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Contents

Federal Register

Vol. 83, No. 45

Wednesday, March 7, 2018

Agency for International Development
RULES
Acquisition Regulations:
Government Property—USAID Reporting Requirements, 9712–9713

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Environmental Assessments; Availability, etc.:
Biological Control of Yellow Toadflax, 9724

Antitrust Division
NOTICES
Proposed Final Judgments and Competitive Impact Statements:
United States et al. v. W.A. Foote Memorial Hospital, d/b/a Allegiance Health, 9750–9760

Civil Rights Commission
NOTICES
Meetings:
Louisiana Advisory Committee, 9724–9725
Maine Advisory Committee, 9725
New York Advisory Committee, 9725–9726

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Experimental Sites Initiative Reporting Tool 2017, 9727–9728

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticide Tolerances:
Fluopicolide, 9703–9712
Protection of Stratospheric Ozone:
Revision to References for Refrigeration and Air Conditioning Sector to Incorporate Latest Edition of Certain Industry, Consensus-based Standards; Withdrawal, 9703

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 9692–9697
Dassault Aviation Airplanes, 9683–9685
The Boeing Company Airplanes, 9685–9692
NOTICES
Airport Property Releases:
Craig Field Airport, Selma, AL, 9791

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9737–9738, 9740–9743
Privacy Act; Systems of Records, 9738–9740

Federal Energy Regulatory Commission
RULES
Natural Gas Pipelines; Project Cost and Annual Limits, 9697–9698
NOTICES
Applications:
Eagle Creek Hydro Power, LLC; Eagle Creek Water Resources, LLC; Eagle Creek Land Resources, LLC, 9732
Parker Knoll Hydro, LLC, 9735–9736
Combined Filings, 9728–9731
Complaints:
Andeavor Field Services, LLC v. Mid-America Pipeline Co., LLC, Enterprise Products Operating LLC, 9734
Minden, LA v. Southwestern Electric Power Co., 9734
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Elk City Renewables II, LLC, 9730
Matador Power Marketing, Inc., 9729–9730
Penn Oak Services, LLC, 9736–9737
Institution of Section 206 Proceedings:
Red Pine Wind Project, LLC, 9734–9735
License Applications:
Cocheco Falls Associates, 9735
Settlement Agreements:
New York Power Authority, 9732–9734
Staff Attendances, 9729

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 9743
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 9743

Fish and Wildlife Service
NOTICES
Permit Applications:
Endangered Foreign Species and Protected Marine Mammals, 9748–9749

Food and Drug Administration
RULES
Medical Devices:
General and Plastic Surgery Devices; Classification of the Extracorporeal Shock Wave Device for Treatment of Chronic Wounds, 9698–9700
PROPOSED RULES
Color Additive Petitions:
GW Cosmetics GmbH, 9715–9716
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reclassification Petitions for Medical Devices, 9743–9745

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9745–9746

Homeland Security Department
See U.S. Citizenship and Immigration Services

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
RULES
Balanced System for Measuring Organizational and Employee Performance, 9700–9701

International Trade Administration
NOTICES
Meetings:
United States Investment Advisory Council, 9726–9727

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine, 9749–9750

Justice Department
See Antitrust Division
NOTICES
Proposed Consent Decrees:
CERCLA, 9760

Labor Department
See Occupational Safety and Health Administration

National Institutes of Health
NOTICES
Meetings:
National Library of Medicine, 9746–9747

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area, 9713–9714
NOTICES
Meetings:
Surveys of Marine Recreational Fishing Effort on the U.S. Atlantic Coast and in the Gulf of Mexico; Marine Recreational Information Program, 9727

Nuclear Regulatory Commission
NOTICES
Charter Renewals:
Advisory Committee on the Medical Uses of Isotopes, 9760–9761

Occupational Safety and Health Administration
RULES
Occupational Exposure:
Beryllium, 9701–9703

Pension Benefit Guaranty Corporation
PROPOSED RULES
Owner-participant Changes to Guaranteed Benefits and Asset Allocation, 9716–9723

Postal Regulatory Commission
NOTICES
New Postal Products, 9761

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9768, 9788–9791
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Credit LLC, 9786–9788
Investors Exchange LLC, 9781–9786
New York Stock Exchange LLC, 9765–9768
NYSE American LLC, 9769–9781
NYSE Arca, Inc., 9768–9769
The Options Clearing Corp., 9761–9765

Transportation Department
See Federal Aviation Administration

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Petition for a CNMI-Only Nonimmigrant Transitional Worker, 9747–9748

Veterans Affairs Department
NOTICES
Privacy Act; Matching Programs, 9791–9792

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 (4 documents) ...9683, 9685, 9688, 9692

18 CFR
157 9697

21 CFR
878 9698

Proposed Rules:
73 9715

26 CFR
801 9700

29 CFR
1910 9701
1915 9701
1926 9701

Proposed Rules:
4001 9716
4022 9716
4041 9716
4043 9716
4044 9716

40 CFR
82 9703
180 9703

48 CFR
752 9712

50 CFR
679 9713

Rules and Regulations

Federal Register
Vol. 83, No. 45
Wednesday, March 7, 2018

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0909; Product Identifier 2017–NM–081–AD; Amendment 39–19214; AD 2018–05–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. This AD was prompted by reports of a loose screw on certain slat mechanical stop assemblies, and punctures in certain fuel caps. This AD requires a one-time inspection, and corrective action if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 11, 2018.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0909.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0909; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on October 24, 2017 (82 FR 49149) (''the NPRM''). The NPRM was prompted by reports of a loose screw on certain slat mechanical stop assemblies, and punctures in certain fuel caps. The NPRM proposed to require a one-time general visual inspection of the screw on the affected slat tracks, and replacement if necessary. We are issuing this AD to detect and correct loose screws that could lead to structural damage to the wing front spar, and consequent fuel leakage, possibly resulting in an uncontrolled fire.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0106, dated June 19, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The MCAI states:

