the primary listing exchange as a critical aspect of listing); and GTS Securities Letter 2, at 1–2. In addition, one commenter stated that further fragmenting the market would limit the quality and quantity of information on trading dynamics that the primary listing markets provide to their listed issuers. *See* CA Technologies Letter.

[167] *See* BZX Letter 1, at 2 and 4 and BZX Letter 2, at 10.

a price that deviates from the official closing price, and therefore, the proposal ''would not impact listed issuers or the market for their securities.'' [168]

The Commission believes that, because the proposal is reasonably designed to minimize any impact on the price discovery process, as described above, commenters' concerns regarding the effects on listed issuers, including small and mid-cap companies, are similarly mitigated. Commenters stated that the proposal would undermine the value and reliability of closing prices for securities and, as a result, the pricing of benchmark indices, and that decentralization of the closing auction would harm liquidity in their stock.[169] However, for the reasons discussed above,[170] the Commission believes that, because the proposal is reasonably designed to not impact price formation in closing auctions on the primary listing markets, the proposal is likewise reasonably designed to avoid the detrimental impacts that commenters have raised regarding the reliability of official closing prices, confidence in closing prices and pricing of benchmark indices, increased volatility, liquidity conditions for particular stocks, and the cost of raising capital. Further, as described above, because BZX will disseminate the amount of BZX matched shares well before the cut-off time for the primary markets' closing auctions, the Commission does not believe that the proposal would negatively impact visibility and transparency into the closing auction process on the primary listing exchanges.

*Impact on Market Complexity and Operational Risk*

Several commenters addressed the potential impact of the proposal on market complexity and operational risk that could occur if the proposal resulted in increased market fragmentation. Some of these commenters believed that the proposal would not introduce significant additional complexity or operational risk. For example, two commenters argued that the proposal could enhance the resiliency of the closing auction process by providing market participants an additional mechanism through which to execute orders at the official closing price in the event of a disruption at a primary listing market.[171] Another commenter argued that exchanges already have many market data feeds that firms must purchase to ensure that they have all of the information necessary to make informed execution decisions and that adding another data feed will not add complexity given the small amount of information that goes into the closing data feed and the current capabilities of market participants to re-aggregate multiple data feeds.[172]

In contrast, other commenters argued that the proposal would add unnecessary market complexity and operational risk. In particular, two commenters stated that the proposal would require market participants to monitor an additional data feed, the Bats Auction Feed, with one also stating that if additional exchanges adopted similar functionality to Cboe Market Close, it would require monitoring of even more data feeds.[173] These commenters argued that monitoring an additional data feed could increase operational risk by creating another point of failure at a critical time of the trading day.[174] One commenter also stated its view of the increased complexity involved in sending order flow to more than one exchange in short periods of time near the close of the trading day.[175] This commenter argued that the proposal increases operational risk and complexity at a critical point of the trading day by forcing market participants whose orders did not match in Cboe Market Close to quickly send MOC orders from one exchange to another before the cut-off time at the primary market closing auction.[176] This added complexity, GTS argued, puts additional stress on the systems of exchanges and increases the potential for disruptions.[177] Lastly, two commenters argued that the proposal could encourage other exchanges, broker-dealers, and alternative trading systems to offer similar processes, which would introduce undesirable fragmentation to the market and lead to operational challenges for investors and traders.[178]

In response, BZX argued that the proposal would not increase market complexity or operational risks.[179] Rather, BZX asserted that it would provide a way to address the single point of failure risk that exists for closing auctions conducted on the primary listing markets.[180] BZX argued that, despite the current system of designated auction backups, market participants can be confused about whether an exchange is in fact able to conduct a closing auction.[181] BZX believes, in the event there is an impairment at a primary listing market, Cboe Market Close could provide an alternative option for market participants to route MOC orders and still receive the official closing price.[182]

In addition, BZX added that modern software can easily and simply add volume data disseminated by the primary listing markets regarding the closing auction and data regarding matched MOC orders from the Cboe Market Close.[183] Moreover, BZX stated that it believed the 3:35 p.m. cut-off time would provide market participants with adequate time to receive any necessary information and to route any unmatched orders to the primary listing exchange.[184] Lastly, BZX stated that market participants would not be obligated to use Cboe Market Close and accordingly, may weigh the value of seeking an execution in Cboe Market Close against any perceived risks.[185]

[168] *See* BZX Letter 2, at 10.

[169] *See supra* notes 161–166 and accompanying text.

[170] *See supra* notes 110–160 and accompanying text.

[171] *See* SIFMA Letter 1, at 2 and ViableMkts Letter, at 3 (further stating that once BZX is able to process MOC orders, they would be in a position to develop the capability to offer a full backup closing auction process).

[172] *See* Clearpool Letter, at 4.

[173] *See* NYSE Letter 1, at 7 and IMC Letter, at 1. *See also* NYSE Letter 3, at 3 (stating that market participants that may not subscribe to multiple proprietary data feeds would be at a disadvantage and that the complexity would be further compounded when other exchanges adopt functionality similar to Cboe Market Close).

[174] *See* IMC Letter, at 1 and NYSE Letter 1, at 7. *See also* Ethan Allen Letter (arguing the proposal would add a layer of complexity).

[175] *See* GTS Securities Letter 1, at 6.

[176] *See* GTS Securities Letter 1, at 6. Furthermore, NYSE argued that in certain situations, investors may not be able to participate in a closing auction on NYSE American or NYSE Arca if they wait until after their order was cancelled by BZX to send in a market-on-close order to closing auctions on NYSE Arca and NYSE American. NYSE explained that in situations where there is an order imbalance priced outside the Auction Collars, orders on the side of the imbalance are not guaranteed to participate in the closing auctions on those two exchanges. Earlier submitted market-on-close orders have priority. *See* NYSE Letter 1, at 8.

[177] *See* GTS Securities Letter 1, at 6.

[178] *See* T. Rowe Price Letter, at 1–2. *See also* Nasdaq Letter 1, at 8 (stating that other exchanges may propose similar offerings but choose different pairing cut-off times which could further complicate investors' decisions and programming requirements).

[179] *See* BZX Letter 1, at 12 and BZX Letter 2, at 10–11.

[180] *See* BZX Letter 1, at 12 and BZX Letter 2, at 10–11.

[181] *See* BZX Letter 1, at 12.

[182] *See id.* In contrast, Nasdaq argued that Cboe Market Close could not serve as a back-up for a primary listing market suffering an impairment because it is not a price-discovering auction and would not operate in the absence of the auction it would be backing-up. *See* Nasdaq Letter 2, at 12.

[183] *See* BZX Letter 1, at 4 and BZX Letter 2, at 3.

[184] *See* BZX Letter 2, at 8.

[185] *See id.* at 8–9. In contrast, NYSE argued that it is irrelevant whether it is optional to send market

Continued

The Cboe Market Close will offer market participants an additional venue to which they may send orders for execution at the official closing price and an additional data feed that some market participants may choose to monitor. However, as several commenters stated, many market participants already monitor multiple data feeds and the Commission believes that those market participants that would plan to monitor information disseminated by BZX relating to Cboe Market Close would likely already maintain systems and software that are able to aggregate such feeds.[186] Accordingly, the Commission does not believe that monitoring the Cboe Market Close feed or having an additional venue to submit MOC interest would significantly increase complexity or impose substantial burdens on market participants in such a manner as to render the proposal inconsistent with the Act. In addition, the Commission believes, as stated by BZX, that because BZX will disseminate the amount of paired shares well in advance of the order entry cut-off times for the primary listing markets' closing auctions, the proposal is reasonably designed to give market participants adequate time to review the necessary data, make informed decisions about closing order submission, and route orders to the primary listing exchange when desired. Further, the Commission believes, as BZX argued, that market participants have the ability to evaluate any potential risks that they believe may be associated with using the proposed functionality in any determination as to whether to send their orders to Cboe Market Close, such as the need to monitor additional data feeds, whether their orders were matched on BZX, or potentially having to send their MOC orders to more than one venue if they are not matched in Cboe Market Close.[187]

*Manipulation*

Several commenters addressed the issue of whether the proposal would facilitate manipulation of both the closing auctions on the primary listing markets, as well as continuous trading during the final minutes of the trading day. Some commenters did not believe it would do so. For example, one commenter stated that incentives to manipulate the closing price already exist and it is unlikely the proposal would result in increased manipulation of the market close.[188]

In contrast, several commenters asserted that the proposal raises a risk of manipulation, in part due to the asymmetry of information that would be disseminated, which would allow market participants to utilize informational advantages to their own benefit. For example, Nasdaq argued that information concerning the amount of orders matched through Cboe Market Close, would represent tradable information that market participants could use to ''game'' the closing crosses on the primary listing markets and undermine fair and orderly markets.[189] In particular, Nasdaq argued that its closing auction was designed to carefully balance the amount and timing of data released so as to reduce the risk of gaming, but that this new information regarding paired MOC orders could be used to gauge the depth of the market, the direction of existing imbalances, and the likely depth remaining at Nasdaq, creating gaming opportunities.[190] While Nasdaq acknowledged that information asymmetries exist today as a result of broker-dealer MOC order matching services, it argued that BZX, ''as a neutral platform, is more likely to gather orders from multiple brokers and enable a small number of participants to gain actionable asymmetric information,'' which could potentially change the Nasdaq closing price.[191] In response to claims from BZX that Nasdaq's closing auction is subject to the same information asymmetries and risks, Nasdaq argued that by having its data dissemination and cut-off time occur simultaneously, all market participants learn the imbalance at the same time, avoiding such risks.[192]

NYSE further asserted that the proposal could potentially provide some market participants, such as professional traders, with useful information that other market participants do not have, such as the direction of an imbalance, which could be used to influence the official closing price.[193]

Although not citing concerns regarding manipulation specifically, T. Rowe Price similarly argued that the proposal would lead to information asymmetries that could result in changes in continuous trading behavior leading into the market close as some market participants could be trading on information gathered from Cboe Market Close pairing results.[194] T. Rowe Price asserted that a market participant that is aware of the composition of volume paired through Cboe Market Close at 3:35 p.m. would be in a position to use that information to influence its trading behavior over the next ten to fifteen minutes leading in to the closing auction cut-off times on NYSE and Nasdaq respectively.[195] T. Rowe Price argued that, as a result, the proposal could not only impact price discovery in closing auctions on the primary listing markets it could also impact continuous trading behavior.[196]

In contrast, BZX argued that information asymmetries are inherent in trading, including the primary listing markets closing auctions.[197] For example, BZX argued that the current operation of d-Quotes on NYSE carries a risk of manipulation as it provides an informational advantage to NYSE DMMs and floor brokers, and allows d-Quotes to be entered, modified or cancelled up until 3:59:50 p.m. while other market participants are prohibited from entering, modifying or cancelling on-close orders after 3:45 p.m.[198] Lastly, BZX argued that the information

orders to the Cboe Market Close, as the analysis should turn on whether the mere existence of the Cboe Market Close would increase complexity and operational risk in the market. *See* NYSE Letter 3, at 2.

[186] In addition, in response to comments regarding the potential for other exchanges to adopt similar functionality that would require monitoring of even more data feeds, the Commission believes that those participants that would likely choose to monitor such data feeds likely already have the capability to monitor and aggregate information from multiple data feeds. Furthermore, the current BZX filing under consideration is a proposal from one exchange to disseminate information on one data feed and, as such, the Commission's analysis considers whether the instant proposal is consistent with the Act, rather than similar functionality that other exchanges may or may not propose in the future.

[187] *See supra* note 120.

[188] *See* Angel Letter, at 5.

[189] *See* Nasdaq Letter 1, at 8 and Nasdaq Letter 2, at 14.

[190] *See* Nasdaq Letter 1, at 8 and Nasdaq Letter 2, at 13–14 (arguing that market participants may use information gained regarding an imbalance in Cboe Market Close to detect the direction of the Nasdaq closing auction imbalance and trade against that information in either the closing auction or the continuous market).

[191] *See* Nasdaq Letter 2, at 14. Nasdaq argued that this would weaken the price discovery process, create a cycle of closing price deterioration, and increase volatility. *See id. But see supra* notes 110–160 and accompanying text discussing why the proposal is reasonably designed to not impact the price discovery process of the primary listing markets' closing auctions.

[192] *See id.*

[193] *See* NYSE Letter 1, at 6. However, ViableMkts argued that because these market participants would not know the full magnitude of the imbalance, it does not believe the proposal creates an incremental risk of manipulation. *See* ViableMkts Letter, at 5.

[194] *See* T. Rowe Price Letter, at 2–3.

[195] *See id.*

[196] *See id.*

[197] *See* BZX Letter 1, at 11–12 and BZX Letter 2, at 9.

[198] *See* BZX Letter 1, at 12 and BZX Letter 2, at 9. BZX also requested that the Commission review the appropriateness of NYSE's use of the d-Quote and its potential for price manipulation of NYSE's closing prices. *See* BZX Letter 1, at 9.

disseminated through the Bats Auction Feed would not provide any indication of whether the cancelling of a particular side of an order that has not been matched back to a market participant ''is meaningful or just happenstance,'' which limits this information's ability to create or increase manipulative activity.[199]

The Commission believes that the proposed rule change is consistent with the requirement of Section 6(b)(5) of the Act that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices. The Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed. Further, on NYSE, not only DMMs, but NYSE floor brokers have access to closing auction imbalance information that is not simultaneously available to other market participants, far in advance of the NYSE order entry cut-off time. Specifically, pursuant to NYSE rules, floor brokers receive the amount of, and any imbalance between, MOC and marketable LOC interest every fifteen seconds beginning at 2:00 p.m. until 3:45 p.m.[200] Floor brokers are permitted to provide their customers with specific data points from this imbalance feed. In arguing for the Commission to approve its proposal to disseminate such information to floor brokers, NYSE stated that the imbalance information does not represent overall supply or demand for a security, but rather is a small subset of buying and selling interest that is subject to change before the close, nor is it actionable prior to 15 minutes before the close.[201] NYSE further asserted that it believed the information it disseminates to all participants at 3:45 p.m. is more material to investors, as it is more accurate, complete, and timely information.[202]

The Commission believes that the same arguments apply with respect to BZX's proposal. In particular, even if a market participant becomes aware of the direction of the imbalance for a security in Cboe Market Close as a result of receiving a cancellation of part or all of that participant's order, such information does not represent overall supply or demand for the security, is subject to change before the close, and is only one piece of information and likely less useful than other information regarding the close that would be available to market participants, such as the total matched amount of MOC shares that would be disseminated by BZX at 3:35 p.m. and available to all market participants on equal terms, as well as any imbalance information disseminated by the primary listing markets. While commenters argue that those who participate in Cboe Market Close would be able to discern the direction of an imbalance and use such information to manipulate the closing price, the Commission believes the utility of such gleaned information is limited. In particular, a market participant would only be able to determine the direction of the imbalance, and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing market, competing auctions, or off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close. Likewise, while a market participant would be able to determine whether its own order made up a large or small percentage of the paired shares for a security in Cboe Market Close, it would not be able to determine the composition of same-side or contra-side MOC orders submitted to Cboe Market Close, nor would such information enable it to determine the composition of orders submitted to the primary listing market, competing auctions, or off-exchange matching services.[203] Therefore, the Commission believes the utility of this information is also limited. Accordingly, the Commission believes the proposal's potential for increased manipulation due to information asymmetries is negligible.

NYSE also argued that the proposal would increase potential manipulation for several reasons.[204] First, NYSE asserted that the potential for manipulative activity at the close would increase because primary listing exchange auctions would decrease in size and thus be easier to manipulate.[205] NYSE also argued that the proposal facilitates manipulative activity by providing an incentive for market participants to influence the closing price when they know they have been successfully matched on BZX to the benefit of the price of its already matched order.[206] Further, NYSE argued that market participants could manipulate information leading up to the close by entering orders into Cboe Market Close in an attempt to send a false signal regarding demand and subsequently reverse such positions after hours.[207]

The Commission recognizes that, with or without Cboe Market Close, the potential exists that there may be market participants who may seek to engage in manipulative or illegal trading activity, including with respect to closing prices.[208] Although no commenters provided specific data, analyses, or studies regarding manipulation generally or to support the assertion that the proposal could increase the potential for manipulative activity,[209] scholarly articles have suggested that closing auction manipulations are often characterized by large, unrepresentatively priced orders submitted in the final seconds of the auction.[210] Accordingly, the

[199] *See id.*

[200] *See* NYSE Rule 123C(6)(b).

[201] *See* Securities Exchange Act Release No. 62923 (September 15, 2010), 75 FR 57541, 57542 (September 21, 2010) (SR–NYSE–2010–20; SR–NYSEAmex–2010–25).

[202] *See id.*

[203] *See supra* notes 194–196 and accompanying text. While one commenter expressed concern that market participants that are aware of the composition of volume paired through Cboe Market Close would be in a position to use that information to influence their trading behavior leading up to the close, under BZX's proposal, BZX would only publish the size, and not the composition, of paired MOC shares, and that such disseminated information would be available to all market participants.

[204] *See* NYSE Letter 1, at 6 and NYSE Report, at 19–22. *See also* Americas Executions Letter (stating that the proposal creates new opportunities to possibly manipulate the close).

[205] *See* NYSE Letter 1, at 6.

[206] *See* NYSE Letter 1, at 6 and NYSE Report, at 19.

[207] *See* NYSE Report, at 19–20.

[208] NYSE also asserted that arbitrageurs will look for opportunities presented by Cboe Market Close to ''gam[e] the system.'' However, NYSE also acknowledged that, ''[i]t is hard to predict all of the ways in which, and the degree to which, this might occur because it will depend on a wide range of variables, including the degree of usage of the Bats close, the changes to order flow and liquidity provision in the primary market's closing mechanism, the profits realized from manipulation, and the vitality of market oversight.'' *See* NYSE Report, at 19–22.

[209] In the OIP, the Commission specifically solicited comments on the whether the proposal would increase the potential for manipulation and requested that commenters provide specific data, analyses, or studies for support to the extent possible. *See* OIP, *supra* note 7, at 40211. Although the NYSE Report criticized the DERA Analysis for not addressing concerns regarding manipulation, the potential impact of the proposal on manipulation was outside the intended scope of such analysis, *see supra* note 144, and NYSE did not, in response to the OIP request, provide any of its own specific data or purport to provide findings of any study or analyses in this area. *See* NYSE Report, at 19–22.

[210] *See* Carole Comerton-Forde and Talis J. Putnins, ''Measuring Closing Price Manipulation,''

Continued

Commission believes that, while it is possible that the potential for manipulation could increase if the closing auctions on the primary listing exchanges decreased significantly in size, existing surveillance systems, should be able to continue to detect such activity.[211] With respect to NYSE's comment that the proposal would provide an incentive for market participants to influence the closing price when they know they have been successfully matched on BZX, market participants can attempt this today with respect to existing off-exchange MOC matching services (which are surveilled by FINRA) and any attempts to use Cboe Market Close to do this would result in such activity occurring on BZX, a national securities exchange with obligations under the Act to regulate and surveil its market. Similarly, entering non bona fide orders in an attempt to give the appearance of high demand is not a new form of potential manipulation unique to the proposal; rather, similar forms of market manipulation exist today and the Commission believes that current surveillance systems are designed to detect such activity.

Lastly, Nasdaq stated that it and other exchanges would need to develop new cross-market surveillance systems in order to address these risks.[212] NYSE also stated that there are no safeguards built-in to the proposal to prevent manipulation, and identifying manipulative activity would also become more difficult under the proposal due to the time difference between the Cboe Market Close and primary market closing auctions and the cross-market nature of the manipulation.[213] Further, NYSE argued that market participants may have legitimate reasons to want to reverse their trades that have been matched in Cboe Market Close by trading in the primary market auction, and thus, it would be difficult to distinguish between manipulative trading activity and legitimate 'positioning.'[214] GTS similarly argued that the proposal would make surveillance of the market close more difficult and expensive due to fragmentation of order flow across multiple markets.[215] In contrast, IEX argued that participation in the Cboe Market Close, followed by activity intended to affect the closing price on the primary market, would make manipulation of closing crosses as or more conspicuous than other trading patterns for which exchanges already conduct surveillance.[216] Two commenters also stated that the Consolidated Audit Trail would provide a new tool for detecting any such manipulation.[217]

In response, BZX made several arguments as to why it does not believe that the proposal creates a potential for increased manipulation.[218] BZX stated that, should the Commission approve the proposal, both it and FINRA, as well as other exchanges, would continue to surveil for manipulative activity and ''seek to punish those that engage in such behavior.''[219] In its final response letter, BZX reiterated that while it does not believe that the proposal would increase the potential for manipulation, it is ''committed to enhancing its current surveillance procedures and working with other [SROs], including FINRA, the NYSE, and Nasdaq, to ensure that any potential inappropriate trading activity is detected and prevented.''[220] Specifically, BZX stated that, consistent with its obligations as an SRO, it currently surveils all trading activity on its system including trading activity at the close, and intends to implement and enhance in-house surveillance processes designed to detect potential manipulative activity related to the Cboe Market Close.[221]

BZX also highlighted the cross-market surveillance that FINRA conducts on its behalf.[222] In particular, BZX stated that FINRA's comprehensive cross-market surveillance program can monitor for nefarious activity by a market participant across two or more markets and includes surveillance designed to detect activity geared towards manipulating a security's closing price.[223] Stating that it currently provides FINRA the necessary trade data to conduct such surveillance, BZX represented that it is also committed to work with FINRA on enhancements to the current cross market surveillance program to account for any potential manipulative activity by participants in Cboe Market Close and the primary listing markets' closing auctions.[224] BZX also stated that, as a member of the Intermarket Surveillance Group (''ISG''), it would share the necessary information concerning Cboe Market Close with NYSE and Nasdaq, as part of their participation in ISG, to allow them to properly surveil for potentially manipulative activity within their closing auctions.[225]

With respect to manipulative or illegal trading activity more broadly, self-regulatory organizations such as BZX and the primary listing markets have an obligation under the Act to surveil for manipulative activity on their markets. The Commission generally believes that existing self-regulatory organization surveillance and enforcement activity, and the measures that the Exchange has represented that it would take to surveil for and detect manipulative activity related to the proposal, would help to deter market participants who might otherwise seek to try and abuse Cboe Market Close or a closing auction on a primary listing exchange. The Commission expects that BZX will closely monitor Cboe Market Close and implement new or enhanced surveillance measures, as necessary, designed to identify potential manipulative behavior. Further, the Commission expects that potential violative conduct identified by BZX, FINRA, or any other national securities exchange would be investigated. With respect to NYSE's comment on the potential challenges posed that time differences or cross-market activity may pose in identifying manipulative activity,[226] these issues also exist today with respect to existing off-exchange MOC matching services. To the extent

*Journal of Financial Intermediation* 20, 135–158 (2011), available at: *https://www.sciencedirect.com/science/article/pii/S104295731000015X;* and Talis J. Putnins, ''Market Manipulation: A Survey,'' Journal of Economic Surveys, 26, 952–967 (2012), available at: *http://onlinelibrary.wiley.com/doi/10.1111/j.1467-6419.2011.00692.x/full.*

[211] *See infra* for discussion of the obligations under the Act of national securities exchanges, as self-regulatory organizations, to surveil for manipulative activity on their markets.