> On some aeroplanes in-service, the screw of the slat mechanical stop assembly on slat tracks #6, #7 and #8 was found loose. In some cases, a puncture was found in the fuel cap. The results of the technical investigations concluded that the most probable reason for these events was improper installation of the lock washers on the screws during production or maintenance.
>
> This condition, if not detected and corrected, could lead to structural damage to the wing front spar, and consequent fuel leakage, possibly resulting in an uncontrolled fire.
>
> To address this potential unsafe condition, Dassault issued [Service Bulletin] SB F900–460 Revision 1, SB F900EX–508 Revision 3, SB F2000–433 Revision 1, and SB F2000EX–386 Revision 3 (hereafter collectively referred as 'the applicable SB' in this [EASA] AD), as applicable to aeroplane type/model, to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time [general visual] inspection of the slat tracks #6, #7 and #8 to verify the tightening torque of the screw and proper lock washer installation and, depending on findings, accomplishment of applicable corrective action(s).

Applicable corrective actions include replacement, if necessary. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0909.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed, except for minor changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued the following service information.

- Dassault Service Bulletin F900–460, Revision 1, dated February 10, 2017.
- Dassault Service Bulletin F900EX–508, Revision 3, dated February 10, 2017.
- Dassault Service Bulletin F2000–433, Revision 1, dated February 10, 2017.
- Dassault Service Bulletin F2000EX–386, Revision 3, dated February 10, 2017.

This service information describes procedures for doing a one-time general visual inspection of the screw on the affected slat tracks, and replacement if necessary. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 65 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
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$22,100

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 replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	6 work-hours × $85 per hour = $510	$15	$525

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 transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

3. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–05–05 Dassault Aviation: Amendment 39–19214; Docket No. FAA–2017–0909; Product Identifier 2017–NM–081–AD.

(a) Effective Date

This AD is effective April 11, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation airplanes, certificated in any category, as identified in paragraphs (c)(1) through (c)(4) of this AD.

(1) MYSTERE–FALCON 900, serial numbers as specified in Dassault Service Bulletin F900–460, Revision 1, dated February 10, 2017.

(2) FALCON 900EX, serial numbers as specified in Dassault Service Bulletin F900EX–508, Revision 3, dated February 10, 2017.

(3) FALCON 2000, serial numbers as specified in Dassault Service Bulletin F2000–433, Revision 1, dated February 10, 2017.

(4) FALCON 2000EX, serial numbers as specified in Dassault Service Bulletin

F2000EX–386, Revision 3, dated February 10, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of a loose screw on certain slat mechanical stop assemblies, and punctures in certain fuel caps. We are issuing this AD to detect and correct loose screws that could lead to structural damage to the wing front spar, and consequent fuel leakage, possibly resulting in an uncontrolled fire.

(f) Compliance

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

(g) Required Actions

(1) Within 9 months or 440 flight hours, whichever occurs first after the effective date of this AD, do a general visual inspection of slat tracks #6, #7, and #8 for proper screw and lockwasher installation, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (c)(1) through (c)(4) of this AD.

(2) If, during the inspection required by paragraph (g)(1) of this AD, the tightening torque of the screw and/or the lockwasher installation is incorrect, before further flight, accomplish the applicable corrective action(s) in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (c)(1) through (c)(4) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Dassault Service Bulletin F900EX–508, dated January 5, 2016; or Dassault Service Bulletin F2000EX–386, dated January 5, 2016, as applicable.

(i) No Reporting Requirement

Although the service information identified in paragraphs (c)(1) through (c)(4) of this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0106, dated June 19, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0909.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

(l) 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) Dassault Service Bulletin F900–460, Revision 1, dated February 10, 2017.

(ii) Dassault Service Bulletin F900EX–508, Revision 3, dated February 10, 2017.

(iii) Dassault Service Bulletin F2000–433, Revision 1, dated February 10, 2017.

(iv) Dassault Service Bulletin F2000EX–386, Revision 3, dated February 10, 2017.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 Renton, Washington, on February 20, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–04260 Filed 3–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0806; Product Identifier 2017–NM–064–AD; Amendment 39–19216; AD 2018–05–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 787–8 and 787–9 airplanes. This AD was prompted by a flight test report indicating that the crew oxygen masks in the flight deck did not deploy correctly. This AD requires an inspection at four locations in the flight deck to determine whether any crew oxygen mask having a certain part number is installed, and replacement of affected crew oxygen masks. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 11, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0806.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0806; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the

Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, Seattle ACO Branch, FAA, 2200 South 216th St., Des Moines, WA; phone: 206–231–3570; email: *susan.l.monroe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 787–8 and 787–9 airplanes. The NPRM published in the **Federal Register** on August 28, 2017 (82 FR 40735). The NPRM was prompted by a flight test report indicating that the crew oxygen masks in the flight deck did not deploy correctly. The NPRM proposed to require an inspection at four locations in the flight deck to determine whether any crew oxygen mask having a certain part number is installed, and replacement of affected crew oxygen masks. We are issuing this AD to prevent the oxygen mask harness from getting caught in the oronasal mask or goggles, which may lead to flight crew hypoxia and the loss of useful consciousness, possibly resulting in loss of control of the airplane.