[212] *See* Nasdaq Letter 2, at 14.

[213] *See* NYSE Report, at 20–21 and NYSE Letter 1, at 6.

[214] *See* NYSE Report, at 19.

[215] *See* GTS Securities Letter 1, at 6; GTS Securities Letter 2, at 5.

[216] *See* IEX Letter, at 2.

[217] *See id.,* at 2–3 and Bollerman Letter, at 2.

[218] *See* BZX Letter 1, at 11–12 and BZX Letter 2, at 9.

[219] *See* BZX Letter 1, at 11 and BZX Letter 2, at 9.

[220] *See* BZX Letter 4, at 1.

[221] *Id.* In particular, BZX stated that the surveillance would include, among other things, monitoring for possible non bona fide order activity, such as the submission of orders for the purpose of gaining an informational advantage, the entry of large size orders on one side of the market, or other trading activity that would indicate a pattern or practice aimed at manipulating the closing auction. *Id.* Further, BZX committed to providing the Commission staff its surveillance plan and stated that it would implement that plan on the date that Cboe Market Close becomes available to market participants. *See id.* at 2.

[222] *See id.* Under regulatory services agreements, national securities exchanges, such as BZX, may enter into contracts with other regulatory entities, such as FINRA, to provide regulatory services on the exchange's behalf. Notwithstanding the existence of a regulatory services agreement, the exchange retains legal responsibility for the regulation of its members and its market and the performance of its regulatory services provider.

[223] *Id.*

[224] *Id.*

[225] *Id.*

[226] *See supra* note 213 and accompanying text.

that such attempted manipulative activity instead occurs on BZX, it would simply shift surveillance from FINRA to BZX, a national securities exchange with obligations under the Act to regulate and surveil its market. Further, with regard to the challenge of differentiating between legitimate trading and manipulative activity, this too exists today with regard to many different trading scenarios.

*Impact on Competition*

A number of commenters addressed the proposal's impact on competition. Seven commenters supporting the proposal stated that it would increase competition among exchanges for executions of orders at the close.[227] These commenters asserted that increased competition could result in reduced fees for market participants.[228] Three commenters characterized the primary listing markets as maintaining a ''monopoly'' on orders seeking a closing price with no market competition, which they argued has, and would continue to, result in a continual increase in fees for such orders if the proposal were not approved.[229] In addition, IEX argued that the proposal does not unduly burden competition as exchanges often attempt to compete by adopting functionality or fee schedules developed by competitors.[230] ViableMkts also asserted that the proposal is not fully competitive with closing auctions, as it does not accept priced orders or disseminate imbalance information.[231] Rather, it believed that the proposal competes with other unpriced orders in closing auctions which, in its view, is not ''destructive to the mission of the closing auction.'' [232]

In contrast, other commenters argued that the proposal would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including by ''free-riding'' on the investments the primary listing markets have made in their closing auctions.[233] Specifically, NYSE asserted that the proposal is an unnecessary and inappropriate burden on competition as it would allow BZX to use the closing prices established through the auction of a primary listing market, without bearing any of the costs or risks associated with conducting a closing auction.[234] NYSE added that the existing exchange fees for closing auctions reflect the value created by the primary listing exchange's complex procedures and technology to determine the official closing price of a security.[235] NYSE emphasized that it has invested significantly in intellectual property and software to implement systems that facilitate orderly price discovery in the closing auction, as well as surveillance tools necessary to monitor activity leading up to, and in, the closing process.[236] Specifically, NYSE stated that operating an auction is the most technologically complicated function of an exchange that requires significant resources.[237] According to NYSE, BZX would be able to sell the official closing price established by a NYSE closing auction at a price point with which it could not realistically compete.[238] NYSE also stated that the proposal differs from the Nasdaq and NYSE Arca competing auctions in securities not listed on their exchanges in that such auctions compete on a level playing field because they are independent price-discovery auction events that do not rely on prices established by the primary listing exchange and they serve as an alternative method of establishing an official closing price if a primary listing exchange is unable to conduct a closing auction due to a technology issue.[239]

Nasdaq also argued that the proposal would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, Nasdaq believed that the proposal undermines intra-market competition, by removing orders from Nasdaq's auction book and prohibiting those orders from competing on Nasdaq, which Nasdaq argued is necessary for the exchange to arrive at the most accurate closing price.[240] Nasdaq also stated that, by diverting orders away from NYSE and Nasdaq, the proposal would detract from robust price competition and discovery that closing auctions ensure.[241] Nasdaq further argued that in order for BZX to meaningfully enhance competition, it would have to generate its own closing price, as opposed to merely utilizing the closing price generated by a primary listing market.[242] In addition, Nasdaq argued that price competition between exchanges is not as important a form of competition as innovation because price competition elevates fragmentation, sacrifices quote and order interaction, and, in the case of Cboe Market Close, undermines innovation.[243] Further, Nasdaq stated that BZX's comparisons to pegged orders, where the price is based upon reference data that does not originate on that exchange, was misplaced because all exchanges

[227] *See* PDQ Letter; Clearpool Letter, at 2; Virtu Letter, at 2; SIFMA Letter 1, at 2; IEX Letter, at 1; ViableMkts Letter, at 1–2; and Bollerman Letter, at 2.

[228] *See* PDQ Letter; Clearpool Letter, at 2; Virtu Letter, at 2; SIFMA Letter 1, at 2; IEX Letter, at 1; ViableMkts Letter, at 1; SIFMA Letter 2, at 2; and Bollerman Letter, at 2.

[229] *See* IEX Letter, at 3; Clearpool Letter, at 2; and ViableMkts Letter, at 1–2. However, one commenter also stated that it believes the fees charged by NYSE and Nasdaq for participating in their closing auctions are not excessive and there is no need for additional fee competition for executing orders at the official closing price. *See* GTS Securities Letter 1, at 5.

[230] *See* IEX Letter, at 3.

[231] *See* ViableMkts Letter, at 5.

[232] *See id.* ViableMkts also argued that the effect of this competition will most likely be increased volumes at the closing price because of lower marginal costs and the potential to attract new types of investors to transact at the closing price. *See id.*

[233] *See* NYSE Letter 1, at 9–10; NYSE Letter 3, at 1, 4–6 Nasdaq Letter 1, at 5–6 & 9; Nasdaq Letter 2, at 7–8 (reiterating its assertion that BZX is ''free-riding'' on the primary listing markets' investments in issuer relationships, real-time regulation, and closing cross technology); BioCryst Letter, at 2; Digimarc Letter, at 1–2; NBT Bancorp Letter, at 2; Balchem Letter, at 2; Cree Letter, at 2; Sirius Letter, at 2; Lam Letter, at 2; and PayPal Letter, at 1. *See also* Angel Letter, at 3 (calling for a rationalization of intellectual property protection in order to foster productive innovation).

[234] *See* NYSE Letter 1, at 9, NYSE Letter 2, at 1–3 (adding that the proposal is anti-competitive because it is proposing to sell at a lower price the closing prices produced through resources expended by NYSE), and NYSE Letter 3, at 5; and NYSE Letter 4, at 1. In contrast, one commenter argued that BZX would not be ''free-riding'' on the primary listing exchanges' price discovery process because it is ''a regular and accepted practice'' to match orders at reference prices. *See* SIFMA Letter 2, at 2.

[235] *See* NYSE Letter 1, at 9 and NYSE Letter 3, at 5 (stating that NYSE does not segregate the costs associated with building, testing, monitoring or maintaining its closing auction process and that the costs do not vary based on the volume of orders sent to the closing auction). NYSE also argued that the proposal impacts competition for listings, as issuers choose where to list their securities based on how primary listing exchanges are able to centralize liquidity and perform closing auctions. *See* NYSE Letter 1, at 9.

[236] *See* NYSE Letter 2, at 2. Moreover, NYSE stated that it dedicates resources to providing systems to DMMs necessary to facilitate the closing of trading as well as to floor brokers to enter and manage their customers' closing interest. *See id.*

[237] *See* NYSE Letter 3, at 5.

[238] *See id.* NYSE stated that the majority of costs associated with operating a closing auction are fixed costs. If NYSE were to reduce the fees charged for participating in its closing auction, NYSE stated that there likely would be other impacts on the exchange's overall fee structure. *See id.*

[239] *See* NYSE Letter 1, at 6; NYSE Letter 2, at 3–4; and NYSE Letter 3, at 5. In response, one commenter stated that these competing auctions were not originally proposed to only serve as a back-up to a primary listing markets' closing auction. *See* SIFMA Letter 2, at 2. In addition, one commenter stated that such competing auctions are not expressly limited to operating only when another primary listing exchange is experiencing a failure. *See* Bollerman Letter, at 3.

[240] *See* Nasdaq Letter 1, at 9.

[241] *See* Nasdaq Letter 1, at 10 and Nasdaq Letter 2, at 7–8. *See also supra* notes 27–109 and accompanying text (discussing comments on the proposal's impact on price discovery).

[242] *See id.,* at 13. *See also supra* notes 52–54 (discussing comments on the proposal's impact on price discovery and competing auctions and over-the-counter matching services).

[243] *See* Nasdaq Letter 2, at 8.

contribute to the prices to which such orders are pegged.[244] Nasdaq asserted that Cboe Market Close is not an analogous offering because BZX does not contribute to the closing price on a primary listing exchange.[245]

In response to commenters' contentions about competition, BZX asserted that the proposal would enhance rather than burden competition.[246] In this regard, BZX argued that its proposal would promote competition in the use of MOC orders at the official closing price.[247] Specifically, BZX stated that the proposal would have a positive impact on competition as it offers a price-competitive alternative that will not impact the price discovery process.[248]

BZX also challenged the assertion that it was ''free-riding'' on the primary listing exchanges' closing auctions.[249] In this regard, BZX argued that instead it was, on balance, providing a ''a materially better value to the marketplace'' in two ways: By not diverting price-forming limit orders away from the primary listing market; and by providing users with the official closing price because any other price would be undesirable to market participants and potentially harmful to price formation.[250] BZX further argued that there is precedent for an exchange to execute orders solely at reference prices while not also displaying priced orders for that security.[251] In addition, BZX stated that no rule or regulation provides the primary listing market with control over how other market participants use the official closing price in their matching engines or with regard to the pricing of their own products, such as mutual funds, ETFs, and indices.[252] BZX also stated that improving and mimicking functionality enhances the competitive dynamic amongst exchanges.[253]

Further, BZX asserted that the Commission has approved the operation of competing closing auctions, noting in particular the closing auctions on Nasdaq, NYSE Arca, and the American Stock Exchange.[254]

The Commission believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the Act; rather, it provides an alternative venue to which market participants may submit closing interest and receive the official closing price. The Commission believes that while BZX would not be conducting the closing auction that would determine the execution price for orders executed in Cboe Market Close, the availability of Cboe Market Close will inject competition into the closing process to the ultimate benefit of market participants generally, which could include price and execution quality competition. The Commission further believes that implementation of Cboe Market Close could incent other venues, including the primary listing exchanges as well as off-exchange matching venues, to continue to innovate and compete to attract MOC orders to their closing auctions, which may include lowering transaction fees, to the benefit of market participants generally. The proposal would also provide an opportunity for market participants to assess and compare their experience in seeking to execute MOC orders on different national securities exchanges, which would foster competition and that may enhance the quality and efficiency of MOC order executions. Ultimately, the Commission believes that the success of the Cboe Market Close in competing with the primary listing exchanges and off-exchange matching venues for MOC orders will depend on a variety of factors, including the quality of the MOC order execution services, the attendant risks, and the costs associated with such executions.

While the primary listing markets and other commenters argue that BZX is ''free riding'' on investments of the primary listing markets in the development and maintenance of the closing auction process and thus impeding competition in a manner inconsistent with the Act, the Commission believes that this form of burden on competition must be evaluated against the potentially enhanced competition that the proposal also provides, as discussed above.[255] Further, while NYSE and Nasdaq argue that their fees for closing executions reflect their costs of developing and operating the closing auctions, other commenters assert that the primary listing markets have taken advantage of the ''monopoly'' they have on orders seeking a closing price to impose high fees. In this regard, the Commission expects that the proposal, by introducing further competition, should result in a reduction of fees for such orders. This may result in benefits to investors generally. In addition, in the highly competitive environment of the current national market system with numerous exchanges competing for order flow, it is commonplace for exchanges to attempt to mimic or build upon various functionality of their competitors. Doing so does not result in the proposal imposing a competitive burden not necessary or appropriate in furtherance of the purposes of the Act.

In addition, both NYSE and Nasdaq referenced the Commission's disapproval of Nasdaq's proposal to create a Benchmark Order as support that BZX has not sufficiently satisfied its obligation to justify that the proposal is consistent with the Act and not an inappropriate burden on competition. NYSE argued that BZX essentially proposes to compete with broker-dealer agency order matching services.[256] NYSE asserted that the Commission disapproved Nasdaq's Benchmark Order in part because it would provide an exchange with an unfair advantage over competing broker-dealers, which was not consistent with Section 6(b)(8) of the Act.[257] Nasdaq further argued that the disapproval of its Benchmark Order proposal supports the assertion that an exchange must articulate how a proposed service is consistent with the

[244] *See id.,* at 13.

[245] *See id.*

[246] *See* BZX Letter 1, at 10–11 and BZX Letter 2, at 6–7.

[247] *See id.* BZX further argued that Nasdaq's assertion that the proposal would undermine competition amongst orders is misplaced because BZX believes that paired MOC orders, which are beneficiaries of price discovery and not price-setting orders do not impact interactions that take place on another exchange because orders compete with each other for executions within each individual exchange based on the parameters a market participant places on its orders. *See id.,* at 11.

[248] *See* BZX Letter 2, at 7.

[249] *See* BZX Letter 1, at 5 and BZX Letter 2, at 7.

[250] *See* BZX Letter 1, at 5.

[251] *See* BZX Letter 1, at 6 and BZX Letter 2, at 7 (describing NYSE's after hours crossing sessions which executes orders at the NYSE official closing price and the ISE Stock Exchange functionality that only executed orders at the midpoint of the NBBO and did not display orders).

[252] *See* BZX Letter 2, at 8.

[253] *See id.*

[254] *See* BZX Letter 1, at 6. *See also supra* notes 81–93 and accompanying text (discussing BZX's comments on competing closing auctions with regard to price discovery). In addition, in response to Nasdaq's contention that it is aware of no regulator in any jurisdiction that has sanctioned a diversion of orders from the primary market close, BZX stated the Ontario Securities Commission's approval of a similar proposal by Chi-X Canada ATS, which it said is currently owned by Nasdaq, to match MOC orders at the closing price established by the Toronto Stock Exchange. *See* Nasdaq Letter 1, at 10; BZX Letter 1, at 7; and BZX Letter 2, at 2 (stating that the Ontario Securities Commission stated that the proposal would not threaten the integrity of the price formation process and would pressure the Toronto Stock Exchange to competitively price executions during their closing auction).

[255] To the extent that the primary listing markets believe the proposal infringes on their intellectual property and innovations they have developed with regard to closing auctions, they have the ability to seek protection under applicable laws, as appropriate.

[256] *See* NYSE Letter 1, at 8.

[257] *See id.*

policy goals of the Act with respect to national securities exchanges.[258]

Likewise, SIFMA also referenced the Commission's disapproval of Nasdaq's proposal to create a Benchmark Order as support for its assertion that BZX is proposing to offer a function identical to that currently offered by broker-dealers, yet would benefit from regulatory immunity as well as the limits on liability contained in BZX Rule 11.16.[259] Specifically, SIFMA stated that, while it supports the proposal, it believes that as a condition of approval, BZX and the Commission should clarify in writing that Cboe Market Close would not be entitled to any application of regulatory immunity and that the Exchange should amend its Rule 11.16 to provide that Cboe Market Close would not be subject to the monetary limits on the Exchange's liability.[260]

With respect to regulatory immunity, SIFMA asserted that both courts and the Commission have stated that regulatory immunity applies only in situations where an exchange is exercising its regulatory authority over its member, pursuant to the Act.[261] SIFMA stated that because Cboe Market Close would not be a self-regulatory function whereby the exchange would be regulating its members, BZX should not be entitled to apply regulatory immunity for any losses arising from the functionality.[262] In addition, SIFMA stated that BZX Rule 11.16 currently limits the liability exposure of the exchange to its members.[263] SIFMA asserted that BZX's limits on liability set forth in Rule 11.16 ''bear no relation to the actual amount of financial loss that could result from an exchange malfunction.'' [264] SIFMA argued that the ''disparity is particularly acute'' with respect to the proposal because broker-dealers currently perform services akin to Cboe Market Close without a limitation on their liability.[265] Accordingly, SIFMA stated that, as a condition of operating Cboe Market Close, BZX should carve it out from the liability limits of Rule 11.16.[266]

BZX argued that, rather than looking to compete with broker-dealer services, it is seeking to compete on price with the primary listing markets' closing auctions.[267] In addition, BZX argued that, contrary to the assertions by NYSE and Nasdaq, its proposal does not implicate the same issues as Nasdaq's Benchmark Order proposal because the Commission's disapproval of that proposal rested primarily on its finding that it raised issues under the Market Access Rule.[268] BZX responded to SIFMA's comments on regulatory immunity and its limitation on liability rule by stating that the concerns raised were ''not germane to whether the [p]roposal is consistent with the Act,'' and further stated that it believed it would be inappropriate in the context of a filing on one proposed rule change to set a new standard on an issue that has broad application to all exchange services as well as National Market System Plans.[269] BZX also asserted that SIFMA did not provide any evidence to support its claim that its members have been disadvantaged by the exchange's limitation of liability rule as compared to limitation on liability provisions in a broker-dealer's contracts with its clients, which often disclaim all liability.[270]

The Commission believes, as acknowledged by BZX, that it is possible that BZX's proposal could divert some MOC orders from off-exchange matching services operated by broker-dealers onto a regulated exchange.[271] Broker-dealers and national securities exchanges currently compete with respect to a variety of functions and services that they offer to market participants within the current national market system. As such, the fact that a national securities exchange proposes to offer functionality that is similar to a service offered by a broker-dealer does not, in and of itself, render such functionality an inappropriate burden on competition. Rather, the proposal must be considered in the broader context of the existing competitive landscape and different regulatory structures applicable to broker-dealers and exchanges under the Act, respectively. With respect to BZX's proposal, the Commission believes that, on balance, in light of the differing requirements under the Act and the rules and regulations thereunder applicable to national securities exchanges and broker-dealers, the proposal does not pose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Further, the Commission believes that the issues raised by commenters regarding the judicial doctrine of regulatory immunity and rule-based limitations on liability are part of a broader policy issue regarding the different regulatory structures for exchanges and broker-dealers, and do not materially impact the Commission's analysis or finding regarding whether this proposal poses an unnecessary or inappropriate burden on competition.[272]

The Commission has taken the position that immunity from suit ''is properly afforded to the exchanges when engaged in their traditional self-regulatory functions—where the exchanges act as regulators of their members,'' including ''the core adjudicatory and prosecutorial functions that have traditionally been accorded absolute immunity, as well as other functions that materially relate to the exchanges' regulation of their members,'' but should not ''extend to functions performed by an exchange itself in the operation of its own market, or to the sale of products and services arising out of those functions.'' [273] The Court of Appeals for the Second Circuit recently reached a similar conclusion.[274] The Commission has also recognized that an exchange's invocation of immunity from suit should be examined on a '''case-by-case basis,' with 'the party asserting immunity bear[ing] the burden of demonstrating [an] entitlement to it.' '' [275] Whether and to what extent a court would consider BZX's additional functionality under the proposed rule to fall within an exchange's traditional regulatory functions depends on an assessment of the facts and circumstances of the particular allegations before it and is beyond the scope of the Commission's consideration of the proposed rule change pursuant to the Act.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

[258] *See* Nasdaq Letter 1, at 5.

[259] *See* SIFMA Letter 3, at 2–4.

[260] *See id.* at 1.

[261] *See id.* at 2–3.

[262] *See id.* at 3.