Comments

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

Support

In addition to the comments described below, Air Line Pilots Association, International (ALPA) agrees with the intent of the proposed subject AD, and United Airlines (UAL) provided support for the NPRM, stating that the proposed changes are clear and easily understood, with an acceptable compliance time line.

Requests To Change or Delete Parts Installation Prohibition Language

All Nippon Airways (ANA) and Japan Airlines (JAL) asked that the prohibition of affected parts, specified in paragraph (h) of the proposed AD, ''Parts Installation Prohibition,'' apply after 72 months after the effective date of the AD, instead of ''as of the effective date of this AD.'' ANA and JAL stated that the supply of spare parts having part number (P/N) MF40–45–02 is insufficient worldwide.

UAL asked that paragraph (h) of the proposed AD, ''Parts Installation Prohibition,'' be deleted in its entirety, and that the proposed AD simply mandate replacement of all affected masks within 72 months from the effective date of the AD. UAL objected to this paragraph as written because it would result in the unintended consequence of restricting operators to replacing the oxygen masks one at a time, which would allow an intermixing of both MLD20 and MF40 series masks in any of the four locations on any given aircraft. UAL noted that since these masks are operationally different, intermixing the masks is not desirable, even with extensive flight crew training on both mask types. UAL added that in order to mitigate any potential risk due to pilot confusion with the parts differences, replacing the entire shipset of masks at once eliminates the potential for error caused by replacing one mask at a time.

Boeing asked that paragraph (h) of the proposed AD, ''Parts Installation Prohibition,'' be changed to read: ''As of the effective date of this AD, no person may install a crew oxygen mask having P/N MLD20–626–1, in place of a crew oxygen mask having P/N MF40–45–02, on any Model 787 series airplane.'' Boeing stated that as noted in the NPRM, the affected parts are rotable parts, and these parts could frequently be removed and re-installed on airplanes for a variety of reasons. Boeing added that allowing the replacement of one oxygen mask having P/N MLD20–626–1 with another oxygen mask having P/N MLD20–626–1 until accomplishment of the required actions will avoid any unnecessary disruption caused by replacing rotable parts, such as a crew oxygen mask having P/N MLD20–626–1 found in unserviceable condition prior to dispatch or prior to completion of the terminating action steps required for compliance. Boeing concluded that revising paragraph (h) of the proposed AD would prevent the proliferation of oxygen masks having P/N MLD20–626–1, while still allowing operators the flexibility to replace rotable parts until the terminating action in the proposed AD has been done.

We agree to change paragraph (h) of this AD, ''Parts Installation Prohibition,'' because of the need for dispatch relief. While we acknowledge all of the commenters' requests and concerns, we have revised this provision specific to situations when dispatch relief is warranted. We have revised paragraph (h) of this AD to allow installation of an affected oxygen mask only when the mask is replacing another affected mask, and only when the action of replacing the mask is done as unscheduled maintenance. Unscheduled maintenance is defined as maintenance that was not planned for or scheduled in advance, such as changing a defective or unserviceable oxygen mask at dispatch. If a different (unaffected) mask is already installed, an operator may not replace it with an affected mask. The supplier has informed us that no parts availability issues are expected.

Request To Reduce Compliance Time

ALPA suggested reducing the compliance time from 72 to 36 months. ALPA stated that 72 months is excessive considering the limited number of airplanes on the market and the ease of the inspection. ALPA added that 36 months would be more appropriate.

We disagree with the commenter's request to reduce the compliance time. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the oxygen masks. Further, we arrived at the proposed compliance time with the manufacturer's concurrence. In consideration of all of these factors, we have determined that the compliance time, as proposed, represents an appropriate interval in which the oxygen masks can be replaced in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to replace the oxygen masks before reaching 72 months after the effective date of this AD. If data are presented that would justify a shorter compliance time, we might consider further rulemaking on this issue. We have not changed this AD in this regard.

Request To Clarify Applicability

ANA asked that we clarify whether the actions in the proposed AD apply to all airplanes, as specified in paragraph (c) of the proposed AD, or only to the airplanes identified in paragraph (g) of the proposed AD. ANA stated that paragraph (g) of the proposed AD would apply to airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD. ANA added that it is uncertain of which actions are required for airplanes not identified in paragraph (g) of the proposed AD.

We acknowledge the commenter's concern and agree to clarify. Paragraph (g) of this AD only applies to the airplanes identified therein. The ''Parts Installation Prohibition'' specified in paragraph (h) of this AD applies to all airplanes identified in paragraph (c) of this AD. In addition, paragraph (h) has been revised, as noted above. We have not changed this AD in this regard.

Statement Regarding Training for Packing Oxygen Masks

Zodiac Aerospace Oxygen Systems Division stated that it recommends that all individuals packing the oxygen masks be properly trained and checked periodically on procedures. Zodiac offered to provide this training to all operators. Zodiac stated that proper stowage of all crew oxygen masks and hoses is essential to ensure that the mask can be donned within the mandated 5-second period. Zodiac added that instructions are provided with the masks for every Boeing Model 787–8 and 787–9 airplane. Zodiac concluded that if these instructions are followed, no equipment change should be required, contrary to what would be required by the proposed AD.

We acknowledge the commenter's offer to provide training; however, the supplier had previously provided mask-packing training to Boeing, and the masks that failed were packed by trained, certified mask packers. Given that trained, certified mask packers packed and installed the oxygen masks that failed, we have determined that mandating a design change is necessary to effectively mitigate the unsafe condition. Therefore, we have not changed this AD in this regard.