[263] *See* BZX Rule 11.16.

[264] *See* SIFMA Letter 3, at 4.

[265] *See id.*

[266] *See id.*

[267] *See* BZX Letter 1, at 10.

[268] *See id.,* at 11.

[269] *See id.*

[270] *See* BZX Letter 3, at 5.

[271] *See* BZX Letter 2, at 11.

[272] The Commission also notes that MOC orders submitted to other exchanges' closing auctions would be subject to those exchanges' rules governing limitations on liability.

[273] Brief of the Securities and Exchange Commission, *Amicus Curiae,* No. 15–3057, *City of Providence* v. *Bats Global Markets, Inc.* (2d Cir.) (''*City of Providence* Amicus Br.''), at 22.

[274] *City of Providence* v. *Bats Global Markets, Inc.,* 878 F.3d 36 (2d Cir. 2017) (''When an exchange engages in conduct to operate its own market that is distinct from its oversight role, it is acting as a *regulated* entity—not a *regulator.* Although the latter warrants immunity, the former does not.'').

[275] *City of Providence* Amicus Br. at 21 (quoting *In re NYSE Specialists Secs. Litig.,* 503 F.3d 89, 96 (2d Cir. 2007)).

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act [276] that the proposed rule change (SR–BatsBZX–2017–34), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[277]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01093 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[276] 15 U.S.C. 78s(b)(2).

[277] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82514; File No. SR–OCC–2017–810]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

January 17, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with a proposed change to formalize and update OCC's Recovery and Orderly Wind-Down Plan (''RWD Plan'' or ''Plan''), consistent with the requirement applicable to OCC in Rule 17Ad–22(e)(3)(ii).

The RWD Plan was included as confidential Exhibit 5 of the filing.[3] The proposed change is described in detail in Item II below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[4]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

*(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act*

Description of the Proposed Change

Background

On September 28, 2016 the Commission adopted amendments to Rule 17Ad–22 [5] and added new Rule 17Ab2–2 [6] pursuant to Section 17A of the Securities Exchange Act of 1934 [7] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'') [8] to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a ''covered clearing agency,'' as defined by Rule 17Ad–22(a)(5) [9] (collectively, the new and amended rules are herein referred to as ''CCA'' rules). The CCA rules require that covered clearing agencies, among other things:

> [E]stablish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the [CCA], which . . . [i]ncludes plans for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[10]

OCC is defined as a covered clearing agency under the CCA rules, and therefore is subject to the requirements of the CCA rules, including Rule 17Ad–22(e)(3).[11]

Proposed RWD Plan

OCC is proposing to update, formalize and adopt its RWD Plan.[12] Consistent with the Commission's guidance concerning the requirements of Rule 17Ad–22(e)(3)(ii), the purpose of the proposed RWD Plan is to (i) demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide its ''Critical Services'' (defined below) as a going-concern,[13] (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such consideration; [14] and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.[15]

As discussed in greater detail below, in preparing the proposed Plan, OCC was informed by relevant guidance from not only from OCC's regulators, but also from certain international organizations. Within the framework of this guidance, OCC has drafted the proposed Plan to reflect OCC's specific characteristics, including its ownership, organizational, and operational structures, as well as OCC's size and systemic importance relative to the products that its clears.[16]

The proposed RWD Plan consists of eight chapters. A description of each of the first seven chapters of the proposed Plan is provided below (Chapter 8 of the proposed plan consists of a series of appendices containing supporting material).

Chapter 1: Executive Summary

Chapter 1 of the RWD Plan would provide an executive summary and overview of the proposed Plan. Chapter 1 would begin by acknowledging OCC's

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] OCC has filed a proposed rule change with the Commission in connection with the proposed change. *See* SR–OCC–2017–021.

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ab2–2.

[7] 15 U.S.C. 78q–1.

[8] 12 U.S.C. 5461 et. seq.

[9] 17 CFR 240.17Ad–22(a)(5).

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

[11] *Id.*

[12] OCC maintains a recovery and orderly wind-down plan that was prepared in response to evolving international standards for CCPs. The existing version of OCC's recovery and orderly wind-down plan was prepared in advance of the adoption of the CCA rules.

[13] As defined by Rule 17Ad–22(e)(3)(ii), those scenarios are: ''credit losses, liquidity shortfalls, losses from general business risks and other losses.'' 17 CFR 240.17Ad–22(e)(3)(ii).

[14] *See* Standards for Covered Clearing Agencies, 81 FR 70786, 70810 (Oct. 13, 2016).

[15] *Id.*

[16] *See* 81 FR at 70808.

status as a designated Systemically Important Financial Market Utility (''SIFMU'') [17] and would recognize that the proposed Plan is designed to satisfy OCC's regulatory requirements under Rule 17Ad–22(e)(3)(ii). Chapter 1 would include a list of relevant guidance that was considered by OCC in drafting the proposed Plan; the guidance considered by OCC includes, but is not limited to, the materials listed below:

- The sections of the preamble to the Commission's adopting release for its CCA rules that address topics relating to recovery and orderly wind-down of a CCA; [18]
- *Principles for Financial Market Infrastructures* (''PFMI''), published by the Bank for International Settlements Committee on Payment and Settlement Services and the Board of the International Organization of Securities Commissions (''CPSS–IOSCO''); [19]
- *Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Identification of Critical Functions and Critical Shared Services,* published by the Financial Stability Board (''FSB''); [20]
- *Recovery of Financial Market Infrastructures,* published by the Bank for International Settlements Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions (''CPMI–IOSCO''); [21]
- Commodity Futures Trading Commission (''CFTC'') Staff Letter 16–61, published by the Division of Clearing and Risk of the CFTC; [22]
- *Essential Aspects of CCP Resolution Planning,* published by the FSB; [23]
- *Guidance on Central Counterparty Resolution and Resolution Planning,* published by the FSB; [24] and
- *Resilience of Central Counterparties: Further Guidance on the PFMI,* published by CPMI–IOSCO.[25]

Chapter 1 would highlight OCC's designated Critical Services and would summarize the approach OCC used in preparing its ''Stress Scenarios,'' which are six detailed storyline scenarios that address OCC's possible response to one or more of the following stresses: Individual Clearing Member default, multiple successive Clearing Member defaults, disruption or failure of a bank or liquidity facility provider, inability to access another financial market infrastructure and general business and operational risks. The Stress Scenarios would be included in Appendix H of the Plan. Chapter 1 would restate each of the five qualitative ''Recovery Trigger Events'' that are identified in Chapter 5 of the RWD Plan (which constitutes OCC's ''Recovery Plan'') and explain that the timeframe for OCC's recovery, based on the Stress Scenarios, could range from intraday to several months. Chapter 1 also would restate each of the six qualitative ''W[ind-]D[own ]P[lan] Trigger Events,'' which, if occurring during OCC's recovery efforts, could likely jeopardize the viability of OCC's recovery and signal that initiation of OCC's Wind-Down Plan (''WDP'') should be considered. Chapter 1 would explain that, given OCC's critical role as the sole clearing organization for all securities options exchanges in the U.S., OCC would seek to focus primarily on recovering from any severe stress scenario; however, in the extremely remote circumstance that that OCC experienced a stress severe enough to initiate the WDP, the ultimate goal of OCC's resolution would be to transfer ownership of OCC itself by the consummation of a consensual sale or similar transaction, in a manner ensuring the ongoing provision of OCC's Critical Services. Chapter 1 would conclude by summarizing OCC's assumptions for the duration of its resolution process and the estimated amount of operating capital needed to fund OCC's resolution.

Chapter 2: OCC Overview

Chapter 2 of the proposed RWD Plan is designed to impart information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for the subsequent discussion and analysis of OCC's ''Critical Services'' and ''Critical Support Functions'' in Chapter 4 (discussed below) and of OCC's resolution process in Chapter 6 (discussed below). To accomplish this, Chapter 2 would provide a detailed description of OCC's business, summarizing the role that OCC plays in the options market and the services and products it provides to its clearing members and market participants. Chapter 2 also would describe the regulatory oversight to which OCC is subject, and give details on the basic structure and organization of OCC's Board of Directors and management. Chapter 2 also would provide OCC's financial statements and summarize the services OCC provides to its clearing members and other financial market utilities (''FMUs''). Chapter 2 would include details about OCC's internal and external interconnectedness, distinguishing as appropriate between financial, operational and external forms of interconnectedness. Chapter 2 would further provide an explanation of each of OCC's three lines of defense, which are employed to mitigate the various risks to which OCC is exposed,[26] and the internal controls framework used to implement OCC's three lines of defense model. Chapter 2 would also discuss the participation and role of OCC's internal Management Committee and the Board of Directors and its various committees in OCC's risk management process. Finally, Chapter 2 would provide a discussion of OCC's budgeting process, pricing decisions, refund pricing, retirement plan obligations, other material financial obligations and sources of funds relevant to OCC's critical operations.[27]

Chapter 3: Support Functions

In Chapter 3 of the proposed RWD Plan, OCC would identify each of its fourteen different internal support functions and provide a brief description of the activities performed by each such support function. Together, Chapters 2 and 3 of the proposed Plan are designed to provide foundational information about the organization and operation of OCC that might be essential to relevant authorities in the event of an orderly wind-down planning. Like Chapter 2, the

[17] The Financial Stability Oversight Council designated OCC a SIFMU on July 18, 2012 pursuant to the Payment, Clearing and Settlement Supervision Act. *See* 12 U.S.C. 5463.

[18] *See* 81 FR 70786.

[19] CPSS–IOSCO, Principles for financial market infrastructures (Apr. 16, 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

[20] FSB, Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Identification of Critical Functions and Critical Shared Services.

[21] CPMI–IOSCO, Recovery of financial market infrastructures (published as revised on July 5, 2017), available at: *http://www.bis.org/cpmi/publ/d162.pdf* (''Recovery Report'').

[22] CFTC Staff Letter 16–61, available at: *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-61.pdf.*

[23] FSB, Essential Aspects of CCP Resolution Planning, (Aug. 16, 2016), available at: *http://www.fsb.org/wp-content/uploads/Essential-Aspects-of-CCP-Resolution-Planning.pdf.*

[24] FSB, Guidance on Central Counterparty Resolution and Resolution Planning, (July 5, 2017), available at: *http://www.fsb.org/wp-content/uploads/P050717-1.pdf.* (''CCP Resolution Report'').

[25] CPMI–IOSCO, Resilience of central counterparties: further guidance on the PFMI (published on July 5, 2017), available at: *http://www.bis.org/cpmi/publ/d163.pdf.*

[26] The three lines of defense are discussed in greater detail in a proposed rule change regarding OCC's ''Risk Management Framework.'' *See* Securities Exchange Act Release No. 34–81909 (Oct. 19, 2017), 82 FR 49456 (Oct. 25, 2017) (SR–OCC–2017–005).

[27] Each of the items listed is discussed in the ''Subsequent Events'' section of OCC's 2016 Annual Report, available at: *https://www.theocc.com/components/docs/about/annual-reports/occ-2016-annual-report.pdf.*

information provided in Chapter 3 also would provide readers of the RWD Plan with necessary context for the subsequent discussion and analysis in Chapters 4 and 6.

Chapter 4: Critical Services and Critical Support Functions

The primary purpose of Chapter 4 of the proposed RWD Plan would be to identify OCC's ''Critical Services'' and ''Critical Support Functions.'' A ''Critical Service,'' as defined in the proposed Plan, is a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets the FMU serves.[28] Similarly, a ''Critical Support Function,'' as defined in the proposed Plan, is a function within OCC that must continue in some capacity in order for OCC to be able to continue providing its Critical Services.

Chapter 4 of the proposed Plan sets forth the framework that OCC has used to designate its ''Critical Services'' and provides the analysis that OCC employed such designation. As proposed, the framework for designating OCC's ''Critical Services'' enlists the following criteria to determine if failure or discontinuation of a particular its services would adversely impact financial and operational capabilities of OCC's clearing members, other FMUs, and/or the broader financial system:

- *Market Dominance:* This criterion considers OCC's market share in the relevant service and evaluation of importance of relevant service to clearing members and to the overall economy.
- *Substitutability:* This criterion considers the existence of service providers other than OCC that could replicate the functionality of OCC's Critical Service if such Critical Service failed or was discontinued and the ability to transfer customers and transactions to other providers in a short timeframe.
- *Interconnectedness:* This criterion considers the depth and breadth of connections between OCC and other market participants that increase the likelihood of contagion if the service failed or was discontinued.
- *Barriers to Entry:* This criterion considers the business, structural, and/or operational complexity of OCC's services that may increase barriers to entry to other service providers.[29]

In proposed Chapter 4, OCC further reduces each criterion to between one and three ''measurable indicators.'' Each measureable indicator is assigned a ''high,'' ''medium'' or ''low'' rating relative to each of the services evaluated, and each rating assigned to a measurable indicator is given equal weight in OCC's designation analysis. OCC evaluated eight discreet services, five of which were assigned a ''high'' rating for at least one of the measurable indicators in each of the four selected criteria. In proposed Chapter 4, certain qualitative and quantitative characteristics of each of those five discreet services is further discussed in order to reach a conclusion about the service's criticality. In proposed Chapter 4, OCC designates several of its services as Critical Services on the basis of this final discussion; the services designated as Critical Services would include, but not be limited to, clearance services for listed options and clearance services for futures.

Proposed Chapter 4 derives OCC's Critical Support Functions from the Critical Services designations. In proposed Chapter 4, OCC inventories each of the fourteen support functions discussed in Chapter 3 and determines which are minimally necessary for the continued and orderly operation each of the services identified as Critical Services. On the basis of this identification process, proposed Chapter 4 identifies the eleven support functions as ''Critical Support Functions.''

The final sections of Chapter 4 would discuss the critical vendors for each of the Critical Support Functions, as well as the critical external interconnections that OCC maintains with other FMUs, exchanges (including designated contract markets), clearing and settlement banks, custodian banks, letter of credit banks, clearing members and credit facility lenders. These sections would be supported by the materials in Appendix B (which identifies OCC's clearing members), Appendix C (which identifies OCC's settlement banks), Appendix D (which identifies OCC's custodial banks), Appendix E (which identifies OCC's letter of credit banks), Appendix F (which identifies OCC's key vendors and service providers) and Appendix G (which identifies key agreements to be maintained).

Chapter 5: Recovery Plan

Chapter 5 of OCC's proposed Plan would constitute OCC's Recovery Plan. Consistent with the above-stated purpose of a recovery and orderly wind-down plan, the purpose of Chapter 5 would be to demonstrate that OCC has considered scenarios which may potentially prevent it from being able to provide its Critical Services as a going-concern and that, based on the scenarios considered, OCC has prepared appropriate plans for its recovery.[30]

The Recovery Plan would begin by describing the approach OCC initially took in developing the stress scenarios and recovery scenarios in OCC's existing orderly recovery and wind-down plan. Proposed Chapter 5 would then describe the approach OCC took in refining existing scenarios and adding new scenarios to arrive at the six storyline Stress Scenarios in Appendix H of the proposed RWD Plan.[31]

The Recovery Plan would next identify and discuss each of OCC's ''Enhanced Risk Management Tools'' and ''Recovery Tools,'' which together would form the tool set that OCC could deploy, as applicable facts and circumstances might warrant, in a stress scenario. With respect to the Enhanced Risk Management Tools and Recovery Tools, the Recovery Plan would provide an overview of the tool, and as appropriate for each tool, the Recovery Plan would include a discussion of the implementation of the tool (including the estimated time frame for implementation of the tool), the key risks associated with the tool, and the expected impact and incentives associated with use of the tool.

Enhanced Risk Management Tools

Proposed Chapter 5 would explain that OCC's Enhanced Risk Management Tools are designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses. Contrary to the Recovery Tools (which are described in greater detail below), the use of OCC's Enhanced Risk Management Tools

[28] *See* Recovery Report, p. 8.

[29] The criteria OCC selected align with criteria set forth in the Recovery Report to identify services as ''critical'' based upon ''the importance to the service to the FMI's participants and other FMIs, and to the smooth functioning of the markets the FMI serves and, in particular, the maintenance of financial stability.'' *See* Recovery Report, p. 8.

[30] For the purposes of the RWD Plan, OCC would define ''recovery'' consistent with the definition advanced by CPMI–IOSCO, which is ''the actions of an FMI, consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the FMI's viability as a going concern.'' *See* Recovery Report, p. 3.

[31] As stated above, the Stress Scenarios are six detailed storyline scenarios that address OCC's possible response to one or more of the following stresses: Individual Clearing Member default, multiple successive Clearing Member defaults, disruption or failure of a bank or liquidity facility provider, inability to access another financial market infrastructure and general business and operational risks.

would not be intended to be limited strictly to situations in which a Recovery Trigger Event has occurred. Rather, OCCs Enhanced Risk Management Tools have been designed such that they could be used prior to the occurrence of a Recovery Trigger Event (and preferably, the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event). As proposed, OCC would not anticipate there being a rigid order or timing for the deployment of its Enhanced Risk Management Tools, subject to one caveat—''Cash Settlement of Physically Delivered Options and Single Stock Futures'' would only be deployed in very narrow circumstances where a correspondent clearing organization has rejected the settlement obligations of an OCC Clearing Member and OCC does not believe it has sufficient liquid resources immediately available to facilitate settlement through a substitute broker.

Descriptions of each of the Enhanced Risk Management Tools contained in the proposed Recovery Plan are provided below:

*Use of Current/Retained Earnings.* Section 5(d) of Article VIII of OCC's By-Laws provides OCC with the authority to use current and/or retained earnings to discharge a loss that would be chargeable against the Clearing Fund. The Recovery Plan would identify this existing authority as one of OCC's Enhanced Risk Management Tools.

As stated in Section 5(d) of Article VIII of the By-Laws, use of OCC's current and/or retained earnings would require prior unanimous consent from the holders of OCC's Class A common stock and Class B common stock. Accordingly, the Recovery Plan would acknowledge that the utility of this particular tool is limited by the fact that the tool is dependent upon receipt of unanimous consent from OCC's existing stockholders (and therefore, the availability of the tool cannot be known in advance). The Recovery Plan would further acknowledge that because OCC's retained earnings presently amount to only a small fraction of OCC's existing prefunded Clearing Fund resources, the maximum utility of this particular tool may be realized in specific circumstances at either the beginning of OCC's loss waterfall (*i.e.,* by attempting to fully extinguish the liabilities and obligations arising from a Clearing Member's default without charging the Clearing Fund whatsoever) or toward the end of OCC's loss waterfall (*i.e.,* by attempting to contribute additional resources that may be necessary for OCC to fully extinguish its liabilities and obligations through tear-up).

*Minimum Clearing Fund Cash Contribution.* OCC is in the process of proposing a requirement that Clearing Members collectively contribute $3 billion in cash to the Clearing Fund and that OCC would have discretionary authority, in certain limited circumstances, to increase that minimum cash requirement from $3 billion up to the then-minimum size of the Clearing Fund. (''Cash Clearing Fund Requirement'').[32] The Cash Clearing Fund Requirement would be included in the Recovery Plan as one of OCC's Enhanced Risk Management Tools.

With respect to OCC's discretionary authority to increase the minimum cash requirement, the proposal would allow OCC's Executive Chairman, Chief Administrative Officer (''CAO''), or Chief Operating Officer (''COO''), upon providing notice to the Risk Committee of OCC's Board of Directors (''Risk Committee''), to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund for the protection of OCC, clearing members or the general public. Any determination by the Executive Chairman, CAO and/or COO to implement a temporary increase in Clearing Fund size would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. The proposal would require that any such temporary increase be reviewed by the Risk Committee as soon as practicable, but in any event within 20 calendar days of the increase. Clearing Members would be required to satisfy any such increase in their required cash contributions no later than one hour before the close of the Fedwire (*i.e.,* 5:30 p.m. Central Time) on the business day following OCC's issuance of an instruction to increase cash contributions.

OCC's Recovery Plan would acknowledge that the process for initiating any increase to the minimum cash requirement would be driven by the preparation of a ''Close-Out Action Plan,'' which is an internal document prepared in accordance with OCC's Default Management Policy and Default Management Procedures that, among other things, takes into consideration the projected liquidity demands for successful management of a defaulted Clearing Member. The Recovery Plan recognizes that the expected impact of any increase to the minimum Clearing fund cash requirement could be the exacerbation of any ongoing liquidity constraints facing OCC's Clearing Members.

*Borrowing Against Clearing Fund.* Presently, Article VIII, Section 5(e) of OCC's By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow where OCC ''deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise.'' Second, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow against the Clearing Fund where OCC ''sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC's By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund.'' In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC's By-Laws, it must arise from a situation in which any bank or securities or commodities clearing organization has failed ''to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event.''[33] OCC has proposed to extend this borrowing authority to include a third scenario, whereby OCC could borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, COO or CAO) against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.[34] This

[32] *See* Securities Exchange Act Release No. 34–82156 (Nov. 27, 2017), 82 FR 57015 (Dec. 1, 2017) (SR–OCC–2017–019).

[33] To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

[34] OCC has filed a proposed rule change with the Commission in connection with the authority to borrow against the Clearing Fund to address liquidity needs for same-day settlement. *See* Securities Exchange Act Release No. 34–81058 (Jun.

Continued

borrowing authority, as expanded by the proposed rule change, would be included in the Recovery Plan as one of OCC's Enhanced Risk Management Tools.

The Recovery Plan would acknowledge that the process for initiating any borrowing against the Clearing Fund would be driven by the preparation of a ''Close-Out Action Plan'' (in the event of a Clearing Member default), in accordance with the execution of OCC's ''Settlement Bank Failure Procedure'' (in the event of a disruption to or failure of a settlement bank), in accordance with the execution of OCC's ''Linked FMI Disruption Procedure'' (in the event of a disruption to a linked financial market infrastructure). The Recovery Plan would further acknowledge that a borrowing pursuant to a recommendation in a Close-Out Action Plan or under either of the Settlement Bank Failure Procedures or Linked FMI Disruption Procedures would occur in accordance with OCC's ''Syndicated Credit Facility Procedure.'' The Recovery Plan recognizes that a key risk of this particular tool would be that in a heightened stress scenario OCC's primary liquidity facilities already may be fully or partially utilized (and therefore, the availability of the tool cannot be known in advance).

*OCC's Credit Facility.* OCC maintains a $2.0 billion senior secured 364-day revolving credit facility with a syndicate of lenders.[35] The purpose of the facility is to provide OCC with liquidity to meet settlement obligations as a central counterparty. The Recovery Plan would include the facility among OCC's Enhanced Risk Management Tools.

The Recovery Plan would recognize that borrowings under the facility would occur in accordance with OCC's Syndicated Credit Facility Procedure. The Recovery Plan would further recognize that the key risk associated with the use of the facility is that a portion of the syndicate may not timely fund OCC's draw.

*OCC's Non-Bank Facility.* OCC maintains a $1.0 billion secured non-bank liquidity facility.[36] The purpose of the non-bank facility is to provide OCC with a non-bank liquidity resource to meet settlement obligations as a central counterparty. The Recovery Plan would include the non-bank facility among OCC's Enhanced Risk Management Tools.

The Recovery Plan would recognize that borrowings under the facility would occur in accordance with OCC's ''Non-Bank Facility Procedure.'' The Recovery Plan would further recognize that the key risk associated with the use of the non-bank facility is that OCC's counterparty may not timely execute the transaction.

*Cash Settlement of Physically Delivered Options and Single Stock Futures.* OCC is in the process of proposing a new Rule 913,[37] which would provide OCC the ability to require cash settlement of otherwise physically-settled delivery obligations arising from exercised or assigned stock options and/or physically-settled matured stock futures in the event that a correspondent clearing corporation[38] rejects the settlement obligations for such stock options and/or stock futures (such rejected stock options and/or stock futures hereinafter, ''Rejected Cleared Securities'') and either of the two following necessary conditions exists: (i) The liquidity demand on OCC to fund an alternative form of settlement for such Rejected Cleared Securities (*i.e.,* settlement through the use of a ''substitute broker'')[39] would exceed the amount of liquid resources immediately available to OCC, or (ii) no agent is available to serve as substitute broker to facilitate alternative settlement for OCC.[40] In these extremely limited circumstances, fixing cash settlement amounts pursuant to proposed Rule 913 would provide OCC with the ability to substantially reduce the liquidity demands that it might otherwise face if required to fund an alternative form of settlement to effect physical delivery. The Recovery Plan would include cash settlement of otherwise physically-delivered options and single-stock futures pursuant to proposed Rule 913 among OCC's Enhanced Risk Management Tools.

The Recovery Plan would acknowledge that, assuming one of the two necessary conditions exists, the process for initiating cash settlement would be driven by the preparation of a ''Close-Out Action Plan,'' which would recommend impacted options and single-stock futures be cash settled in lieu of physical delivery. The Recovery Plan would also acknowledge that execution of cash settlement would occur in accordance with OCC's ''Alternative Cash Settlement of Cleared Contracts Procedure.'' The Recovery Plan recognizes that a key risk of this particular tool would be the potentially detrimental impacts on Clearing Members and their customers, who would receive a cash settlement amount when they had anticipated receiving physical securities.

Recovery Tools

Proposed Chapter 5 would explain that OCC's Recovery Tools differ from OCC's Enhanced Risk Management Tools in that the use of each Recovery Tool is generally limited to a scenario in which a Recovery Trigger Event has occurred, and as discussed below, the sequence and timing of the deployment of each Recovery Tool is more structured than the sequence and timing for the deployment of the Enhanced Risk Management Tools. As noted below, each of the Recovery Tools is discussed in greater detail in a proposed rule change that has been filed with the Commission.

Descriptions of each of the Recovery Tools contained in the proposed Recovery Plan are provided below:

*Assessment Powers.* OCC is in the process of amending its By-Laws to revise its assessment powers such that OCC would have the authority to assess non-defaulting Clearing Members during any ''cooling-off period'' (explained below) in an aggregate amount equal to 200% of each such Clearing Member's required contribution as of the time immediately preceding the start of the applicable cooling-off period (hereinafter, ''Assessment Powers'').[41] Under the proposed Assessment Powers, an automatic minimum fifteen calendar day cooling-off period would begin whenever a proportionate charge is

30, 2017), 82 FR 31371 (July 6, 2017) (SR–OCC–2017–803).

[35] *See* Securities Exchange Act Release No. 34–81956 (Oct. 26, 2017) (SR–OCC–2017–017).

[36] *See* Securities Exchange Act Release No. 34–76821 (Jan 4, 2016), 81 FR 3208 (Jan. 4, 2016) (SR–OCC–2016–805).

[37] OCC will be filing a proposed rule change with the Commission in connection with this proposal. *See* SR–OCC–2017–018.

[38] Under Article I of OCC's By-Laws, the term ''correspondent clearing corporation'' means the National Securities Clearing Corporation or any successor thereto which, by agreement with the OCC, provides facilities for settlements in respect of exercised option contracts or BOUNDs or in respect of delivery obligations arising from physically-settled stock futures.

[39] ''Substitute broker'' refers to the use of another OCC clearing member that remains in good standing at the correspondent clearing corporation and that, on OCC's behalf, will facilitate settlement of OCC's delivery obligations of the Rejected Cleared Securities through the correspondent clearing corporation.

[40] To avoid the retroactive application of Rule 913, OCC's ability to require cash settlement of cleared securities would only apply where the relevant cleared securities were issued by OCC after regulatory approval is received for this proposed rule change and the change has been implemented by OCC. As of the date of this filing, OCC lists standard equity options through November 25, 2024 and flexible style equity options through December 18, 2026.

[41] OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* SR–OCC–2017–020.

assessed by OCC against Clearing Members' Clearing Fund contributions. While the cooling-off period would continue for a minimum of fifteen consecutive calendar days, if one or more of the events described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws occur(s) during that fifteen calendar day period and result(s) in one or more proportionate charges against the Clearing Fund, the cooling-off period would be extended through either (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period, whichever is sooner. During such cooling-off period, the proposed Assessment Powers would cap each Clearing Member's aggregate liability to replenish the Clearing Fund at 200% of the Clearing Member's then-required contribution to the Clearing Fund. Once the cooling-off period ends each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution.[42] The Recovery Plan would include the proposed Assessment Powers among OCC's Recovery Tools.

The Recovery Plan would discuss the mechanics for replenishment of the Clearing Fund, which is the mechanism by which assessments would be collected from Clearing Members.[43] The Recovery Plan would acknowledge that one of the key risks associated with OCC's assessment powers is that utilization of assessment powers (or even prefunded Clearing Fund resources) may incentivize Clearing Members to withdraw from membership (to avoid replenishing the Clearing Fund following the cooling-off period), thereby potentially reducing the size of the future Clearing Fund as well as OCC's future assessment powers.

*Voluntary Payments.* OCC is in the process of proposing new Rule 1009, which would provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[44] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[45] Under proposed Rule 1009, non-defaulting Clearing Members would be invited to make voluntary payments to the Clearing Fund, in addition to any amounts they are otherwise required to contribute. If OCC subsequently recovers from the estate(s) of the defaulted Clearing Member(s), all non-defaulting Clearing Members that made voluntary payments would be repaid from such recovery (and if the amount recovered the defaulted Clearing Member(s) is less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the recovery that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received). The Recovery Plan would include proposed Rule 1009 among OCC's Recovery Tools.

The Recovery Plan would discuss the mechanics for voluntary payments and the estimated time frame for issuing a ''Voluntary Payment Notice'' and collecting voluntary payments (from several hours to overnight, depending on the timing of the event driving OCC's determination to call for voluntary payments).[46] The Recovery Plan would acknowledge that the key risk associated with the ability to call for voluntary payments is that non-defaulting Clearing Members would be unwilling, or unable, to participate.

*Voluntary Tear-Up.* OCC is in the process of proposing new Rule 1111, which, in relevant part, would establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to voluntarily extinguish (*i.e.,* voluntarily tear-up) their open positions at OCC in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[47] OCC presumes that the scope of any voluntary tear-up would be dictated by the cleared contracts remaining in the portfolio(s) of the defaulted Clearing Member(s); however, to ensure OCC retains sufficient flexibility to effectively deploy this tool in an extreme stress event, proposed Rule 1111(c) would provide the Risk Committee with discretion to determine the appropriate scope of each voluntary tear-up. New Rule 1111(c) also would impose standards designed to circumscribe the Risk Committee's discretion, requiring that any determination regarding the scope of a voluntary tear-up would (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. The Recovery Plan would include this proposed authority to call for voluntary tear-ups among OCC's Recovery Tools.

The Recovery Plan anticipates that OCC's tear-up process—for both voluntary tear-ups as well as partial tear-ups—would be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC would be expected to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers without

[42] Under the proposed Assessment Powers, the time frame within which a Clearing Member may provide a termination notice to OCC to avoid liability for replenishment of the Clearing Fund after the cooling-off period would be extended and the obligations of such a terminating Clearing Member for closing-out and transferring its remaining open positions would be modified. Specifically, to effectively terminate its status as a Clearing Member and not be liable replenishing the Clearing Fund after the cooling-off period, a Clearing Member would be required to: (i) Notify OCC in writing of its intent to terminate not later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close-out or transfer all of its open positions by no later than the last day of the cooling-off period. If a Clearing Member failed to satisfy all of these conditions by the end of a given cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member and therefore it would remain subject to the obligation to replenish the Clearing Fund after the end of the cooling-off period.

[43] Article 6 of OCC's By-Laws states that Clearing Members are required to promptly make good any deficiency in their required contribution that results from a charge against the Clearing Fund, and Clearing Members must make good any such deficiencies by 9:00 a.m. Central Time on the first business day following the day on which OCC notifies Clearing Members of such deficiency.

[44] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

[45] OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* SR–OCC–2017–020.

[46] Article 6 of OCC's By-Laws states that Clearing Members are required to promptly make good any deficiency in their required contribution that results from a charge against the Clearing Fund, and Clearing Members must make good any such deficiencies by 9:00 a.m. Central Time on the first business day following the day on which OCC notifies Clearing Members of such deficiency.

[47] OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* SR–OCC–2017–020.

haircutting gains.[48] The Recovery Plan contemplates that, if tear-up becomes necessary, OCC likely would initiate its tear-up process after the market closes on the date on which OCC has determined that the amount of its remaining financial resources measured against the estimated stressed exposure of the unauctioned positions in the portfolio(s) of the defaulted Clearing Member(s) warrants the initiation of OCC's tear-up process (for purposes of this example, Day T). The Recovery Plan anticipates that notice of tear-up (both voluntary tear-up and partial tear-up) would be published no later than the morning of the following trading day prior to the market opening (for purposes of this example, Day T+1) and that the call for voluntary tear-ups would remain open throughout the duration of the trading on Day T+1. The Recovery Plan anticipates that voluntarily tendered positions would be extinguished either after the close on Day T+1 or prior to the opening of the markets on Day T+2 (where Day T+2 is a trading day), and that such positions would be extinguished at their last established end-of-day settlement price, in accordance with OCC's existing practices concerning pricing and valuation (*i.e.,* the closing price on Day T+1).

After OCC has completed its tear-up process and re-established a matched book, OCC expects that holders of both voluntarily torn-up and mandatorily torn-up positions would be provided with a limited opportunity to re-establish positions in the contracts that were voluntarily or mandatorily extinguished. For the losses, costs or expenses imposed upon the holders of torn-up positions, proposed Rule 1111 would provide OCC with two separate and non-exclusive means of equitably re-allocating such losses costs or expenses.[49]

In addition to discussing the above mechanics for voluntary tear-up and the estimated time frame for initiating and completing OCC's tear-up process, the Recovery Plan would acknowledge that the key risk associated with the ability to call for voluntary tear-ups is that non-defaulting Clearing Members and nonwould be unwilling, or unable, to participate.

*Partial Tear-Up.* Proposed Rule 1111 also would provide the Board with discretion to extinguish the remaining (*i.e.,* mandatorily extinguish) open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (such positions, ''remaining open positions''), as well as any related open positions as necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (such positions, ''related open positions''), in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default (such tear-ups, ''partial tear-ups''). Like the determination for voluntary tear-ups, OCC presumes that the scope of any partial tear-up would be dictated by the cleared contracts remaining in the portfolio(s) of the defaulted Clearing Member(s); however, to ensure OCC retains sufficient flexibility to effectively deploy this tool in an extreme stress event, proposed Rule 111(c) would provide the Risk Committee with discretion to determine the appropriate scope for each partial tear-up. Proposed Rule 1111(c) would impose the same standards designed to circumscribe the Risk Committee's discretion as would be imposed with respect to voluntary tear-ups: partial tear-ups would (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. The Recovery Plan would include this proposed authority to impose mandatory tear-ups among OCC's Recovery Tools.

As explained above, the Recovery Plan would anticipate that the process for implementing a partial tear-up would be intertwined with the process for implementing a voluntary tear-up. The Recovery Plan would also make clear that partially torn-up positions would be allocated to non-defaulting Clearing Members' accounts (and further allocated by Clearing Members to their non-defaulting customers' accounts) on a pro rata basis.

*Replenishment Capital.* In 2015 OCC adopted a capital plan (''Capital Plan'') under which OCC's stockholder exchanges made an additional capital contribution and, in the event that total shareholder's equity falls below a certain threshold, committed to replenishing OCC's capital up to an amount determined as OCC's ''Baseline Capital Requirement.'' [50] The Recovery Plan would include the replenishment capital that OCC's stockholder exchanges would be required to provide under the Capital Plan among OCC's Recovery Tools.

In addition to generally discussing each of the Enhanced Risk Management Tools and Recovery Tools as described above, the Recovery Plan also would provide a mapping of OCC's Enhanced Risk Management Tools and Recovery Tools against the types of financial market infrastructure (''FMI'') risk exposures identified in the Recovery Report.[51] The general mapping of tools to risk exposures is presented below:

- *Tools to address uncovered credit losses from a Clearing Member default:* Use of current/retained earnings, proposed voluntary payments and proposed Assessment Powers.
- *Tools to address liquidity shortfalls:* minimum Clearing Fund cash contribution, borrowing against Clearing Fund, OCC's credit facility, OCC's non-

[48] OCC is not proposing a tear-up process that would require the imposition of ''gains haircutting'' (*i.e.,* the reduction of unpaid gains) on a portion of OCC's cleared contracts. In general, OCC believes that forced gains haircutting is a tool that can be more easily applied to products whose gains are settled at least daily, like futures through an exchange of variation margin, and by central counterparties with comparatively large daily settlement flows. Listed options, which constitute the vast majority of the contracts cleared by OCC, do not have daily settlement flows and any attempt to reduce the ''unrealized gains'' of a listed options contract would require the reduction of the option premium that is embedded within the required margin (such a process would effectively require haircutting the listed option's initial margin). In OCC's proposed tear-up process, the holders of torn-up positions would be assigned a Tear-Up Price and OCC would draw on its remaining financial resources in order to extinguish the torn-up positions at the assigned Tear-Up Price without forcing a reduction in the amount unpaid gains on such positions.

[49] Proposed Rule 1111 would provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from such tear-up(s). Further, proposed Rule 1111(a) also would provide that if OCC subsequently recovers from the estate(s) of the defaulted Clearing Member(s) and the amount of such recovery exceeds the amount OCC received in voluntary payments, then non-defaulting Clearing Members and non-defaulting customers that voluntarily tore-up open positions and incurred losses from such tear-ups would be repaid from the amount of the recovery in excess of the amount OCC received in voluntary payments (if the amount recovered is less than the aggregate amount of voluntary tear-up, each non-defaulting Clearing Member and non-defaulting customer that incurred losses from voluntarily torn-up positions would be repaid in an amount proportionate to the percentage of its total amount of losses, costs and fees imposed on Clearing Members or customers as a result of the voluntary tear-ups).

[50] *See* Securities Exchange Act Release No. 34–74387 (Feb. 26, 2015), 80 FR 12215 (Mar. 6, 2015) (SR–OCC–2014–813). As stated in the advance notice, OCC's Baseline Capital Requirement for 2015 was $117,000,000.

[51] The Recovery Report recognizes the following risk exposures for an FMI: legal risk, credit risk, liquidity risk, general business risk, custody risk, investment risk and operational risk. *See* Recovery Report, p. 12.

bank facility and cash settlement of physically delivered options and single stock futures.

• *Tools to replenish financial resources:* Replenishment capital.

• *Tools to address losses related to business, operational or other structural weaknesses (i.e., losses not caused by Clearing Member Default):* Borrowing against Clearing Fund and replenishment capital.

• *Tools to re-establish a matched book:* Voluntary tear-up and partial tear-up.

The Recovery Plan would include a short discussion of how the Enhanced Risk Management Tools and Recovery Tools would apply to each of the risk categories and failure scenarios identified in the Recovery Report.[52] The discussion of each risk category would reference the appropriate Stress Scenarios in Appendix H that demonstrate the use of applicable Enhanced Risk Management Tools and Recovery Tools. The Recovery Plan also would discuss the Enhanced Risk Management Tools and Recovery Tools in the context of the characteristics of recovery tools enumerated in the CPMI–IOSCO Recovery Report.[53]

After discussing the Enhanced Risk Management Tools and Recovery Tools, the Recovery Plan would identify five qualitative ''Recovery Trigger Events'' (events that—if occurring during OCC's risk management efforts—would indicate that OCC is facing an extreme stress event that potentially threatens OCC's viability). The Recovery Plan would specify that the occurrence of a Recovery Trigger Event shall require OCC personnel to notify the Commission and the CFTC (and the Federal Deposit Insurance Corporation, to the extent applicable), and such notice shall apprise the regulator(s) of the specific Recovery Trigger Event that has occurred and sufficient information to enable the regulator(s) to understand the nature of the occurrence of the Recovery Trigger Event. The Recovery Plan would further outline an escalation process for the occurrence of a Recovery Trigger Event. The escalation process would start with individual support function leads, who would be responsible for communicating the possible occurrence of a Recovery Trigger Event to other support functions within OCC. The escalation process would require OCC's Enterprise Risk Management and Financial Risk Management groups to be responsible for assessing the situation and providing recommendations regarding the potential use of Enhanced Risk Management Tools and Recovery Tools. The escalation process would identify that the Chief Executive Officer and Executive Chairman would be responsible for providing necessary approvals for the implementation of Enhanced Risk Management Tools and Recovery Tools, and that the Chief Risk Officer and the Management Committee would be responsible for overseeing the deployment of any Enhanced Risk Management Tools or Recovery Tools. The escalation process would identify OCC's Board and the Risk Committee of the Board as being responsible for generally overseeing OCC's recovery efforts.

Finally, the Recovery Plan would provide general descriptions of how OCC would anticipate deploying its Enhanced Risk Management and Recovery Tools in response to each of the six Stress Scenarios detailed in Appendix H. As described above, the six detailed Stress Scenarios would be grouped into the following categories of stresses: Individual Clearing Member default, multiple successive Clearing Member defaults, disruption or failure of a bank or liquidity facility provider, inability to access another financial market infrastructure and general business and operational risks.

Chapter 6: Wind-Down Plan

Chapter 6 of OCC's proposed RWD Plan would constitute OCC's WDP. Consistent with the above-stated purpose of an orderly wind-down plan, Chapter 6 would demonstrate that OCC has considered scenarios which may potentially prevent it from being able to provide its Critical Services as a going-concern and that OCC has adequately evaluated plans for its orderly wind-down.[54]

The WDP would state OCC's basic assumptions concerning the resolution process, including assumptions about the duration of the resolution process, the cost of the resolution process, OCC's capitalization through the resolution process, the maintenance of Critical Services and Critical Support Functions and the retention of personnel and contractual relationships. The WDP would further identify six ''WDP Trigger Events'' that—if occurring during OCC's recovery efforts—could likely jeopardize the viability of OCC's recovery and signal that initiation of the WDP should be considered. Upon the occurrence of any WDP Trigger Event, the WDP would require OCC personnel to notify the Commission and the CFTC (and the Federal Deposit Insurance Corporation, to the extent applicable), and such notice must apprise the regulator(s) of the specific WDP Trigger Event that has occurred and sufficient information to enable the regulator(s) to understand the nature of the occurrence of the WDP Trigger Event. Additionally, the WDP would prescribe for each WDP Trigger Event more tailored internal notification requirements. These more tailored notification requirements would designate OCC personnel in specific support functions (generally, the function whose area is most closely related to, or impacted by, the specific WDP Trigger Event) as responsible for identifying such WDP Trigger Event and for notifying OCC's senior management.

The WDP also would reference the importance of the critical external interconnections (discussed in Chapter 4) to the resolution process and highlight the key agreements that would be necessary to maintain throughout OCC's resolution (such agreements would be listed in Appendix G). The WDP would provide a discussion of the key actions that OCC (or a resolution authority) could take during the resolution process. The key actions discussed in the WDP would include the following: The decision by OCC's Board (informed by senior management) to abandon recovery and initiate OCC's resolution process; the potential institution of new or heightened requirements on clearing membership; the potential imposition of heightened capital requirements on clearing members (consistent with the existing requirements in Rule 301); the imposition of increased margin requirements for Clearing Members

[52] The Recovery Report identifies the following purposes for an FMI's recovery tools: (i) Tools to allocate uncovered credit losses caused by a participant default, (ii) tools to address uncovered liquidity shortfalls, (iii) tools to replenish financial resources, (iv) tools for CCPs to re-establish a matched book following a participant default, and (v) tools to allocate losses not caused by participant default. *See* Recovery Report, p. 17.