Request To Provide Statement of Relief for Airplanes With Unaffected Masks

ANA asked that we clarify paragraph (g) of the proposed AD by stating that if no oxygen mask having P/N MLD20–626–1 is installed at the four locations, there is no further action.

We do not agree with the commenter's request. We acknowledge that if no oxygen mask having P/N MLD20–626–1 is found, no further action is required by paragraph (g) of this AD. However, operators must still address the actions specified in paragraph (h) of this AD, ''Parts Installation Prohibition.'' This AD specifies only those actions required to address the unsafe condition. Therefore, we have not changed this AD in this regard.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin B787–81205–SB350007–00, Issue 001, dated May 9, 2017. The service information describes procedures for replacing the crew oxygen masks at four locations in the flight deck. 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.

Costs of Compliance

We estimate that this AD affects 57 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
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$4,845.
Replacement	Up to 4 work-hours × $85 per hour = $340	Up to $36,800	Up to $37,140	Up to $2,116,980.

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 transport category airplanes to the Director of the System Oversight 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):

2018–05–07 The Boeing Company: Amendment 39–19216; Docket No. FAA–2017–0806; Product Identifier 2017–NM–064–AD.

(a) Effective Date

This AD is effective April 11, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a flight test report indicating that the crew oxygen masks in the flight deck did not deploy correctly. We are issuing this AD to prevent the oxygen mask harness from getting caught in the oronasal mask or goggles, which may lead to flight crew hypoxia and the loss of useful consciousness, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Oxygen Mask Inspection and Replacement

For airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD: Within 72 months after the effective date of this AD, do an inspection to determine whether any crew oxygen mask having part number (P/N) MLD20–626–1 is installed at the four locations identified in Boeing Service Bulletin B787–81205–SB350007–00, Issue 001, dated May 9, 2017. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the crew oxygen mask can be conclusively determined from that review. If any crew oxygen mask having P/N MLD20–626–1 is found installed, within 72 months after the effective date of this AD, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB350007–00, Issue 001, dated May 9, 2017.

(h) Parts Installation Prohibition

(1) For airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD: As of the effective date of this AD, no person may install a crew oxygen mask having P/N MLD20–626–1 on any airplane, except as provided in this paragraph. Within 72 months after the effective date of this AD, installation of a crew oxygen mask having P/N MLD20–626–1 is acceptable when the action of replacing the mask is done as unscheduled maintenance, and as a replacement only for another crew oxygen mask having P/N MLD20–626–1. For the purposes of this AD, unscheduled maintenance is defined as maintenance that was not planned for or scheduled in advance, such as changing a defective or unserviceable oxygen mask at dispatch.

(2) For airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after the effective date of this AD: As of the effective date of this AD, no person may install a crew oxygen mask having P/N MLD20–626–1 on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

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

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

(j) Related Information

For more information about this AD, contact Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, Seattle ACO Branch, FAA, 2200 South 216th St., Des Moines, WA; phone: 206–231–3570; email: *susan.l.monroe@faa.gov.*

(k) 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 the AD specifies otherwise.

(i) Boeing Service Bulletin B787–81205–SB350007–00, Issue 001, dated May 9, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 Renton, Washington, on February 22, 2018.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–04259 Filed 3–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0527; Product Identifier 2017–NM–015–AD; Amendment 39–19215; AD 2018–05–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–12, which applied to certain The Boeing

Company Model 787–8 and 787–9 airplanes. AD 2016–09–12 required repetitive inspections of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, and reinstalling any disengaged panels. This AD retains the actions required by AD 2016–09–12 and requires replacing the existing decompression panels with new panels and straps, which terminates the repetitive inspections. This AD also removes airplanes from the applicability. This AD was prompted by a terminating modification developed to address the unsafe condition. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 11, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0527.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0527; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th Street, Des Moines, WA 98198–6547; phone: 206–231–3570; email: *susan.l.monroe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016) (''AD 2016–09–12''). AD 2016–09–12 applied to certain The Boeing Company Model 787–8 and 787–9 airplanes. The NPRM published in the **Federal Register** on June 6, 2017 (82 FR 25983). The NPRM was prompted by a terminating modification developed to address the unsafe condition. The NPRM proposed to continue to require repetitive inspections of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, and reinstallation of any disengaged panels. The NPRM also proposed to require replacing the existing decompression panels with new panels and straps, which would terminate the repetitive inspections. The NPRM also proposed to remove airplanes from the applicability. We are issuing this AD to prevent decompression panels from disengaging from the bilge barriers located in the forward and aft cargo compartments. In the event of a cargo compartment fire, this condition would provide a path for smoke and Halon to enter the flight compartment and passenger cabin, which could result in the inability to contain and extinguish a fire.

Comments

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

Supportive Comment

The Air Line Pilots Association, International stated that it agrees with the intent of the NPRM.

Request To Extend Compliance Time

Japan Airlines (JAL) asked that we extend the compliance time for the replacement of the decompression panels required by paragraph (i) of the proposed AD from 22 to 48 months. JAL stated that extending this compliance time will not affect the safety level because the repetitive inspections specified by paragraph (g) of the proposed AD would still be required. JAL asked that the replacement be done during a C-check maintenance interval, which is three years. JAL added that it would also like to add a one-year margin for airplanes on which the decompression panel is not replaced due to inevitable circumstances.

American Airlines (AAL) and United Airlines (UAL) asked that we extend the compliance time from 22 to 36 months, for the same reasons provided by JAL. AAL added that replacing the panels within 22 months would result in an undue maintenance burden on operators.