[53] The Recovery Report states that a financial market infrastructure's recovery tools should (i) be comprehensive, (ii) be effective, (ii) be transparent, measurable, manageable and controllable, (iv) create appropriate incentives, and (v) minimize negative impact. *See* Recovery Report, p. 13.

[54] For the purposes of the RWD Plan, OCC would frame its wind-down objective consistent with the objective advanced by the FSB for CCP resolution: ''CCP resolution should have as its objective the pursuit of financial stability and ensure the continuity of critical CCP functions in all jurisdictions where those functions are critical and without exposing taxpayers to risk of loss. . . . The objectives of CCP resolution can be achieved either by: (i) restoring the ability of the CCP to continue to perform its critical functions as a going concern; or (ii) ensuring continued performance of those functions by another entity or arrangement (including a bridge entity established by the resolution authority) coupled with the orderly wind-down of the residual CCP in resolution.'' *See* CCP Resolution Report, p. 2.

(pursuant to the existing authority under Rule 603); ceasing OCC's investment activities; instituting new operational practices (to address any operation weaknesses that caused, or contributed to, the events resulting in the initiation of the resolution process), and; targeted reductions in force (by each of the fourteen support functions discussed in Chapter 3).

The WDP also would identify potential transactions that could be entered to accomplish the objectives of wind-down (''WDP Transactions''), as well as discuss the possibility of ceasing operation of OCC's Critical Services. The WDP would state that the goal of OCC's resolution—and thusly of any WDP Transaction—would be to transfer ownership of OCC itself by the consummation or a consensual sale or similar transaction, in a manner that ensures the continuation of OCC's Critical Services. The WDP would examine the structure of three potential WDP Transactions, with a focus on the corporate, transactions, governance and regulatory issues relating to each structure. In order of preference based on OCC's examination, the first structure would be a ''Stock Transaction,'' meaning a sale by OCC's stockholder exchanges of all of their shares of stock to one or more new owners; the second structure would be a ''Merger Transaction,'' meaning a merger or consolidation of OCC with another entity (with the aim of OCC remaining as the surviving entity), and; the third structure would be an ''Asset Transaction,'' meaning that substantially all of OCC's assets and some or all of OCC's liabilities, including open positions in OCC-cleared contracts along with related Clearing Fund deposits and margin collateral, would be transferred to a third party.

With respect to the possibility of ceasing OCC's Critical Services, the WDP would consider taking a corporate action to consider institution of a bankruptcy or insolvency proceeding, which would have the effect of triggering the existing close-out netting provisions in Article VI, Section 27 of OCC's By-Laws.

Chapter 7: RWD Plan Governance

Chapter 7 of OCC's proposed Plan would memorialize the prior governance for approval of the earlier drafts of OCC's recovery and orderly wind-down plan and would establish an internal governance process for the maintenance, review and approval of the proposed RWD Plan. The internal governance process for the approval of subsequent changes to OCC's proposed RWD Plan would initiate with an RWD Working Group, which would recommend any changes to OCC's Management Committee. OCC's Management Committee, in turn, would review and, as appropriate, approve and recommend any changes to OCC's Risk Committee. OCC's Risk Committee, in turn, would review and, as appropriate, approve and recommend any changes to OCC's Board. OCC's Board would have final responsibility for review and approval of subsequent changes to OCC's proposed RWD Plan.

Expected Effect on and Management of Risk

OCC believes that the proposed change would reduce the nature and level of risk presented to OCC by formalizing a plans designed to enhance OCC's ability to address extreme stress events and minimize the risks of contagion to OCC's Clearing Members, market participants or to the wider financial system, including other FMIs. Specifically, the RP would seek to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate the use its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the WDP would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. In this regard, OCC believes its proposed RWD Plan improves the possibility of maintaining market and public confidence during a time of unprecedented stress.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[55] Section 805(a)(2) of the Clearing Supervision Act[56] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[57] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including those standards adopted pursuant to the Commission rules cited below.[58] For the reasons set forth below, OCC believes that the proposed change is consistent with the risk management standards promulgated under Section 805(a) of the Clearing Supervision Act.[59]

OCC believes that the proposed rule change is also consistent with Rule 17Ad–22(e)(3)(ii).[60] As stated above, the RWD Plan would describe OCC's plans to recover from, or orderly resolve its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.[61] Consistent with the Commission's guidance concerning, the proposed RWD Plan would consider scenarios which may potentially prevent OCC from providing its Critical Services as a going-concern and provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such considerations. Further, OCC's proposed Plan would seek to provide the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.[62] In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad–22(e)(3)(ii).[63]

[55] 12 U.S.C. 5461(b).

[56] 12 U.S.C. 5464(a)(2).

[57] 12 U.S.C. 5464(b).

[58] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore is subject to section (e) of Rule 17Ad–22.

[59] 12 U.S.C. 5464(b)(1) and (4).

[60] 17 CFR 240.17Ad–22(e)(3)(ii).

[61] 17 CFR 240.17Ad–22(e)(3)(ii).

[62] *See* 81 FR at 70810.

[63] 17 CFR 240.17Ad–22(e)(3)(ii).

### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–810 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.

All submissions should refer to File Number SR–OCC–2017–810. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_810.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–810 and should be submitted on or before February 13, 2018.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01071 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82519; File No. SR–CboeEDGX–2018–002]**

## Self-Regulatory Organizations; CBOE EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule applicable to its equity options platform (''EDGX Options'') to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*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 the Market Data section of its fee schedule applicable to EDGX Options to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe BZX Exchange, Inc. (''BZX'') received approval to effect a merger (the

[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)(6)(iii).

''Merger'') of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.[5] In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of ''Non-Professional User'' to harmonize it with that of its affiliates, Cboe and C2. The EDGX Option's fee schedule currently defines ''Non-Professional User'' as:

> a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, ''Non-Professional User'' would be defined as:

> a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of ''Non-Professional User' included within the Cboe and C2 fee schedules.[6] The Exchange's current definition of ''Non-Professional User'' does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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, 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR–BatsEDGX–2016–60; SR–BatsEDGA–2016–24; SR–BatsBYX–2017–29; and SR–BatsBYX–2016–68).

[6] *See* the Cboe fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule and* the C2 fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.[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: (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–CboeEDGX–2018–002 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number CboeEDGX–2018–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CboeEDGX–2018–002 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01090 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[11] *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82516; File No. SR–GEMX–2018–01]**

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Orders

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The text of the proposed rule change is set forth below. Proposed new language is *italicized;* deleted text is in [brackets].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rule 805 to permit Market Makers[3] to enter additional order types in the options classes to which they are appointed.

* * * * *

**Nasdaq GEMX Rulebook**

* * * * *

**Rule 805. Market Maker Orders**

(a) *Options Classes to Which Appointed.* Market makers may *enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.*[not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders, immediate-or-cancel orders, market orders, fill-or-kill orders, sweep orders, and block-size orders executed through the Block Order Mechanism pursuant to Rule 716(c).] Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(iii) upon the entry of such orders if they were not previously quoting in the series.

(b) *Options Classes Other Than Those to Which Appointed.*

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, *except for Reserve Orders,* provided that:

(i) and (ii) No change.

(2) and (3) No 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.

[3] Market Makers refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* GEMX Rule 100(a)(25).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to permit Market Makers to enter principal orders to buy or sell options in the options classes to which they are appointed under Rule 802 [4] for all order types listed in Rule 715 except for Stopped Orders,[5] Reserve Orders [6] and Customer Cross Orders.[7] This filing is intended to permit Market Makers to execute most of the same order types, which today they are permitted to enter on other options markets.[8] In addition, this filing is intended to amend GEMX Rule 805(b)(1) to indicate that Reserve Orders are not permitted to be entered by GEMX Market Makers in non-appointed options classes. Today, GEMX Market Makers may not enter Reserve Orders in either appointed or non-appointed options classes. Today, while the System prohibits GEMX Market Makers from entering Reserve Orders, GEMX Rule 805(b)(1) does not indicate the restriction.

Appointed Options Classes

Today, as noted in GEMX Rule 805(a), a Market Maker may not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than opening only orders,[9] immediate-or-cancel orders,[10] market orders, fill-or-kill orders,[11] sweep orders,[12] and block-size orders [13] executed through the Block Order Mechanism [14] pursuant to Rule 716(c). At this time, the Exchange proposes to expand the order types which Market Makers are permitted to enter on GEMX.[15] The Exchange is amending GEMX Rule 805(a) to make clear which order types a Market Maker in an appointed options class may submit. Additionally, ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, Opening Sweep Orders, Cancel and Replace Orders,[16] and Add Liquidity Orders are accepted on GEMX today from Market Makers as principal orders as modifiers of the allowable non-resting order types, although they are not specifically detailed in the rule. This rule change will further detail and align the rule text with the system functionality by making clear that Maker Makers may enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders.

Today, GEMX Market Makers, who are appointed and non-appointed in a particular options class, may submit orders without limitation, unless otherwise restricted by the order type as discussed herein. The Exchange proposes to permit Market Makers to enter all order types, which are listed in GEMX Rule 715, except for Stopped Orders, Reserve Orders and Customer Cross Orders. The Exchange notes that today Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.[17] With respect to Reserve Orders, the Exchange proposes to continue to restrict Market Makers from entering Reserve Orders in their appointed options class. The Exchange believes that Market Maker liquidity should be displayed liquidity. For these reasons, and to remain competitive with other markets, the Exchange proposes to permit Market Makers to enter all orders they are eligible to submit in their appointed class with the exception of Reserve Orders and also restrict Reserve Orders in the non-appointed classes.

[4] GEMX Rule 802 concerns the appointment of Market Makers.

[5] A stopped order is a limit order that meets the requirements of Rule 1901(b)(8). To execute stopped orders, Members must enter them into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Rule 716. *See* GEMX Rule 715(b)(6).

[6] A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. A non-marketable Reserve Order will rest on the order book. The displayed portion of a Reserve Order shall be ranked at the specified limit price and the time of order entry. The displayed portion of a Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. If the displayed portion is refreshed in part, the new displayed portion shall include the previously displayed portion. Upon any refresh, the entire displayed portion shall be ranked at the specified limit price and obtain a new time stamp, *i.e.,* the time that the new displayed portion of the order was refreshed. The new displayed portion will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. The initial non-displayed portion of a Reserve Order rests on the order book and is ranked based on the specified limit price and time of order entry. Thereafter, non-displayed portions, if any, always obtain the same time stamp as that of the new displayed portion in subparagraph 4 above. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest has been executed. The non-displayed portion of any Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders. *See* GEMX Rule 715(g).

[7] A Customer Cross Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* Gemx Rule 715(i).

[8] NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') do not limit the types of orders that can be entered by market makers. *See* NYSE Arca Rule 6.37C–O and NYSE American Rule 925.2NY.

[9] An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* GEMX Rules 717(o).

[10] An immediate-or-cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An immediate-or-cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the Limit Order Price Protection and Size Limitation Protection as defined in GEMX Rule 714(b)(2) and (3). *See* GEMX Rule 715(b)(2).

[11] A fill-or-kill order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. *See* GEMX Rule 715(b)(2).

[12] A Sweep Order is a limit order that is to be executed in whole or in part on the Exchange and the portion not so executed shall be routed pursuant to Supplementary Material .05 to Rule 1901 to Eligible Exchange(s) for immediate execution as soon as the order is received by the Eligible Exchange(s). Any portion not immediately executed by the Eligible Exchange(s) shall be canceled. If a Sweep Order is not marketable when it is submitted to the Exchange, it shall be canceled. *See* GEMX Rule 715(s).

[13] Block-size orders are orders for fifty (50) contracts or more. *See* GEMX Rule 716(a).

[14] The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. *See* GEMX Rule 716(c).

[15] This expansion would include Good-Till-Date Orders, GTC Orders, Limit Orders, and Stop Limit Orders as new acceptable order types.

[16] Cancel and Replace Orders shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, size is not increased, or in the case of Reserve Orders, size is not changed. If the replacement portion of a Cancel and Replace order does not satisfy the system's price or other reasonability checks (*e.g.,* GEMX Rule 710; GEMX Rule 711(c); GEMX Rule 714(b)(2); and GEMX Rule 722(b)(1) and Supplementary Material .07 (b), (c) and (d) to Rule 722) the existing order shall be cancelled and not replaced. *See* Supplementary Material .02 to GEMX Rule 715.

[17] GEMX Rule 1901(b)(8) states, ''The transaction that constituted the Trade-Through was the execution of an order for which, at the time of receipt of the order, a Member had guaranteed an execution at no worse than a specified price (a ''stopped order''), where: (i) The stopped order was for the account of a Customer; (ii) the Customer agreed to the specified price on an order-by-order basis; and (iii) the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution . . .''

Non-Appointed Options Classes

Today, for the reasons noted above, the Exchange does not permit Market Makers to enter Reserve Orders in non-appointed options classes. However, the current rule text does not provide this limitation. The Exchange proposes to amend the current rule text at GEMX Rule 805(b)(1) to codify this limitation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing Market Makers access to trade order types which are currently permissible to be traded in on other options exchanges today.[20] The Exchange believes that permitting Market Makers to enter all eligible order types, except Reserve Orders, in both appointed and non-appointed options classes offers no advantage to Market Makers under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules in GEMX Rule 713 and various risk protection mechanism rules applicable to Market Makers in GEMX Rule 804.[21] Today, other non-Market Maker participants may submit these order types on GEMX.

The Exchange notes that previously, Nasdaq ISE, LLC prohibited non-customer trading by Electronic Access Members (''EAMs'') for principal or agent transactions.[22] At that time, ISE represented that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until their order is fully executed. ISE further noted that, without this restriction, non-customers would be able to use large-size orders to quickly take out ISE's entire order book without giving other market participants an opportunity to react.[23] Today, EAMs on ISE may submit non-customer limit orders regardless of the size of the order where previously EAMs were prohibited from submitting orders for non-customers that caused ISE's best bid and offer to be for less than 10 contracts.[24]

The Exchange notes that these restrictions never existed on GEMX. GEMX believes that these restrictions should not exist today because there is no reason to restrict Market Makers in entering order types, except for the restriction related to Reserve Orders, in options classes in which they are appointed. Unlike other order types, the Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion.[25] Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. The Exchange believes that because a Reserve Order contains a non-displayed potion, Market Makers should not be permitted to enter this order. Market Makers are required to make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the market maker is appointed.[26] The Exchange believes that these markets should be transparent. Today, GEMX Market Makers are not permitted to enter Reserve Orders in either appointed or non-appointed options classes. The Exchange proposes to specifically note this limitation in both Rule 805(a) and (b) as an exception. The Exchange notes that this limitation is specifically not noted in Rule 805(b) today despite the fact that the limitation exists in the System today.

The Exchange is also amending GEMX Rule 805(a) to detail the types of non-resting order types and their modifiers with respect to ISO Orders, All-Or-None Orders, Stop Orders, Qualified Contingent Cross Orders, Attributable Orders, Do-Not-Route Orders, Opening Sweep Orders, Cancel and Replace Orders, and Add Liquidity Orders. This rule change will detail and align the rule text with the system functionality and make clear which order types a Market Maker may submit in appointed options classes.

GEMX Market Makers continue to be obligated to add liquidity on GEMX. The Exchange also notes that GEMX Rule 805(b)(2) and (3) restricts the number of contracts that a Market Maker may enter in an options class to which the Market Maker is not appointed.[27] The Exchange notes that it also requires Market Makers to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to GEMX Rule 802, in order to maintain the status of a Market Maker.[28] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on GEMX and effectively compete with other market makers on other options exchanges. Quotes and orders entered by a Market Maker may not interact against quotes and orders entered on the opposite side of the market by the same Market Maker.[29]

*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. Today, NYSE Arca and NYSE American place no limitation on the types of orders that can be entered by market makers in their appointed class.[30] Accordingly, the Exchange believes that this proposal does not impose an undue burden on inter-market competition because each options exchange generally determines permissible order types for market makers in its trading environment based

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* note 8 above.

[21] Today, Market Makers are not eligible to execute either Customer Cross Orders, which are Customer orders, or Stopped Orders, which are intended for the account of a customer.

[22] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

[23] *Id.* When the restriction was adopted, there were various limitations imposed on non-customer trading. For example, displayed quotes were firm only for public customer orders. Since that time, electronic options trading has evolved. With the adoption of trade-through protection under the intermarket linkage, every order must be executed at the best quoted price. Further, ISE has also removed restrictions on non-customer trading.

[24] *See* Securities Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (SR–ISE–2003–26).

[25] *See* GEMX Rule 715(g).

[26] *See* GEMX Rule 803(b)(2).

[27] The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Rule 804(e)(2). *See* GEMX Rule 805(b)(2).

The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership. *See* GEMX Rule 805(b)(3).

[28] *See* GEMX Rule 804(e) and Supplementary Material .01 to Rule 804. Orders do not count toward meeting continuous quoting obligations.

[29] *See* GEMX Rule 804(b).

[30] *See* note 8 above.

on the exchange's individual business policy, objectives, and trading system. The Exchange's proposal reflects its policy and objectives, and does not impose an undue burden on intra-market competition because it treats all market makers uniformly with respect to permissible order types. Further, this rule change will align the system functionality with the rule text to reflect the types of orders a Market Maker in both appointed and non-appointed options class may submit. The current rule text is not accurate. This rule filing is intended to detail and align the rule text with the system functionality in the current text of Rule 805(a) and (b). This proposal will make clear which order types a Market Maker may submit in both appointed and non-appointed options classes.

Further, Market Makers, unlike other market participants, are required to abide by certain quoting requirements, in the options classes in which they are appointed pursuant to GEMX Rule 802, in order to maintain the status of a Market Maker.[31] The Exchange also notes that GEMX Rule 805(b)(2) and (3) restricts the number of orders that a Market Maker may enter in an options class to which the Market Maker is not appointed.[32] The Exchange believes that permitting a Market Maker to enter additional order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on GEMX and effectively compete with other market makers on other options exchanges.

*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[33] and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

A proposed rule change filed under Rule 19b–4(f)(6)[35] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[36] 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change will permit Market Makers additional latitude to conduct business on GEMX and effectively compete with other market makers on other options exchanges. The Exchange further states that the proposed rule will detail and align the rule text with the system functionality. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[37]

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–2018–01 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–GEMX–2018–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2018–01 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01087 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[31] *See* note 28 above.

[32] *See* note 27 above.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] 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).

[38] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** To be Published.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, January 24, 2018 at 2:00pm.

**CHANGES IN THE MEETING:** The Closed Meeting scheduled for Wednesday, January 24, 2018 at 2:00 p.m. has been changed to Wednesday, January 24, 2018 at 11:00 a.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: January 19, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–01294 Filed 1–19–18; 4:15 pm]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82524; File Nos. SR–BatsBZX–2017–37; SR–BatsEDGX–2017–23; SR–BOX–2017–17; SR–C2–2017–018; SR–CBOE–2017–041; SR–FINRA–2017–013; SR–ISE–2017–46; SR–IEX–2017–18; SR–MIAX–2017–20; SR–PEARL–2017–23; SR–NASDAQ–2017–055; SR–BX–2017–027; SR–Phlx–2017–43; SR–NYSE–2017–23; SR–NYSEArca–2017–57; SR–NYSEArca–2017–59; SR–NYSEMKT–2017–29; SR–NYSEMKT–2017–30]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; Investors Exchange LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Notice of Withdrawal of Proposed Rule Changes, as Modified by Amendments Thereto, To Eliminate Requirements That Will Be Duplicative of CAT

January 17, 2018.

On May 15, 2017, Bats BZX Exchange, Inc. (''Bats BZX'') (n/k/a Cboe BZX Exchange, Inc.);[1] Bats EDGX Exchange, Inc. (''Bats EDGX'') (n/k/a Cboe EDGX Exchange, Inc.);[2] BOX Options Exchange LLC (''BOX''); C2 Options Exchange, Incorporated (''C2'') (n/k/a Cboe C2 Exchange, Inc.);[3] Chicago Board Options Exchange, Incorporated (''CBOE'') (n/k/a Cboe Exchange, Inc.);[4] Financial Industry Regulatory Authority, Inc. (''FINRA''); International Securities Exchange, LLC (''ISE''); Investors Exchange LLC (''IEX''); Miami International Securities Exchange LLC (''MIAX''); MIAX PEARL, LLC (''PEARL''); NYSE Arca, Inc. (''NYSE Arca''); and NYSE MKT LLC (''NYSE MKT'') (n/k/a NYSE American LLC)[5] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[6] and Rule 19b–4 thereunder,[7] proposed rule changes to eliminate or modify certain rules that require the collection or reporting of information that is duplicative of the information that will be collected by the Consolidated Audit Trail (''CAT'') established pursuant to the National Market System Plan contemplated by Rule 613 of Regulation NMS.[8] On May 22, 2017, the New York Stock Exchange LLC (''NYSE'') filed with the Commission a proposed rule change for the same purpose, and each of NYSE Arca and NYSE MKT filed an additional proposed rule change for the same purpose. On May 26, 2017, the NASDAQ Stock Market LLC (''NASDAQ'') and NASDAQ PHLX LLC (''Phlx'') filed with the Commission proposed rule changes for the same purpose.[9] On May 30, 2017, NASDAQ BX, Inc. (''BX'') filed with the Commission a proposed rule change for the same purpose.[10] In this notice, all of these proposed rule changes are referred to collectively as the ''Systems Retirement Proposals.''

On June 1, 2017, the proposed rule changes submitted by Bats BZX, Bats EDGX, BOX, C2, CBOE, FINRA, IEX, ISE, MIAX, and PEARL; both proposed rule changes submitted by NYSE MKT; and one of the proposed rule changes submitted by NYSE Arca were published for comment in the **Federal Register**.[11] On June 2, 2017, the proposed rule change submitted by NYSE and the other proposed rule change submitted by NYSE Arca were published for comment in the **Federal Register**.[12] On June 5, 2017, the proposed rule changes submitted by NASDAQ, BX, and Phlx were published for comment in the **Federal Register**.[13]

Four comments were submitted to File Number SR–FINRA–2017–013.[14]

On June 22, 2017, each of NASDAQ, BX, ISE, and Phlx filed an amendment to its proposed rule change. On July 14,

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[1] *See* Securities Exchange Act Release No. 81962 (October 26, 2017), 82 FR 50711 (November 1, 2017) (SR–BatsBZX–2017–70). The name change was not yet effective when Bats BZX filed SR–BatsBZX–2017–37.

[2] *See* Securities Exchange Act Release No. 81963 (October 26, 2017), 82 FR 50697 (November 1, 2017) (SR–BatsEDGX–2017–41). The name change was not yet effective when Bats EDGX filed SR–BatsEDGX–2017–23.

[3] *See* Securities Exchange Act Release No. 81979 (October 30, 2017), 82 FR 51317 (November 3, 2017) (SR–C2–2017–028). The name change was not yet effective when C2 filed SR–C2–2017–018.

[4] *See* Securities Exchange Act Release No. 81981 (October 30, 2017), 82 FR 51309 (November 3, 2017) (SR–CBOE–2017–066). The name change was not yet effective when CBOE filed SR–CBOE–2017–041.

[5] *See* Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR–NYSEMKT–2017–14). The name change was not yet effective when NYSE MKT filed SR–NYSEMKT–2017–29 and SR–NYSEMKT–2017–30.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 242.613.

[9] NASDAQ and Phlx initially filed proposed rule changes on May 15, 2017 (SR–NASDAQ–2017–050 and SR–PHLX–2017–38). On May 26, 2017, NASDAQ and Phlx withdrew these filings and submitted new proposed rule changes (SR–NASDAQ–2017–055 and SR–PHLX–2017–43).

[10] BX initially filed a proposed rule change on May 15, 2017 (SR–BX–2017–025). On May 30, 2017, BX withdrew that initial filing and submitted a new proposed rule change (SR–BX–2017–027).

[11] *See* Securities Exchange Act Release No. 80796 (May 26, 2017), 82 FR 25374 (SR–BatsBZX–2017–37); Securities Exchange Act Release No. 80795 (May 26, 2017), 82 FR 25358 (SR–BatsEDGX–2017–23); Securities Exchange Act Release No. 80789 (May 26, 2017), 82 FR 25492 (SR–BOX–2017–17); Securities Exchange Act Release No. 80798 (May 26, 2017), 82 FR 25385 (SR–C2–2017–018); Securities Exchange Act Release No. 80797 (May 26, 2017), 82 FR 25429 (SR–CBOE–2017–041); Securities Exchange Act Release No. 80783 (May 26, 2017), 82 FR 25423 (SR–FINRA–2017–013); Securities Exchange Act Release No. 80788 (May 26, 2017), 82 FR 25400 (SR–IEX–2017–18); Securities Exchange Act Release No. 80787 (May 26, 2017), 82 FR 25469 (SR–ISE–2017–46); Securities Exchange Act Release No. 80790 (May 26, 2017), 82 FR 25366 (SR–MIAX–2017–20); Securities Exchange Act Release No. 80792 (May 26, 2017), 82 FR 25436 (SR–PEARL–2017–23); Securities Exchange Act Release No. 80791 (May 26, 2017), 82 FR 25362 (SR–NYSEArca–2017–59); Securities Exchange Act Release No. 80793 (May 26, 2017), 82 FR 25443 (SR–NYSEMKT–2017–29); Securities Exchange Act Release No. 80794 (May 26, 2017), 82 FR 25439 (SR–NYSEMKT–2017–30).

[12] *See* Securities Exchange Act Release No. 80799 (May 26, 2017), 82 FR 25635 (SR–NYSE–2017–23); Securities Exchange Act Release No. 80800 (May 26, 2017), 82 FR 25639 (SR–NYSEArca–2017–57).

[13] *See* Securities Exchange Act Release No. 80813 (May 30, 2017), 82 FR 25820 (SR–NASDAQ–2017–055); Securities Exchange Act Release No. 80814 (May 30, 2017), 82 FR 25872 (SR–BX–2017–027); Securities Exchange Act Release No. 80811 (May 30, 2017), 82 FR 25863 (SR–Phlx–2017–43).

[14] *See* letters from William H. Herbert, Managing Director, Financial Information Forum (''FIF''), dated June 22, 2017; Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated June 22, 2017; Marc R. Bryant, Senior Vice President, Deputy General Counsel, Fidelity Investments, dated June 22, 2017; and Ellen Greene, Managing Director and Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated June 23, 2017.

2017, the Commission extended the time period for Commission action on all of the Systems Retirement Proposals to August 30, 2017.[15]

On August 24, 2017, BOX submitted Amendment No. 1 to its proposed rule change, IEX submitted Amendment No. 1 to its proposed rule change, PEARL submitted Amendment No. 2 to its proposed rule change,[16] and MIAX submitted Amendment No. 3 to its proposed rule change.[17] On August 25, 2017, Bats BZX submitted Amendment No. 1 to its proposed rule change, Bats EDGX submitted Amendment No. 1 to its proposed rule change, BX submitted Amendment No. 2 to its proposed rule change, C2 submitted Amendment No. 1 to its proposed rule change, CBOE submitted Amendment No. 1 to its proposed rule change, FINRA submitted Amendment No. 1 to its proposed rule change, ISE submitted Amendment No. 2 to its proposed rule change, NASDAQ submitted Amendment No. 2 to its proposed rule change, NYSE submitted Amendment No. 1 to its proposed rule change, NYSE Arca submitted Amendment No. 1 to each of its proposed rule changes, NYSE MKT submitted Amendment No. 1 to each of its proposed rule changes, and Phlx submitted Amendment No. 2 to its proposed rule change.

On August 30, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[18] to determine whether to approve or disapprove the proposed rule changes, as modified by the respective amendments thereto.[19] Since then, the Commission has received nine additional comment letters on the proposed rule changes, including a response from FINRA and a response from the CAT NMS Plan Operating Committee Chair on behalf of Bats BZX, Bats EDGX, BOX, C2, CBOE, IEX, ISE, MIAX, NASDAQ, BX, Phlx, NYSE, NYSE Arca, NYSE MKT, and PEARL.[20] On November 21, 2017, the Commission extended the time period for approving or disapproving the proposed rule changes, as modified by the respective amendments thereto, for an additional 60 days until January 27, 2018.[21]

On January 9, 2018, MIAX and PEAL withdrew their proposed rule changes (File Numbers SR–MIAX–2017–20; SR–PEARL–2017–23). On January 10, 2018, Bats BZX, Bats EDGX, C2, CBOE, and IEX withdrew their proposed rule changes (File Numbers SR–BatsBZX–2017–37; SR–BatsEDGX–2017–23; SR–C2–2017–018; SR–CBOE–2017–041; SR–IEX–2017–18). On January 11, 2018, BOX withdrew its proposed rule change (File Number SR–BOX–2017–17). On January 12, 2018, FINRA, ISE, NASDAQ, BX, and Phlx withdrew their proposed rule changes (File Numbers SR–FINRA–2017–013; SR–ISE–2017–46; SR–NASDAQ–2017–055; SR–BX–2017–027; SR–PHLX–2017–43). On January 16, 2018, NYSE withdrew its proposed rule change (File Number SR–NYSE–2017–23), and NYSE Arca and NYSE MKT each withdrew both of their proposed rule changes (File Numbers SR–NYSEArca–017–57; SR–NYSEArca–2017–59; SR–NYSEMKT–2017–29; SR–NYSEMKT–2017–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01095 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[15] *See* Securities Exchange Act Release No. 81145, 82 FR 33533 (July 20, 2017).

[16] PEARL filed Amendment No. 1 to its proposed rule change on August 22, 2017. On August 24, 2017, PEARL withdrew Amendment No. 1 and replaced it with Amendment No. 2.

[17] MIAX filed Amendment No. 1 to its proposed rule change on August 22, 2017 and withdrew and replaced it with Amendment No. 2 on the same day. On August 24, 2017, MIAX withdrew Amendment No. 2 and replaced it with Amendment No. 3.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *See* Securities Exchange Act Release No. 81499, 82 FR 42168 (September 6, 2017) (''OIP'').

[20] Seven substantive comment letters were submitted in response to the OIP. *See* letters from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated September 27, 2017; William H. Herbert, Managing Director, FIF, dated September 29, 2017; Ellen Greene, Managing Director and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 29, 2017; Brant K. Brown, Associate General Counsel, FINRA, dated October 11, 2017; William H. Herbert, Managing Director, FIF, dated November 2, 2017; Michael Simon, CAT NMS Plan Operating Committee Chair, dated November 2, 2017; and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 18, 2017. An eighth letter in response to the OIP requested additional time to submit comments on the proposed rule changes. *See* letter from William H. Herbert, Managing Director, FIF, dated September 27, 2017. The ninth comment letter was submitted solely to File Number SR–Phlx–2017–43. *See* letter from Michael Kitlas, dated November 14, 2017.

[21] *See* Securities Exchange Act Release No. 82135, 82 FR 56287 (November 28, 2017).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82512; File No. SR–CboeBYX–2018–001]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

[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)(6)(iii).

the most significant parts 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 the Market Data section of its fee schedule to harmonize the definition of ''Non-Professional User'' with that of its affiliate, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), and Cboe BZX Exchange, Inc. (''BZX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.[5] In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of ''Non-Professional User'' to harmonize it with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2''). The Exchange fee schedule currently defines ''Non-Professional User'' as:

> a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, ''Non-Professional User'' would be defined as:

> a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of ''Non-Professional User'' included within the Cboe and C2 fee schedules.[6] The Exchange's current definition of ''Non-Professional User'' does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR–BatsEDGX–2016–60; SR–BatsEDGA–2016–24; SR–BatsBYX–2017–29; and SR–BatsBYX–2016–68).

[6] *See* the Cboe fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule and* the C2 fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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, 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.[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: (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–CboeBYX–2018–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number CboeBYX–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CboeBYX–2018–001 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01086 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82517; File No. SR–CboeBZX–2018–003]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Harmonize the Definition of Non-Professional User in Its Fee Schedule With That of Its Affiliates

January 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule applicable to its equity options platform (''BZX Options'') to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[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)(6)(iii).

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule applicable to BZX Options to harmonize the definition of ''Non-Professional User'' with that of its affiliates, Cboe and C2. In late 2016, the Exchange and its affiliates Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BYX Exchange, Inc. (''BYX''), and Cboe EDGX Exchange, Inc. (''EDGX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Bats Global Markets, Inc., the parent of EDGA, EDGX, BYX, and BZX with CBOE Holding, Inc. (now known as Cboe Global Markets, Inc.) the parent company of Cboe and C2.[5] In order to provide consistent rules and terminology amongst the Exchange, Cboe, and C2, the Exchange proposes to amend the definition of ''Non-Professional User'' to harmonize it with that of its affiliates, Cboe and C2. The BZX Option's fee schedule currently defines ''Non-Professional User'' as:

> a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

As amended, ''Non-Professional User'' would be defined as:

> a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

The revised definition is substantially identical to the definition of ''Non-Professional User' included within the Cboe and C2 fee schedules.[6] The Exchange's current definition of ''Non-Professional User'' does differ from that contained in the Cboe and C2 fee schedules in following minor, non-substantive ways. First, the harmonized definition will make clear that a Non-Professional User may be a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose. To date, the Exchange is not aware of any entity that receives an Exchange market data product would be deemed a qualifying trust and, therefore, has not had to determine whether such entity is a Professional or Non-Professional User under the prior definition. Second, the harmonized definition would specify that a natural person who works outside of the United States would not be deemed a Non-Professional User where that person does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. The definition with regard to natural persons who work in the United States are substantively identical amongst the old and harmonized definition.

None of these differences impact the manner in which the Exchange would characterize a User and a Professional or Non-Professional. The harmonized definition would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The harmonized definition of Non-Professional User is equitable, reasonable, and removes impediments to and perfect the mechanism of a free and open market and a national market system it would provide additional specificity while harmonizing the definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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, as amended. The harmonized definition of Non-Professional User would have no impact on competition because it does not materially alter the definition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 82 FR 6961 (December 22, 2016) (SR–BatsEDGX–2016–60; SR–BatsEDGA–2016–24; SR–BatsBYX–2017–29; and SR–BatsBYX–2016–68).

[6] *See* the Cboe fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule and* the C2 fee schedule *available at https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/c2-cds-fees-schedule.pdf&section=SEC_MDX_CSM&title=C2%20CDS%20Fees%20Schedule.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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, 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.

In its filing, the Exchange requested that the Commission waive the 30-day operative delay in order to enable the Exchange to immediately ensure consistent use of terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers regarding the type of User they may be considered by the Exchange. The Commission believes that such waiver is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. 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.[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: (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–CboeBZX–2018–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number CboeBZX–2018–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number CboeBZX–2018–003 and should be submitted on or before February 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01088 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82513; File No. SR–OCC–2017–809]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning Enhanced and New Tools for Recovery Scenarios

January 17, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with a proposed change to make certain revisions to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario.

The proposed changes to OCC's By-Laws and Rules were submitted as Exhibits 5A and 5B of the filing, and proposed changes to OCC's Default Management Policy were submitted as confidential Exhibit 5C of the filing.[3] The proposed change is described in detail in Item II below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[4]

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] OCC has filed a proposed rule change with the Commission in connection with the proposed change. *See* SR–OCC–2017–017.

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

*(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act*

Purpose of the Proposed Change

Background

The purpose of this proposed rule change is to make certain revisions to OCC's Rules and By-Laws Laws that are designed to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. Each of the proposed revisions also is designed to further OCC's compliance, in whole or in part, with the provisions of the Commission's rules identified immediately below.

On September 28, 2016, the Commission adopted amendments to Rule 17Ad–22 [5] and added new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii) [6] pursuant to Section 17A of the Securities Exchange Act of 1934 [7] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'').[8] In relevant part, these new rules collectively require a covered clearing agency (''CCA''), as defined by Rule 17Ad–22(a)(5),[9] to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) Maintain a risk management framework including plans for recovery and orderly wind-down necessitated by credit losses, liquidity shortfalls, general business risk losses or any other losses, (2) effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by addressing the allocation of credit losses a CCA might face if its collateral and other resources are insufficient to fully cover its credit exposures, (3) effectively identify, measure, monitor and manage credit exposures, including by describing the process to replenish any financial resource that a CCA may use following a default event or other event in which use of such resource is contemplated, (4) effectively identify, measure, monitor and manage liquidity risks that arises or is borne by the CCA by, at a minimum, describing the process for replenishing any liquid resource that a CCA may employ during a stress event, (5) ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, (6) publicly disclose relevant rules and material procedures, including key aspects of its default rules and procedures, and (7) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. The relevant portions of each of these new requirements is restated below:

- Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the [CCA], which . . . [i]ncludes plans for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.'' [10]
- Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [a]ddressing allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the [CCA] may borrow from liquidity providers.'' [11]
- Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [d]escribing the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.'' [12]
- Rule 17Ad–22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the [CCA], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following...[d]escribing the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.'' [13]
- Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations . . .'' [14]
- Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [15]
- Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).

[7] 15 U.S.C. 78q–1.

[8] 12 U.S.C. 5461 et seq.

[9] 17 CFR 240.17Ad–22(a)(5).

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

[11] 17 CFR 240.17Ad–22(e)(v)(viii).

[12] 17 CFR 240.17Ad–22(e)(4)(ix).

[13] 17 CFR 240.17Ad–22(e)(7)(ix).

[14] 17 CFR 240.17Ad–22(e)(13).

[15] 17 CFR 240.17Ad–22(e)(23)(i).

participating in the covered clearing agency.'' [16]

OCC meets the definition of a CCA and is therefore subject to the requirements of the CCA rules, including new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).[17]

Proposed Changes

Summary of Proposed Changes

In order to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default, OCC is proposing to make the following revisions to its Rules and By-Laws:

(1) Revise the existing assessment powers in Section 6 of Article VIII of OCC's By-Laws, specifically to:

(a) Establish a rolling ''cooling-off period'' that would be triggered by the payment of a proportionate charge against the Clearing Fund (''triggering proportionate charge''), during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge;

(b) Clarify that a Clearing Member that chooses to terminate its membership status during a cooling-off period will not be liable for replenishment of the Clearing Fund immediately following the expiration of such cooling-off period, provided that the withdrawing Clearing Member satisfies enumerated criteria, including providing notice of such termination by no later than the end of the cooling-off period and by closing-out and/or transferring of all its open positions with OCC by no later than the last day of the cooling-off period; and

(c) Delineate between the obligation of a Clearing Member to replenish its contributions to the Clearing Fund and its obligations to meet additional ''assessments'' that may be levied following a proportionate charge to the Clearing Fund.

(2) Adopt a new Rule 1009 that would provide OCC with discretionary authority to call for voluntary payments from non-defaulting Clearing Members in a circumstance where one or more Clearing Members has already defaulted and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Rule 1009 also would establish that OCC would prioritize compensation of Clearing Members that made voluntary payments from any amounts recovered from the defaulted Clearing Members.

(3) Adopt a new Rule 1111 that would provide authority to:

(a) Allow OCC to call for voluntary tear-ups (''Voluntary Tear-Up,'' as defined below) of non-defaulting Clearing Member and/or customer positions at any time following the suspension or default of a Clearing Member, with the scope of any such Voluntary Tear-Ups being determined by the Risk Committee of OCC's Board (''Risk Committee'');

(b) Allow OCC's Board to vote to tear-up the ''Remaining Open Positions'' (defined below) of a defaulted Clearing Member, as well as any ''Related Open Positions'' (defined below) in a circumstance where OCC has attempted one or more auctions of such defaulted Clearing Member's remaining open positions and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default with the scope of any such tear-up (''Partial Tear-Up'') being determined by the Risk Committee; and

(c) Allow OCC's Board to vote to re-allocate losses, costs and fees imposed upon holders of positions extinguished in a Partial Tear-Up through a special charge levied against remaining non-defaulting Clearing Members.

(4) Revise the descriptions and authorizations in Article VIII of OCC's By-Laws concerning the use of the Clearing Fund to reflect the discretion of OCC to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from a Voluntary Tear-Up or a mandatory tear-up (''Partial Tear-Up,'' as defined below).

Discussion of Proposed Changes

Each of the proposed revisions to OCC's Rules and By-Laws is described in more detail in the following sub-sections:

1. Proposed Changes to OCC's Assessment Powers

a. Current Assessment Powers

OCC's current assessment powers are described in Section 6 of Article VIII of OCC's By-Laws. Section 6 establishes a general requirement for each Clearing Member to promptly make good any deficiency in its required contribution to the Clearing Fund whenever an amount is paid out of its Clearing Fund contribution (whether by proportionate charge or otherwise).[18] In this regard, a Clearing Member's obligation to replenish the Clearing Fund is not currently subject to any pre-determined limit. Notwithstanding the foregoing, a Clearing Member can limit the amount of its liability for replenishing the Clearing Fund (at an additional 100% of the amount of its then-required Clearing Fund contribution) by winding-down its clearing activities and terminating its status as a Clearing Member. Any Clearing Member seeking to so limit its liability for replenishing the Clearing Fund must: (i) Notify OCC in writing not later than the fifth business day after the proportionate charge that it is terminating its status as a Clearing Member, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close out or transfer all of its open positions as promptly as practicable after giving notice to OCC. Thus, withdrawal from clearing membership is the only means by which a Clearing Member currently can limit its liability for replenishing the Clearing Fund.

b. Proposed Changes to Assessment Powers

OCC proposes to amend Section 6 of Article VIII of OCC's By-Laws to make three primary modifications regarding its existing authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund. First, the proposal introduces an automatic minimum fifteen calendar day ''cooling-off'' period that begins

[16] 17 CFR 240.17Ad–22(e)(23)(ii).

[17] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix) and (e)(7)(ix).

[18] Under Article VIII, Section 6 of OCC's By-Laws, OCC currently has authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund in certain enumerated situations. For example, Section 6 generally provides that if the conditions regarding a Clearing Member default specified in subparagraphs (a)(i) through (vi) of Article VIII, Section 5 of OCC's By-Laws are satisfied, OCC will make good resulting losses or expenses that are suffered by OCC by applying the defaulting Clearing Member's Clearing Fund contribution after first applying other funds available to OCC in the accounts of the Clearing Member. If the sum of the obligations, however, exceeds the total Clearing Fund contribution and other funds of the defaulting Clearing Member available to OCC, then OCC will charge the amount of the remaining deficiency on a proportionate basis against all non-defaulting Clearing Members' required contributions to the Clearing Fund at the time. Section 5(b) of Article VIII of OCC's By-Laws similarly provides for proportionate charges against Clearing Members' contributions to the Clearing Fund when certain conditions are met that involve a failure by a bank or a securities or commodities clearing organization to perform obligations to OCC when they are due.

when a proportionate charge is assessed by OCC against Clearing Members' Clearing Fund contributions. While the cooling-off period will continue for a minimum of fifteen consecutive calendar days, if one or more of the events described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws occur(s) during that fifteen calendar day period and result in one or more proportionate charges against the Clearing Fund, the cooling-off period shall be extended through either (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period, whichever is sooner.