We agree to extend the compliance time for the replacement of the decompression panels from 22 to 36 months, because the repetitive inspections will maintain an acceptable margin of safety until the redesigned decompression panels are installed. This extension has been coordinated with the manufacturer. Therefore, we have extended the compliance time in paragraph (i) of this AD accordingly.

We do not agree to extend the compliance time to 48 months, which would exceed the acceptable margin of safety. A 36-month compliance time provides an adequate interval of time for replacing the decompression panels without compromising safety.

Request To Include the Latest Service Information

Boeing asked that we add Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016, to the proposed AD as an alternative to using Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015 (referenced in the NPRM as the appropriate source of service information for accomplishing the actions).

We agree that this final rule should refer to the latest service information. Since we issued the NPRM, Boeing has released Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016. In the NPRM, we refer to Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015, as the appropriate source of service information. No additional work is necessary on airplanes on which the actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015. We have therefore revised paragraphs (g) and (h) of this AD to add Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016, as the source of service information for accomplishing the actions. We have added paragraph (k) to this AD to specify credit for prior accomplishment of the actions specified in Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated

November 16, 2015. We have redesignated subsequent paragraphs accordingly.

Request To Clarify Description of ''Adjustable Straps''

Boeing asked that we change the term ''adjustable straps'' to ''adjustable straps (zip ties)'' throughout the NPRM for clarification.

We agree with the commenter's request for the reason provided. We have changed the ''Related Service Information under 1 CFR part 51'' section and paragraph (i) of this AD accordingly.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016. This service information describes procedures for replacing the existing decompression panels with new panels and adjustable straps (zip ties).

We also reviewed Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016. This service information describes procedures for repetitive inspections of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, and reinstalling any disengaged panels.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 50 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
Retained inspections	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle.	$12,750 per inspection cycle.
New modification	7 work-hours × $85 per hour = $595	11,748	12,343	617,150.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reinstallation	1 work-hour × $85 per hour = $85	$0	$85

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 transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We have determined that 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 removing Airworthiness Directive (AD) 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016), and adding the following new AD:

2018–05–06 The Boeing Company: Amendment 39–19215; Docket No. FAA–2017–0527; Product Identifier 2017–NM–015–AD.

(a) Effective Date

This AD is effective April 11, 2018.

(b) Affected ADs

This AD replaces AD 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016) (''AD 2016–09–12'').

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a terminating modification developed to address the unsafe condition. We are issuing this AD to prevent decompression panels from disengaging from the bilge barriers located in the forward and aft cargo compartments. In the event of a cargo compartment fire, this condition would provide a path for smoke and Halon to enter the flight compartment and passenger cabin, which could result in the inability to contain and extinguish a fire.

(f) Compliance

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

(g) Retained Repetitive Inspections, With Revised Service Information and Added Reference to Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2016–09–12, with revised service information and an added reference to terminating action: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a general visual inspection of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; or Issue 003, dated December 7, 2016. Repeat the inspection thereafter at the applicable times specified in paragraph 5. ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; or Issue 003, dated December 7, 2016; until the terminating modification required by paragraph (i) of this AD is done. As of the effective date of this AD, only Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016, may be used.

(1) For Group 1 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; or Issue 003, dated December 7, 2016: Inspect within 30 days after May 23, 2016 (the effective date of AD 2016–09–12).

(2) For Group 2 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; or Issue 003, dated December 7, 2016: Inspect within 180 flight cycles or within 90 days after May 23, 2016 (the effective date of AD 2016–09–12), whichever occurs later.

(h) Retained Reinstallation of Decompression Panels With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2016–09–12, with revised service information: If any disengaged decompression panel is found during any inspection required by paragraph (g) of this AD; before further flight, reinstall the panel, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; or Issue 003, dated December 7, 2016, as applicable. As of the effective date of this AD, only Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016, may be used.

(i) New Terminating Modification

Within 36 months after the effective date of this AD: Replace the existing decompression panels of the bilge barriers located in the forward and aft cargo compartments with new decompression panels and adjustable straps (zip ties), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016; except as provided by paragraph (j) of this AD. Accomplishing this modification terminates the repetitive inspections required by paragraph (g) of this AD.

(j) Exceptions to Service Information

(1) Where Step 3 of Task 10 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016, identifies part number (P/N) C412705–577, the correct part number is P/N C412705–575.

(2) Where Step 4 of Task 10 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016, identifies P/N C412705–575, the correct part number is P/N C412705–577.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2016–09–12, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

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

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

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

(m) Related Information

(1) For more information about this AD, contact Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th Street, Des Moines, WA 98198–6547; phone: 206–231–3570; email: *susan.l.monroe@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) 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 the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016.