During a cooling-off period, each Clearing Member would have its aggregate liability to replenish the Clearing Fund capped at 200% of the Clearing Member's then-required contribution to the Clearing Fund. Once the cooling-off period ends each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution. Once the cooling-off period ends, any remaining losses or expenses suffered by OCC as a result of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that occurred during such cooling-off period could not be charged against the amounts Clearing Members have contributed to replenish the Clearing Fund upon the expiration of the cooling-off period.[19]

Second, in connection with the cooling-off period, the proposal would extend the time frame within which a Clearing Member may provide a termination notice to OCC to avoid liability for replenishment of the Clearing Fund after the cooling-off period and would modify the obligations of such a terminating Clearing Member for closing-out and transferring its remaining open positions. Specifically, to effectively terminate its status as a Clearing Member and not be liable for replenishing the Clearing Fund after the cooling-off period, a Clearing Member would be required to: (i) Notify OCC in writing of its intent to terminate not later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close-out or transfer all of its open positions by no later than the last day of the cooling-off period. If a Clearing Member fails to satisfy all of these conditions by the end of a given cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member under Article VIII, Section 6 of OCC's By-Laws and therefore it would remain subject to the obligation to replenish the Clearing Fund after the end of the cooling-off period.

Third, the proposal would clarify the distinction between ''replenishment'' of the Clearing Fund and a Clearing Member's obligation to answer ''assessments.'' In this context, the term ''replenish'' (and its variations) shall to refer to a Clearing Member's standing duty, following any proportionate charge against the Clearing Fund, to return its Clearing Fund contribution to the amount required from such Clearing Member for the month in question.[20] The term ''assessment'' (and its variations) shall refer to the amount, during any cooling-off period, that a Clearing Member would be required to contribute to the Clearing Fund in excess of the amount of the Clearing Member's pre-funded required Clearing Fund contribution.

Proposed Addition of Ability To Request Voluntary Payments

OCC proposes to add new Rule 1009, which will provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[21] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Under new Rule 1009, OCC will initiate a call for voluntary payments by issuing a ''Voluntary Payment Notice'' inviting all non-defaulting Clearing Members to make payments to the Clearing Fund in addition to any amounts they are otherwise required to contribute pursuant to Rule 1001. The Voluntary Payment Notice would specify the terms applicable to any voluntary payment, including but not limited to, that any voluntary payment may not be withdrawn once made, that no Clearing Member shall be obligated to make a voluntary payment and that OCC shall retain full discretion to accept or reject any voluntary payment. Rule 1009 specifies that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s), OCC would seek to compensate first from such recovery all non-defaulting Clearing Members that made voluntary payments (and if the amount recovered from the defaulted Clearing Member(s) is less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the recovery that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received).

Proposed Addition of Ability To Conduct Voluntary Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to voluntarily extinguish (*i.e.,* voluntarily tear-up) their open positions at OCC in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.

While Risk Committee approval is not needed to commence a voluntary tear-up, the Risk Committee would be responsible for determining the appropriate scope of each voluntary tear-up. To ensure OCC retains sufficient flexibility to effectively deploy this tool in an extreme stress event, proposed Rule 1111(c) is drafted to provide the Risk Committee with discretion to determine the appropriate

[19] After a cooling-off period has ended, the occurrence of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that results in a proportionate charge against the Clearing Fund would trigger a new cooling off period, and thusly, a cap of 200% of each Clearing Member's then-required contribution would again apply.

[20] This assumes that the proportionate charge resulted in the Clearing Member's actual Clearing Fund contribution dropping below the amount of its required contribution (*i.e.,* that the Clearing Member did not have excess above its required contribution that was sufficient to cover the amount of the proportionate charge allocated to such Clearing Member).

[21] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

scope of each voluntary tear-up.[22] New Rule 1111(c) also would impose standards designed to circumscribe the Risk Committee's discretion, requiring that any determination regarding the scope of a voluntary tear-up shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

Once the Risk Committee has determined the scope of the Voluntary Tear-Up, OCC will initiate the call for voluntary tear-ups by issuing a ''Voluntary Tear-Up Notice.'' The Voluntary Tear-Up Notice shall inform all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up.[23] The Voluntary Tear-Up Notice would specify the terms applicable to any voluntary tear-up, including but not limited to, that no Clearing Member or customers of a Clearing Member shall be obligated to participate in a voluntary tear-up and that OCC shall retain full discretion to accept or reject any voluntary tear-up.

OCC is not proposing a tear-up process that would require the imposition of ''gains haircutting'' (*i.e.,* the reduction of unpaid gains) on a portion of OCC's cleared contracts.[24] Instead, OCC has determined that its tear-up process—for both Voluntary Tear-Ups as well as Partial Tear-Ups—should be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC would be expected to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers without haircutting gains.[25]

In OCC's proposed tear-up process, the holders of torn-up positions would be assigned a Tear-Up Price and OCC would draw on its remaining financial resources in order to extinguish the torn-up positions at the assigned Tear-Up Price without forcing a reduction in the amount unpaid gains on such positions. The proposed changes would provide OCC with two separate and non-exclusive means of equitably re-allocating the losses, costs or expenses imposed upon the holders of torn-up positions as a result of the tear-up(s). First, the proposed changes to Article VIII would provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from such tear-up(s). Second, Rule 1111(a) would provide that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s) and the amount of such recovery exceeds the amount OCC received in voluntary payments, then non-defaulting Clearing Members and non-defaulting customers that voluntarily tore-up open positions and incurred losses from such tear-ups would be repaid from the amount of the recovery in excess of the amount OCC received in voluntary payments.[26] If the amount recovered is less than the aggregate amount of Voluntary Tear-Up, each non-defaulting Clearing Member and non-defaulting customer that incurred losses from voluntarily torn-up positions would be repaid in an amount proportionate to the percentage of its total amount of losses, costs and fees imposed on Clearing Members or customers as a result of the Voluntary Tear-Ups.

With respect to Voluntary Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance Rule 1111 shall constitute a default by OCC.

Proposed Addition of Ability To Conduct Partial Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will provide the Board with discretion to extinguish the remaining open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (such positions, ''Remaining Open Positions''), as well as any related open positions as necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (such positions, ''Related Open Positions''), in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default (such tear-ups hereinafter collectively referred to as ''Partial Tear-Ups''). Like the determination for Voluntary Tear-Ups, the Risk Committee shall determine the appropriate scope of each Partial Tear-Up and such determination shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Once the Risk Committee has determined the scope of the Partial Tear-Up, OCC will initiate the Partial Tear-Up process by issuing a ''Partial Tear-Up Notice.'' The Partial Tear-Up Notice shall (i) identify the Remaining Open Positions and Related Open Positions designated for tear-up, (ii) identify the open positions of non-defaulting Clearing Members and non-defaulting customers that will be subject to Partial Tear-Up (such positions, ''Tear-Up Positions''), (iii) specify the termination price (''Partial Tear-Up Price'') for each position to be torn-up, and (iv) list the date and time as of which the Partial Tear-Up will occur.[27] With regard to the date and time of a Partial Tear-Up, Rule 1111(d) specifies that the Risk Committee shall set the date and time. With regard to the Partial Tear-Up Price, OCC anticipates that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation. However, given that it is not possible to know in advance the precise circumstances that would cause

[22] Notwithstanding the discretion that would be afforded by the text of proposed Rule 1111(c), OCC anticipates that the scope of voluntary tear-ups likely would be dictated by the cleared contracts remaining in the portfolio(s) of the defaulted Clearing Member(s).

[23] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Voluntary Tear-Up of the opportunity to participate in such tear-up.

[24] In general, forced gains haircutting is a tool that can be more easily applied to products whose gains are settled at least daily, like futures through an exchange of variation margin, and by central counterparties with comparatively large daily settlement flows. Listed options, which constitute the vast majority of the contracts cleared by OCC, do not have daily settlement flows and any attempt to reduce the ''unrealized gains'' of a listed options contract would require the reduction of the option premium that is embedded within the required margin (such a process would effectively require haircutting the listed option's initial margin).

[25] OCC anticipates that it would determine the date on which to initiate Partial Tear-Ups by monitoring its remaining financial resources against the potential exposure of the remaining unauctioned positions from the portfolio(s) of the defaulted Clearing Member(s).

[26] In order to effect re-allocation of the losses, costs or expenses imposed upon the holders of torn-up positions, OCC expects that after it has completed its tear-up process and re-established a matched book, holders of both voluntarily torn-up and mandatorily torn-up positions would be provided with a limited opportunity to re-establish positions in the contracts that were voluntarily or mandatorily extinguished. After the expiration of such period, OCC would seek to collect the information on the losses, costs or expenses that had been imposed on the holders of torn-up positions. Based on the information collected, OCC would determine whether it can reasonably determine the losses, costs and expenses sufficiently to re-allocate such amounts.

[27] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Partial Tear-Up of the possibility of tear-up.

OCC to conduct a tear-up, Rule 1111(f) has been drafted to allow OCC to exercise reasonable discretion, if necessary, in establishing the Partial Tear-Up Price by some means other than its existing practices concerning pricing and valuation. Specifically, Rule 1111(f) would require that OCC, in exercising any such discretion, would act in good faith and in a commercially reasonable manner to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. Rule 1111(f) further specifies that OCC may consider the same information set forth in subpart (c) of Section 27, Article VI of OCC's By-Laws.[28]

The scope of any Partial Tear-Up will be determined in accordance with Rule 1111(e). With respect to the extinguishment of Remaining Open Positions, OCC will designate Tear-Up Positions in identical Cleared Contracts and Cleared Securities on the opposite side of the market and in an aggregate amount equal to that of the Remaining Open Positions. OCC will only designate Tear-Up Positions in the accounts of non-defaulting Clearing Members (inclusive of such Clearing Members' customer accounts) with an open position in the applicable Cleared Contract or Cleared Security and of non-defaulted customers of a defaulted Clearing Member. Tear-Up Positions shall be designated and applied by OCC on a pro rata basis across all the identical positions in Cleared Contracts and Cleared Securities on the opposite side of the market in the accounts of non-defaulted Clearing Members and non-defaulted customers (including the non-defaulted customers of defaulted Clearing Members).

Rule 1111(e)(iii) provides that every Partial Tear-Up position is automatically terminated upon and with effect from the Partial Tear-Up Time, without the need for any further step by any party to such Cleared Contract or Cleared Security, and that upon termination, either OCC or the relevant Clearing Member (as the case may be) shall be obligated to pay the other the applicable Partial Tear-Up Price. Rule 1111(e)(iii) further provides that the corresponding open position shall be deemed terminated at the Partial Tear-Up Price.

Rule 1111(g) provides that to the extent losses imposed upon non-defaulting Clearing Members and non-defaulting customers resulting from a Partial Tear-Up can reasonably be determined, the Board may elect to re-allocate such losses among all non-defaulting Clearing Members through a special charge to all non-defaulting Clearing Members in an amount corresponding to each such non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time such Partial Tear-Up is conducted.[29]

With respect to Partial Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance Rule 1111 shall constitute a default by OCC.

## Expected Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented to OCC in three primary ways: (i) By providing greater certainty regarding what financial resources will be available to OCC after a proportionate charge is assessed; (ii) by providing additional tools by which to allocate credit losses in excess of OCC's available financial resources; and (iii) by enhancing OCC's ability to re-establish a matched book. First, OCC believes the imposition of a 200% cap on OCC's assessment powers during any cooling-off period provides Clearing Members with greater certainty regarding their maximum liability with respect to the Clearing Fund during extreme stress events, which in turn, facilitates Clearing Members' management of their own risks, and to the extent applicable, regulatory capital considerations. Further, OCC believes that extending the window for Clearing Member withdrawal following a proportionate charge to be equivalent with the cooling-off period would afford a Clearing Member a more reasonable period in which to evaluate whether the withdrawal from clearing membership would be necessary to cap its liability for proportionate charges at 200% of its then-required Clearing Fund contributions. With this change, OCC believes the increased predictability would help it to more reliably understand the amount of Clearing Fund contributions that will likely be available to it after a proportionate charge is assessed. Second, the introduction of rules to allow for voluntary payments, Voluntary Tear-Ups and Partial Tear-Ups would provide OCC with three distinct tools that could be used to allocate any credit losses OCC may face in excess of collateral and other resources available to OCC. Finally, in the event that OCC believes its obligations and liabilities arising from remaining positions in the portfolio of a defaulted Clearing Member may exceed its remaining available financial resources, the proposed changes ultimately would enable OCC to extinguish those positions, thereby re-establishing a matched book.

The risks of a Partial Tear-Up are extremely remote; nonetheless, OCC believes that the express authority to conduct a Partial Tear-Up may be viewed as increasing Clearing Members' and customers' exposure to an extreme stress scenario. As explained above, the proposed Partial Tear-Up authority is consistent with regulatory requirements, as well as with the expectations of CCPs of various international organizations. OCC further believes that its proposed Partial Tear-Up authority strikes an appropriate balance between seeking to protect the interests of Clearing Members and customers and the need to have appropriate tools to stabilize a systemically important financial market utility and minimize the risk of disruption to the broader financial system. To address the potential impact of a Partial Tear-Up on Clearing Members and customers, OCC has proposed two tools that would enable it to equitably re-allocate the losses, costs and fees imposed upon holders of torn-up positions.

## Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other

[28] In relevant part, subpart (c) reads as follows: ''In determining a close-out amount, the Corporation may consider any information that it deems relevant, including, but not limited to, any of the following: (1) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests; (2) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest; (3) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and (4) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data. Amounts stated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the current rate of exchange, as determined by the Corporation. A position having a positive close-out value shall be an 'asset position' and a position having a negative close-out value shall be a 'liability position.' ''

[29] For the avoidance of doubt, the special charge would be distinct and separate from a Clearing Member's obligation to satisfy Clearing Fund assessments, and therefore, would not be subject to the aforementioned assessment cap in the amount of 200% of a Clearing Member's then-required contribution to the Clearing Fund.

things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[30] Section 805(a)(2) of the Clearing Supervision Act[31] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[32] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including those standards adopted pursuant to the Commission rules cited below.[33] For the reasons set forth below, OCC believes that the proposed change is consistent with the risk management standards promulgated under Section 805(a) of the Clearing Supervision Act.[34]

Recovery and Orderly Wind-Down

In relevant part, Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . plan[ ] for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.''[35] As stated above, each of the proposed changes is designed to provide OCC with tools to address the risks OCC might confront in a recovery and orderly wind-down scenario.[36] Consistent with the requirements of Rule 17Ad–22(e)(3)(ii), the proposed tools would enable OCC to better address the risks of liquidity shortfalls and credit losses resulting from a Clearing Member default or certain other loss events and, if necessary, to ultimately re-establish a matched book in a recovery or orderly wind-down scenario.[37] In this context, the proposed changes serve as a critical component of OCC's recovery and orderly wind-down plan. As a result, in OCC's view, the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(3)(ii) as to the recovery and orderly wind-down plan.[38]

Allocation of Credit Losses Above Available Resources

In relevant part, Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [a]ddress[ ] allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures . . .''[39] The proposed changes would provide OCC with three distinct tools that could be used to allocate any credit losses OCC may face in excess of collateral and other resources available to OCC. First, new Rule 1009 would provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[40] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Second, new Rule 1111 would establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to participate in Voluntarily Tear-Ups in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Finally, new Rule 1111 also would provide the Board with discretion to mandatorily tear-up Remaining Open Positions and Related Open Positions, in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[41] In OCC's view, each of these tools could be deployed by OCC, if necessary, to allocate credit losses in excess of the collateral and other resources available to OCC, in accordance with Rule 17Ad–22(e)(4)(viii).[42]

Replenishment of Financial Resources Following a Default

In relevant part, Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.''[43] OCC's Clearing Members have a standing obligation to replenish the Clearing Fund following any proportionate charge. The proposed changes would establish a rolling cooling-off period, triggered by the payment of a proportionate charge against the Clearing Fund, during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge. Compared to the current requirement under which a Clearing Member may cap its liability to proportionate charges at an additional 100% of its then-required contribution, a Clearing Member would instead be permitted to cap its liability for proportionate charges at an additional 200% of its then-required Clearing Fund contribution.

OCC believes that the proposed approach improves predictability for

[30] 12 U.S.C. 5461(b).

[31] 12 U.S.C. 5464(a)(2).

[32] 12 U.S.C. 5464(b).

[33] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore is subject to section (e) of Rule 17Ad–22.

[34] 12 U.S.C. 5464(b)(1) and (4).

[35] 17 CFR 240.17Ad–22(e)(3)(ii).

[36] Indeed, the OCC's separately filed recovery and orderly wind-down plan identifies OCC's assessment powers, ability to call for voluntary payments, ability to call for Voluntary Tear-Ups and ability to impose Partial Tear-Ups among its ''Recovery Tools.'' OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* SR–OCC–2017–021.

[37] 17 CFR 240.17Ad–22(e)(3)(ii).

[38] 17 CFR 240.17Ad–22(e)(3)(ii).

[39] 17 CFR 240.17Ad–22(e)(v)(viii).

[40] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

[41] Rule 1111(g), which would provide the Board authority to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge, would serve as a discretionary tool to redistribute the credit losses allocated through Partial Tear-Up.

[42] 17 CFR 240.17Ad–22(e)(v)(viii).

[43] 17 CFR 240.17Ad–22(e)(4)(ix).

OCC and for Clearing Members regarding the size of Clearing Fund contributions that are likely to be subject to assessments for proportionate charges. Additionally, replacing the five business day withdrawal period with the withdrawal period commensurate with the cooling-off period (which, as proposed would be a minimum of fifteen calendar days) would give Clearing Members a more reasonable period in which to meet the wind-down and termination requirements necessary to cap their liability. OCC believes that this would afford them greater certainty regarding their maximum liability with respect to the Clearing Fund during extreme stress events, which in turn, facilitates Clearing Members' management of their own risk management, and to the extent applicable, regulatory capital considerations. And OCC believes this increased predictability would also be beneficial to OCC by helping it to more reliably understand the amount of Clearing Fund contributions that will likely be available to it after a proportionate charge is assessed.[44]

OCC believes that the relative certainty provided by the proposed cooling-off period and 200% cap on assessments ultimately could reduce the risks of successive or ''cascading'' defaults, in which the financial demands on remaining non-defaulting Clearing Members to continually replenish OCC's Clearing Fund (and similar guaranty funds at other CCPs to which such Clearing Members might belong) have the effect of further weakening such Clearing Members to the point of default. In this regard, the proposed changes are designed to provide OCC, Clearing Members and other stakeholders with sufficient time to manage the ongoing default(s) without further aggravating the extreme stresses facing market participants.

OCC recognizes that the proposed changes would limit the maximum amount of Clearing Fund resources that could be available to OCC in an extreme stress scenario, which introduces the possibility, however remote, that the proposed 200% cap ultimately could be reached. If during any cooling-off period the amount of aggregate proportionate charges against the Clearing Fund approaches the 200% cap, the amount remaining in the Clearing Fund may no longer be sufficient to comply with the applicable minimum regulatory financial resources requirements in the CCAs. In any such event, OCC's existing authority under Rule 603 would permit OCC to call on participants for additional initial margin, which could ensure that OCC's minimum financial resources remain in excess of applicable CCA requirements.[45] OCC recognizes that the imposition of increased margin requirements could have an immediate pro-cyclical impact on participants (and consequential impacts on the broader financial system) that is potentially greater than the impact of replenishing the Clearing Fund. These risks would be limited to a specific extreme stress event and could be mitigated by certain factors. First, OCC, in coordination with its regulators, would carefully evaluate any potential increase in the context of then-existing facts and circumstances. Second, during the cooling-off period, Clearing Members and their customers will have the opportunity to reduce or rebalance their respective portfolios in order to mitigate their exposures to stress losses and initial margin increases. Finally, since initial margin is not designed to be subject to mutualized loss, the risk of loss faced by Clearing Members for amounts posted as additional margin would be substantially less than for replenishments of the Clearing Fund.

Given the products cleared by OCC and the composition of its clearing membership, OCC has determined that a minimum 15-calendar day cooling-off period, rolling up to a maximum of 20 calendar days, is likely to be a sufficient amount of time for OCC to manage the ongoing default(s) and take necessary steps in furtherance of stabilizing the clearing system. Further, through conversations with Clearing Members, OCC believes that the proposed cooling-off period is likely to be a sufficient amount for Clearing Members (and their customers) to orderly reduce or rebalance their positions, in an attempt to mitigate stress losses and exposure to potential initial margin increases as they navigate the stress event. Through conversations with Clearing Members, OCC also believes that the proposed cooling-off period is likely to be a sufficient amount for certain Clearing Members to orderly close-out their positions and transfer customer positions as they withdraw from clearing membership. OCC believes the proposed cooling-off period, coupled with the other proposed changes to OCC's assessment powers, is likely to provide Clearing Members with an adequate measure of stability and predictability as to the potential use of Clearing Fund resources, which OCC believes removes the existing incentive for Clearing Members to withdraw following a proportionate charge.[46]

In light of the foregoing, OCC believes that the proposed changes would enhance and strengthen its process to replenish the Clearing Fund following a default or other event in which use of the Clearing Fund is contemplated, in accordance with Rule 17Ad–22(e)(4)(ix).[47]

Replenishment of Liquid Resources

In relevant part, Rule 17Ad–22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.''[48] Since the use any part of the cash portion of OCC's Clearing Fund would constitute a depletion of one of OCC's liquid resources, OCC's assessment power, discussed above, is the primary means of replenishing the Clearing Fund cash that OCC used to address the stress event. For the same reasons stated above, OCC believes that the proposed changes enhance and strengthen its process to replenish the Clearing Fund, as necessary, following a default or other stress event in which the Clearing Fund is used, and therefore, OCC views the proposed changes as consistent with Rule 17Ad–22(e)(7)(ix).[49]

Timely Action To Contain Losses

In relevant part, Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the [CCA] has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations . . .''[50] The proposed changes would provide OCC with the authority to call for Voluntary Tear-Ups and OCC's Board

[44] Under the existing approach, it is less certain from OCC's standpoint regarding whether Clearing Members would reasonably be able to cap their liability to proportionate charges within five business days.