(ii) Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 003, dated December 7, 2016.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 Renton, Washington, on February 21, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–04261 Filed 3–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9074; Product Identifier 2016–NM–097–AD; Amendment 39–19213; AD 2018–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. This AD was prompted by reports of engine fan cowl door (FCD) losses on airplanes equipped with CFM56 engines due to operator failure to close the FCD during ground operations. This AD requires modification and re-identification, or replacement, of certain FCDs. This AD also requires installation of a placard. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 11, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9074.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9074; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The SNPRM published in the **Federal Register** on September 27, 2017 (82 FR 44974) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on September 26, 2016 (81 FR 65980) (''the NPRM''). The NPRM was prompted by reports of engine FCD losses on airplanes equipped with CFM56 engines due to operator failure to close the FCD during ground operations. The NPRM proposed to require modification and re-identification, or replacement, of certain FCDs. The NPRM also proposed to require installation of a placard. The SNPRM proposed to add airplanes to the applicability and expand the list of affected FCD part numbers. We are issuing this AD to prevent in-flight loss of an engine FCD and possible consequent damage to the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0257, dated December 16, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214, airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The MCAI states:

> Fan Cowl Door (FCD) losses were reported on aeroplanes equipped with CFM56 engines. Investigation results confirmed that in all cases the fan cowls were opened prior to the flight and were not correctly re-secured. During the pre-flight inspection, it was then not detected that the FCD[s] were not properly latched.
>
> This condition, if not detected and corrected, could lead to in-flight loss of a FCD, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> Prompted by these events, new FCD front latch and keeper assembly were developed, having a specific key necessary to un-latch the FCD. This key cannot be removed unless the FCD front latch is safely closed. The key, after removal, must be stowed in the flight deck at a specific location, as instructed in the applicable Aircraft Maintenance Manual. Applicable Flight Crew Operating Manuals have been amended accordingly. After modification, the FCD is identified with a different Part Number (P/N). Airbus issued Service Bulletin (SB) A320–71–1068 to provide the modification instructions. Consequently, EASA issued AD 2016–0069 to require modification and re-identification of [affected] FCD[s] [or replacement of affected FCDs].

After that [EASA] AD was published, FCD P/N 238–0301–509 was identified as missing in the list of affected FCD P/N[s] provided in the [EASA] AD.

For the reasons described above, this [EASA] AD retains the requirement of EASA AD 2016–0069, which is superseded, and expands the list of affected FCD P/N[s].

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9074.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM and the FAA's response to each comment. In addition to its general agreement with the proposed requirement to implement the new latches on the FCDs, Delta Airlines (Delta) provided the following comments on the SNPRM.

Request To Specify Which FCDs Require Modification

Delta requested that we specify which FCDs need to be modified by listing the affected FCD serial numbers in paragraphs (g)(1) and (g)(3) of the proposed AD (in the SNPRM). Delta stated that Airbus confirmed that only a specific set of serial numbers is affected.

We acknowledge that Delta provided additional information from Airbus regarding certain FCD serial numbers. However, Delta did not provide substantiation that only the FCDs with those serial numbers are subject to the identified unsafe condition. The State of Design Authority (EASA) and Airbus have determined that FCDs with certain part numbers (P/Ns), which are identified in table 1 to paragraphs (g), (h), (i), and (k) of this AD, as ''Old P/N,'' rather than the serial numbers that Airbus provided to Delta, are affected by the unsafe condition. If an operator can provide substantiation that certain FCDs may be exempted from the AD requirements based on having a type design which mitigates the risk and provides an adequate level of safety, they may apply for an alternative method of compliance in accordance with the procedures in paragraph (n)(1) of this AD. We have not changed this AD in this regard.

Request To Remove Requirement for Placard Installation

Delta requested that we remove the proposed requirement to install a placard at the applicable location specified in paragraph (g)(2) of the proposed AD (in the SNPRM). Delta noted that FCD keys are considered ground support equipment by Airbus and are routinely stored at ground operating stations. Delta suggested that since FCD keys are not required to be stored on an airplane, requiring a placard where the keys may or may not be located creates an undue regulatory burden on operators. Delta pointed out that if the placard was missing from an airplane, that airplane would be out of compliance and could not be operated. Delta added that Airbus has indicated that the placard and key locations are not safety related.

We partially agree with the commenter's request. We agree that the proposed placard requirements were too stringent. However, we have determined that some means of advising the flight and maintenance crews of the location of the FCD keys is necessary. We have revised paragraph (g)(2) of this AD to allow flights, for a time period not to exceed 10 days, when one or both engine FCD keys or the placard are damaged or missing. We have also revised paragraph (g)(2) of this AD to allow an alternate key stowage location in the flight deck and installation of a placard for identification of the stowage location, provided the keys can be consistently retrieved from that flight deck location.

Request To Remove Reference to Certain Instructions for Installing Replacement FCDs

Delta requested that the alternative actions in paragraphs (h) and (l)(2) of the proposed AD (in the SNPRM) to install replacement FCDs using instructions ''. . . approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA)'' be removed from the proposed AD (in the SNPRM). Delta claimed that the safety issue being addressed is the latching of the FCDs, not their installation. Delta noted that the SNPRM would allow on-wing work on FCDs that were installed as specified in the airplane maintenance manual (AMM), and suggested that same method should be acceptable for installing a new or modified FCD. Delta requested that either the requirement to use ''approved'' instructions be removed or the term ''approved'' be changed to allow a method ''accepted'' by the FAA; EASA; or Airbus's EASA DOA, which would allow operators to use procedures in the existing AMM. Delta requested that if this change is not made, the ''Costs of Compliance'' section of this AD be updated to reflect the $3,555 Airbus would charge Delta to approve the existing AMM procedure for the actions specified in paragraphs (h) and (l)(2) of the proposed AD (in the SNPRM).

We disagree with the commenter's request. Installation of a new part using procedures that are not approved in the specified manner might result in an inadvertent introduction of an unsafe condition. We have coordinated with Airbus and EASA and agreed that the installation must be done in accordance with the approved methods specified in paragraphs (h) and (l)(2) of this AD. In addition, we recognize that in accomplishing the requirements of any AD, operators might incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD. However, the cost analysis in ADs typically does not include incidental costs. We have not changed this AD in this regard.

Change to Applicability

In paragraph (c)(2) of the proposed AD (in the SNPRM), we inadvertently included Airbus Model A320–216 airplanes. We did not intend to include Model A320–216 airplanes in the applicability of this AD because the MCAI was already added to the required airworthiness action list (RAAL) for Model A320–216 airplanes. We have removed Model A320–216 airplanes from the applicability of this final rule.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–71–1068, Revision 01, dated April 28, 2016. This service information describes procedures for modifying the left-hand and right-hand FCDs on engines 1 and 2; installing a placard; and re-identifying both the left-hand and right-hand FCDs with a new part number. 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.

Costs of Compliance

We estimate that this AD affects 400 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
Modification, placard installation, and re-identification (or replacement) of FCD.	Up to 11 work-hours × $85 per hour = $935.	$9,730	$10,665 (for two engines) ..	$4,266,000

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 transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

3. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–05–04 Airbus: Amendment 39–19213; Docket No. FAA–2016–9074; Product Identifier 2016–NM–097–AD.

(a) Effective Date

This AD is effective April 11, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD, all manufacturer serial numbers.

(1) Airbus Model A318–111 and –112 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, and –115 airplanes.

(3) Airbus Model A320–211, –212, and –214 airplanes.

(4) Airbus Model A321–111, –112, –211, –212, and –213 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of engine fan cowl door (FCD) losses on airplanes equipped with CFM56 engines due to operator failure to close the FCD during ground operations. We are issuing this AD to prevent in-flight loss of an engine FCD and possible consequent damage to the airplane.

(f) Compliance

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

(g) Modification of Affected FCDs

Within 35 months after the effective date of this AD, accomplish concurrently the actions in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1068, Revision 01, dated April 28, 2016.

(1) Modify the left-hand and right-hand FCDs on engines 1 and 2 that have an old part number (''Old P/N''), as applicable, as specified in table 1 to paragraphs (g), (h), (i), and (k) of this AD.

(2) Install a placard on the box located at the bottom of the 120-volt unit (120 VU) panel, or at the bottom of the coat stowage, as applicable to airplane configuration. Revenue flights with one or both FCD keys missing from the stowage location in the flight deck, or the placard missing or damaged, are permitted for a period not to exceed 10 days. An alternate key stowage location in the flight deck and installation of a placard for identification of the stowage location is permitted in accordance with the operator's FAA accepted maintenance/inspection program, provided the keys can be consistently retrieved from that flight deck location when needed.

(3) Re-identify the modified left-hand and right-hand FCDs with the new part number (''New P/N''), as applicable, as specified in table 1 to paragraphs (g), (h), (i), and (k) of this AD.

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Table 1 to Paragraphs (g), (h), (i), and (k) of this AD – *Fan Cowl Door Part Number (P/N) Change*

Door Position	Old P/N	New P/N
Left-hand side – CFM56-5A engines	238-0301-501	238M0301-501
	238-0301-503	238M0301-503
	238-0301-505	238M0301-505
	238-0301-507	238M0301-507
	238-0301-509	238M0301-509
	238-0301-511	238M0301-511
	238-0301-513	238M0301-513
	238-0301-515	238M0301-515
	238-0301-517	238M0301-517
	238-0301-519	238M0301-519
	238-0301-521	238M0301-521
	238-0301-523	238M0301-523
	238-0301-525	238M0301-525
	238-0301-527	238M0301-527
	238-0301-529	238-0301-533
	238-0301-531	238-0301-535
Right-hand side – CFM56-5A engines	238-0302-501	238M0302-501
	238-0302-503	238M0302-503
	238-0302-505	238M0302-505
	238-0302-509	238M0302-509
	238-0302-511	238M0302-511
	238-0302-513	238M0302-513
	238-0302-515	238M0302-515
	238-0302-517	238M0302-517
	238-0302-519	238M0302-519
	238-0302-521	238M0302-521
	238-0302-523	238M0302-523
	238-0302-525	238M0302-525
	238-0302-527	238M0302-527
	238-0302-529	238M0302-529
	238-0302-531	238M0302-531
	238-0302-533	238M0302-533
	238-0302-535	238M0302-535
	238-0302-537	238M0302-537
	238-0302-539	238-0302-547
	238-0302-541	238-0302-549
	238-0302-543	238-0302-551
	238-0302-545	238-0302-553

Door Position	Old P/N	New P/N
Left-hand side – CFM56-5B engines	642-3001-503	642M3001-503
	642-3001-505	642M3001-505
	642-3001-507	642-3001-511
	642-3001-509	642-3001-513
Right-hand side – CFM56-5B engines	642-3002-503	642M3002-503
	642-3002-505	642M3002-505
	642-3002-507	642M3002-507
	642-3002-509	642M3002-509
	642-3002-511	642-3002-519
	642-3002-513	642-3002-521
	642-3002-515	642-3002-523
	642-3002-517	642-3002-525

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(h) Optional Replacement of Affected FCDs With New Door Design

Replacing the FCDs having a P/N listed as ''Old P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD with the FCDs having the corresponding P/Ns listed as ''New P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD is acceptable for compliance with the requirements of paragraphs (g)(1) and (g)(3) of this AD. The replacement must be done in accordance with instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Compliance Information for Airplanes on Which Airbus Modification 157517 Is Embodied

Accomplishment of Airbus modification 157517 on an airplane in production is acceptable for compliance with the requirements of paragraphs (g)(1) and (g)(3) of this AD, provided that no FCD having a part number identified as ''Old P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD is installed on that airplane.