[45] Rule 603 provides that ''[t]he Risk Committee may, from time to time, increase the amount of margin which may be required in respect of a cleared contract, open short position or exercised contract if, in its discretion, it determines that such increase is advisable for the protection of [OCC], the Clearing Members or the general public.''

[46] OCC initially considered a fixed 15-calendar day cooling-off period; however, OCC concluded that a fixed 15-calendar day cooling-off period may increase the risks of successive or cascading Clearing Member defaults and may perversely incentivize Clearing Members to seek to withdraw from clearing membership. Through conversations with Clearing Members, OCC believes that these potentially disruptive consequences are mitigated by the proposed rolling cooling-off period.

[47] 17 CFR 240.17Ad–22(e)(4)(ix).

[48] 17 CFR 240.17Ad–22(e)(7)(ix).

[49] 17 CFR 240.17Ad–22(e)(7)(ix).

[50] 17 CFR 240.17Ad–22(e)(13).

with the discretion to impose Partial Tear-Ups, which would provide OCC with authority necessary to extinguish certain losses (and attendant liquidity demands) thereby potentially enabling OCC to continue to meet its remaining obligations to participants. As designed, Voluntary Tear-Ups and Partial Tear-Ups would be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC is expected to have adequate resources remaining to cover the amount it must pay to extinguish the positions of Clearing Members and customers without haircutting gains. Accordingly, OCC believes that its authority and capacity to conduct a Partial Tear-Up should be timely, relative to the adequacy of OCC's remaining financial resources. Finally, OCC believes it has the operational and systems capacity sufficient to support the proposed changes, and OCC's policies and procedures will be updated accordingly to reflect the existence of these new tools. As a result, OCC believes that the proposed changes conform to the relevant requirements in Rule 17Ad–22(e)(13).[51]

Public Disclosure of Key Aspects of Default Rules

In relevant part, Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [52] As stated above, each of the tools discussed herein are contemplated to be deployed by OCC if an extreme stress event has placed OCC into a recovery or orderly wind-down scenario, and therefore, the tools discussed herein constitute key aspects of OCC's default rules. By incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that proposed changes would conform to the relevant requirements in Rule 17Ad–22(e)(23)(i).[53]

Sufficient Information Regarding the Risks, Fees and Costs of Clearing

In relevant part, Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.'' [54] The proposed changes would clearly explain to Clearing Members and market participants that an extreme stress scenario could result in the use—and theoretically the exhaustion—of OCC's financial resources, inclusive of OCC's proposed assessment powers. Proposed changes to Section 6, Article VIII of OCC's By-Laws would explain Clearing Members' replenishment obligation and liability for assessments. The proposed changes also would clearly explain, through proposed Rules 1009 and 1111, that as OCC nears the exhaustion of its assessment powers, Clearing Members may be asked for voluntary payments and, if necessary, Clearing Members and customers may be asked to participate in a Voluntary Tear-Up and/or subject to a Partial Tear-Up. Proposed Rules 1009(b) and 1111(a)(ii) also would make clear that Clearing Members that made voluntary payments and Clearing Members and customers whose tendered positions were extinguished in the Voluntary Tear-Up would be prioritized in the distribution of any recovery from the defaulted Clearing Member(s). Proposed changes to Article VIII would clarify that the Clearing Fund contributions remaining after OCC has conducted a Voluntary Tear-Up or Partial Tear-Up could be used to compensate the non-defaulting Clearing Members and non-defaulting customers for the losses, costs or fees imposed upon them as a result of such Voluntary Tear-Up or Partial Tear-Up. Proposed Rule 1111(g) would make clear that, following a Partial Tear-Up, OCC's Board may seek to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge. By incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that is has provided sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they could incur by participating OCC, consistent with the requirements in Rule 17Ad–22(e)(23)(ii).[55]

## III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–809 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.

All submissions should refer to File Number SR–OCC–2017–809. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[51] 17 CFR 240.17Ad–22(e)(13).

[52] 17 CFR 240.17Ad–22(e)(23)(i).

[53] 17 CFR 240.17Ad–22(e)(13).

[54] 17 CFR 240.17Ad–22(e)(23)(ii).

[55] 17 CFR 240.17Ad–22(e)(23)(ii).

with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_809.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–809 and should be submitted on or before February 13, 2018.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–01070 Filed 1–22–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15230 and #15231; Arizona Disaster Number AZ–00050]**

### Administrative Declaration Amendment of Disaster for the State of Arizona

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Administrative declaration of a disaster for the State of Arizona dated 08/03/2017.

*Incident:* Post-fire Flooding from Monsoon Storms.

*Incident Period:* 07/19/2017 through 09/30/2017.

**DATES:** Issued on 01/11/2018.

*Physical Loan Application Deadline Date:* 10/02/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/03/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of an Administrative declaration for the State of ARIZONA, dated 08/03/2017, is hereby amended to establish the incident closing date as 09/30/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: January 11, 2018.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2018–01163 Filed 1–22–18; 8:45 am]

**BILLING CODE 8025–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Proposed Changes to the Slate of Industry Trade Advisory Committees

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** The United States Trade Representative (Trade Representative) and the Secretary of Commerce (Secretary) plan to establish a new four-year charter term for the Industry Trade Advisory Committees (ITACs) beginning in February 2018. As part of the re-chartering process, the Secretary and the Trade Representative are proposing changes to the current slate of ITACs and invite interested parties to submit their view on these changes.

**DATES:** The deadline for submission of written comments is February 5, 2018 at midnight EST.

**ADDRESSES:** Submit comments electronically via email to *FRNCommentsITAC@trade.gov.*

**FOR FURTHER INFORMATION CONTACT:** Gregory M. Walters, Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement at *Gregory.M.Walters@ustr.eop.gov* or (202) 395–2558. You can find additional information about the ITACs on the International Trade Administration website at *www.trade.gov/itac.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), establishes a private-sector trade advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(c)(2) (19 U.S.C. 2155(c)(2)) directs the President to establish sectoral or functional trade advisory committees as appropriate, comprised of representatives of all industry, labor, agricultural, and services interests (including small business interests) in the sector or functional area. These committees provide detailed policy and technical advice, information, and recommendations regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting industry sectors, and perform other advisory functions relevant to U.S. trade policy matters as requested. In organizing such committees, the Trade Representative and the relevant Secretary are to consult with interested private organizations and to consider ''(i) patterns of actual or potential competition between United States industry and agriculture and foreign enterprise in international trade, (ii) the character of the nontariff barriers and other distortions affecting such competition, (iii) the necessity for reasonable limits on the number of such advisory committees, (iv) the necessity that each committee be reasonably limited in size, and (v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.''

Pursuant to this authority, the Secretary and the Trade Representative established the ITACs to provide detailed policy and technical advice, information, and recommendations to the Secretary and the Trade Representative on trade policy matters including: (1) Negotiating objectives and bargaining positions before entering into trade agreements; (2) the impact of the implementation of trade agreements on the relevant sector; (3) matters concerning the operation of any trade agreement once entered into; and (4) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. The nonpartisan, industry input provided by the ITACs is important in developing unified trade policy objectives and positions when the United States negotiates and implements trade agreements. The ITACs address market-access problems, trade barriers, tariffs, discriminatory foreign procurement practices, and information, marketing, and advocacy needs of their industry sector. With

limited statutory exceptions, the ITACs are subject to the provisions of the Federal Advisory Committee Act. *See* 19 U.S.C. 2155(f); 5 U.S.C. App. II.

The current ITACs expire in February 2018, and the Secretary and the Trade Representative intend to renew the ITACs as described below for a new four-year charter terms for the ITACs to begin in February 2018 and end in February 2022.

For the 2014–2018 charter term, the Secretary and Trade Representative chartered: Thirteen sectoral ITACs advising on issues that affect specific sectors of U.S. industry; three ITACs advising on crosscutting, functional issues that affect all industry sectors and include specifically appointed members along with non-voting members from the industry specific ITACs to represent a broad range of industry perspectives; and a Committee of Chairs of the ITACs as follows:

Industry Trade Advisory Committees on:

(ITAC 1) Aerospace Equipment
(ITAC 2) Automotive Equipment and Capital Goods
(ITAC 3) Chemicals, Pharmaceuticals, Health/Science Products and Services
(ITAC 4) Consumer Goods
(ITAC 5) Distribution Services
(ITAC 6) Energy and Energy Services
(ITAC 7) Forest Products
(ITAC 8) Information and Communications Technologies, Services, and Electronic Commerce
(ITAC 9) Building Materials, Construction, and Nonferrous Metals
(ITAC 10) Services and Finance Industries
(ITAC 11) Small and Minority Business
(ITAC 12) Steel
(ITAC 13) Textiles and Clothing
(ITAC 14) Customs Matters and Trade Facilitation
(ITAC 15) Intellectual Property Rights
(ITAC 16) Standards and Technical Trade Barriers and a Committee of Chairs of the Industry Trade Advisory Committees.

For the 2018–2022 charter term, after considering the statutory factors listed above, the Secretary and the Trade Representative propose to streamline the ITACs as follows based on the nature of the U.S. industry in various sectors, the level of interest in serving on an ITAC (using the number of members and applications for appointment during the 2014–2018 charter terms), the level of activity of each ITAC (using the number of meetings and recommendations submitted during the 2014–2018 charter terms), and constraints on the resources to support and engage with the ITACs.

- Combining the current ITACs on Distribution Services and on Services and Finance Industries into one ITAC on Services.
- Combining the current ITACs on Forest Products and on Building Materials, Construction, and Nonferrous Metals into one ITAC on Forest Products, Building Materials, Construction, and Nonferrous Metals.
- Changing the name of the ITAC on Information and Communications Technologies, Services, and Electronic Commerce to the ITAC on Digital Economy to reflect the innovation in and full scope of that industry sector.
- Discontinuing the Committee of Chairs of the ITACs to both preserve staff resources and to ensure that all ITAC members receive relevant, timely, and unfiltered information directly from appropriate government staff.

This streamlining would result in eleven sectoral ITACs and three functional ITACs for the new four-year charter term as follows:

Industry Trade Advisory Committees on:

(ITAC 1) Aerospace Equipment
(ITAC 2) Automotive Equipment and Capital Goods
(ITAC 3) Chemicals, Pharmaceuticals, Health/Science Products and Services
(ITAC 4) Consumer Goods
(ITAC 5) Forest Products, Building Materials, Construction and Nonferrous Metals
(ITAC 6) Energy and Energy Services
(ITAC 7) Steel
(ITAC 8) Digital Economy
(ITAC 9) Small and Minority Business
(ITAC 10) Services
(ITAC 11) Textiles and Clothing
(ITAC 12) Customs Matters and Trade Facilitation
(ITAC 13) Intellectual Property Rights
(ITAC 14) Standards and Technical Trade Barriers

## III. Request for Comments

In accordance with Section 135(c)(2)(A) (19 U.S.C. 2155(c)(2)) of the Trade Act, we invite written comments on the proposed changes to the slate of ITACs for the 2018–2022 charter term.

**Gregory M. Walters,**

*Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.*

[FR Doc. 2018–01125 Filed 1–22–18; 8:45 am]

BILLING CODE 3290–F8–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighty Seventh RTCA SC–147 Plenary Session

**AGENCY:** Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

**ACTION:** Eighty Seventh RTCA SC–147 Plenary Session.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of Eighty Seventh RTCA SC–147 Plenary Session.

**DATES:** The meeting will be held March 08, 2018 9:00 a.m.–4:30 p.m.

**ADDRESSES:** The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION, CONTACT:** Al Secen at *asecen@rtca.org* or 202–330–0647, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Eighty Seventh RTCA SC–147 Plenary Session. The agenda will include the following:

Thursday March 8, 2018

1. Opening Plenary Session—Co–Chairs
   - A. Chairmen's Opening Remarks/ Introductions
   - B. RTCA Federal Advisory Act and Proprietary Material Policies Review
   - C. Approval of Minutes From 86th Meeting of SC–147
   - D. Approval of Minutes From December 2017 Joint Working Group Meeting
   - E. Approval of Agenda
   - F. Future Meeting Scheduling
2. Report From WG–75
3. SESAR Updates
4. Working Group Report
   - A. Report From Coordination Subgroup
   - B. Report From Threat Resolution Working Group
   - C. Report From Surveillance Working Group
   - D. Report From ACAS XU Subgroup
5. CAS Interoperability MASPS: Status, Schedule, and SC–147 TORS
6. ACAS XA/XO MOPS Status & Approval to Conduct Final Review and Comment (FRAC) Process
   - A. Final Status of Mops
   - B. FRAC/OC Process & Schedule Overview

C. Committee Approve for FRAC Process
7. Other Business
8. New Business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 18, 2018.

**Mohannad Dawoud,**

*Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.*

[FR Doc. 2018–01131 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2018–0001]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 26, 2018.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number 2018–0001 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Jaeschke, 703–404–6306, Planning and Programming (HFPP–15), Eastern Federal Lands Highway Division, Federal Highway Administration, Department of Transportation, 21400 Ridgetop Circle, Sterling, VA 20166. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Right-of-Way Cost Estimation Processes; State of the Practice''. Government agencies that acquire real property for a Federal-aid highway program typically consider the cost of many alternatives for a potential project. As a part of this consideration, estimates of the cost of right-of-way needed for potential highway alignments must be determined and documented. Agencies may use several different methods to determine the estimate and document these costs. The methods range from a process using only paper and pencil, all the way to a process utilizing Geographic Information System (GIS) mapping and electronic data capture methods. The electronic methods presumably include an electronic calculation method which tabulates and calculates total costs, area to be acquired, and the numbers of relocations of residential and business property owners and tenants. Utilizing the paper-based method necessarily requires manual collection, organization and calculation which are likely expensive and inefficient, both in terms of dedicated staff time and dollars spent.

*Respondents:* Each State DOT will be asked to respond, as well as a limited number (5–10) of local government agencies that have large and complex transportation programs. Each invited agency will be asked to respond to a one-time survey containing questions about the agency's ROW cost estimation process and management.

*Frequency:* There will be one survey only.

*Estimated Average Burden per Response:* Approximately 8–16 person-hours to fully and accurately respond to the survey, depending on the size and complexity of an individual agency's transportation program.

*Estimated Total Annual Burden Hours:* Approximately 900 hours. (This is the estimated total burden, for approximately 60 State and local government transportation agencies to respond to a single survey).

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: January 17, 2018.

**Michael Howell,**

*FHWA Information Collection Officer.*

[FR Doc. 2018–01137 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2018–0002]**

### Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of request for extension of currently approved information collection.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 26, 2018.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number 2018–0002 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steven Jessberger, 202–366–5052, Federal Highway Administration, Department of Transportation, Office of Highway Policy Information, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Travel Monitoring Analysis System (TMAS), *OMB Control Number:* 2125–0587.

*Background:* Title 49, United States Code, Section 301, authorizes the DOT to collect statistical information relevant to domestic transportation. The FHWA is continuing to develop the TMAS to house data that will enable analysis of the amount and nature of both vehicular and nonmotorized travel at the national and regional levels. The information will be used by the FHWA and other DOT agencies to evaluate changes in vehicular and nonmotorized travel to assess impacts on highway safety, national travel trend, national travel demand, the role of travel in economic productivity, impacts of changes in truck travel on infrastructure condition, and maintenance of our Nation's mobility while protecting the human and natural environment. The increasing dependence on truck transport requires that data be available to better assess its overall contribution to the Nation's well-being. In conducting the data collection, the FHWA will be requesting that State Departments of Transportations (SDOTs) report traffic volume, vehicle classification, vehicle weight data and nonmotorized data which they collect as part of their existing traffic monitoring programs, including other sources such as local governments and traffic operations. States and local governments collect nonmotorized and motorized traffic volume, vehicle classification data, and vehicle weight data throughout the year using detection devices. The data should be representative of all public roads within State boundaries. The data will allow transportation professionals at the Federal, State, and metropolitan levels to make informed decisions about policies and plans.

*Respondents:* 52 SDOTs, including the District of Columbia and Puerto Rico.

*Frequency:* Annually.

*Estimated Average Burden per Response:* Each of the SDOTs already collect traffic data for various purposes. In accordance with 23 U.S.C. 303, each State has a Traffic Monitoring System in place so the data collection burden relevant for this notice is the additional burden for each State to provide a copy of their traffic data using the record formats specified in the *Traffic Monitoring Guide.* Automation and online tools continue to be developed in support of the TMAS and the capability now exists for online submission and validation of total volume data. The estimated average monthly burden is 2.5 hours for an annual burden of 30 hours.

*Estimated Total Annual Burden Hours:* Total burden will be 1560 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: January 17, 2018.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2018–01135 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection: Activity Under OMB Review: Report of Financial and Operating Statistics for Large Certificated Air Carriers

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial data from large certificated air carriers. Large certificated air carriers are carriers that operate aircraft with 61 seats or more, aircraft with 18,001 pounds of payload capacity or more, or operate international air services.

**DATES:** Written comments should be submitted by March 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or EMAIL *jeff.gorham@dot.gov.*

*Comments:* Comments should identify the associated OMB approval # 2138–0013 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0013, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Mail:* Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Fax:* 202–366–3383.

*Instructions:* Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

*Electronic Access*

You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2138–0013.

*Title:* Report of Financial and Operating Statistics for Large Certificated Air Carriers.

*Form No.:* BTS Form 41.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 60.

*Estimated Time per Response:* 4 hours per schedule, an average carrier may submit 90 schedules in one year.

*Total Annual Burden:* 13,910 hours.

*Needs and Uses:* Program uses for Form 41 data are as follows:

**Mail Rates**

The Department of Transportation sets and updates the international and mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

**Submission of U.S. Carrier Data to ICAO**

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

**Carrier Fitness**

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 18, 2018.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics .*

[FR Doc. 2018–01184 Filed 1–22–18; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators

**AGENCY:** Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the two quarterly schedules listed below:

F–1 *Report of Financial Data,*

F–2 *Report of Aircraft Operating Expenses and Related Statistics,* and

Commuter air carriers must file the Schedule F–1 *Report of Financial Data,*

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

**DATES:** Written comments should be submitted by March 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Marianne Seguin, Office of Airline Information, RTS–42, Room E32–105, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–1457, Fax Number (202) 366–3383 or EMAIL *marianne.seguin@dot.gov.*

*Comments:* Comments should identify the associated OMB approval # 2138–0009 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0009, Docket—DOT–OST–2014–

0031. The postcard will be date/time stamped and returned.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Mail:* Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Fax:* 202–366–3383.

*Instructions:* Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

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*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

*Electronic Access:* You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2138–0009.

*Title:* Report of Financial and Operating Statistics for Small Aircraft Operators.

*Form No.:* BTS Form 298–C.

*Type of Review:* Extension of a currently approved collection for the financial data.

*Respondents:* Small certificated (29) and commuter air carriers (35).

**Schedule F1**

*Number of Respondents:* 64.
*Number of Annual responses:* 256.
*Total Burden per Response:* 4 hours.
*Total Annual Burden:* 1,024 hours.

**Schedule F2**

*Number of Respondents:* 29.
*Number of Annual responses:* 116.
*Total Burden per Response:* 12 hours.
*Total Annual Burden:* 1,392 hours.

*Needs and Uses:* Program uses for Form 298–C financial data are as follows:

**Mail Rates**

The Department of Transportation sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

**Essential Air Service**

DOT often has to select a carrier to provide a community's essential air service. The selection criteria include historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

**Carrier Fitness**

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298–C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

The *Confidential Information Protection and Statistical Efficiency Act of 2002* (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 16, 2018.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2018–01183 Filed 1–22–18; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0772]**

## Agency Information Collection Activity: VA Cooperative Studies Program

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the

information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 22, 2018.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer, 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0772'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0772'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

**Authority:** 38 U.S.C. Part 1, Chapter 5, Section 527

*Title:* VA Cooperative Studies Program (CSP):

VA Form 10–10074, CSP Customer Satisfaction Survey.

VA Form 10–10074a, Meeting Evaluation.

*OMB Control Number:* 2900–0772.

*Type of Review:* Reinstatement of a currently approved collection.

*Abstract:* The information collected will be used by VA Cooperative Studies Program (CSP) leadership to evaluate their Coordinating Centers' effectiveness in conducting meetings and interacting with participating study sites and other customers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 51482 on November 6, 2017, pages 51482–51483.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:*

VA Form 10–10074—83 hours.

VA Form 10–10074a—83 hours.

*Estimated Average Burden Per Respondent:*

VA Form 10–10074—10 minutes.

VA Form 10–10074a—10 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:*

VA Form 10–10074—500.

VA Form 10–10074a—500.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.*

[FR Doc. 2018–01105 Filed 1–22–18; 8:45 am]

BILLING CODE 8320–01–P

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