(j) Compliance Information for Airplanes on Which Airbus Modification 157519 or Modification 157521 Is Embodied

Accomplishment of Airbus modification 157519 or modification 157521 on an airplane in production is acceptable for compliance with the requirements of paragraph (g)(2) of this AD.

(k) Parts Installation Prohibition

(1) For any airplane with any FCD installed having a P/N identified as ''Old P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD as of the effective date of this AD: No person may install on an airplane a part number identified as ''Old P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD after accomplishing the requirements of paragraph (g) of this AD on that airplane.

(2) For any airplane with only FCDs installed having P/Ns that are identified as ''New P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD as of the effective date of this AD: No person may install on any airplane a part number identified as ''Old P/N'' in table 1 to paragraphs (g), (h), (i), and (k) of this AD as of the effective date of this AD.

(l) Installation of Approved Parts

Installation on an airplane of a right-hand or left-hand FCD having a part number approved after the effective date of this AD is acceptable for compliance with the requirements of paragraphs (g)(1) and (g)(3) of this AD for that airplane only, provided the conditions specified in paragraphs (l)(1) and (l)(2) of this AD are met.

(1) The part number must be approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(2) The FCD installation must be accomplished in accordance with airplane modification instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–71–1068, Revision 00, dated December 18, 2015.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0257, dated December 16, 2016, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9074.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

(p) 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) Airbus Service Bulletin A320–71–1068, Revision 01, dated April 28, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 Renton, Washington, on February 22, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–04265 Filed 3–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by the Commission's regulations, the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

DATES: This final rule is effective March 7, 2018 and establishes cost limits applicable from January 1, 2018 through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Richard W. Fole, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8955.

SUPPLEMENTARY INFORMATION: Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2018, as published in Table I of § 157.208(d) and Table II of 157.215(a), are hereby issued.

Effective Date

This final rule is effective March 7, 2018. The provisions of 5 U.S.C. 804 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. The Final Rule merely updates amounts published in the Code of Federal Regulations to reflect the Department of Commerce's latest annual determination of the Gross Domestic Product (GDP) implicit price deflator, a mathematical updating required by the Commission's existing regulations.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Issued: February 27, 2018.

Terry L. Turpin,

Director, Office of Energy Projects.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

■ 1. The authority citation for part 157 continues to read as follows:

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

■ 2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I TO PART 157

Year	Limit	
	Auto. proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000
2004	7,800,000	21,600,000
2005	8,000,000	22,000,000
2006	9,600,000	27,400,000
2007	9,900,000	28,200,000
2008	10,200,000	29,000,000
2009	10,400,000	29,600,000
2010	10,500,000	29,900,000
2011	10,600,000	30,200,000
2012	10,800,000	30,800,000
2013	11,000,000	31,400,000
2014	11,200,000	31,900,000
2015	11,400,000	32,400,000
2016	11,600,000	32,800,000
2017	11,800,000	33,200,000
2018	12,000,000	33,800,000

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II TO PART 157

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000

TABLE II TO PART 157—Continued

Year	Limit
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000
2006	5,250,000
2007	5,400,000
2008	5,550,000
2009	5,600,000
2010	5,700,000
2011	5,750,000
2012	5,850,000
2013	6,000,000
2014	6,100,000
2015	6,200,000
2016	6,300,000
2017	6,400,000
2018	6,500,000

* * * * *

[FR Doc. 2018–04413 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2018–N–0387]

Medical Devices; General and Plastic Surgery Devices; Classification of the Extracorporeal Shock Wave Device for Treatment of Chronic Wounds

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the extracorporeal shock wave device for treatment of chronic wounds into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the extracorporeal shock wave device for treatment of chronic wounds' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective March 7, 2018. The classification was applicable on December 28, 2017.

FOR FURTHER INFORMATION CONTACT: Mehmet Kosoglu, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1572, Silver Spring, MD 20993–0002, 301–796–6194, *Mehmet.Kosoglu@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the extracorporeal shock wave device for treatment of chronic wounds as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 25, 2016, Sanuwave, Inc., submitted a request for De Novo classification of the dermaPACE System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA

has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 28, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 878.4685. We have named the generic type of device extracorporeal shock wave device for treatment of chronic wounds, and it is identified as a prescription device that focuses acoustic shock waves onto the dermal tissue. The shock waves are generated inside the device and transferred to the body using an acoustic interface.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—EXTRACORPOREAL SHOCK WAVE DEVICE FOR TREATMENT OF CHRONIC WOUNDS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation.
Infection	Reprocessing validation and Labeling.
Inadequate healing	Labeling.
Device failure/malfunction leading to application site injury	Non-clinical performance testing; Electrical safety testing; Electromagnetic compatibility (EMC) testing; Use life testing; Software verification, validation, and hazard analysis; and Labeling.
Hearing loss	Non-clinical performance testing and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

At the time of classification, extracorporeal shock wave devices for treatment of chronic wounds are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 878.4685 to subpart E to read as follows:

§ 878.4685 Extracorporeal shock wave device for treatment of chronic wounds.

(a) *Identification.* An extracorporeal shock wave device for treatment of chronic wounds is a prescription device that focuses acoustic shock waves onto the dermal tissue. The shock waves are generated inside the device and transferred to the body using an acoustic interface.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must be conducted to demonstrate that the system produces anticipated and reproducible acoustic pressure shock waves.

(2) The patient-contacting components of the device must be demonstrated to be biocompatible.

(3) Performance data must demonstrate that the reusable components of the device can be reprocessed for subsequent use.

(4) Performance data must be provided to demonstrate the electromagnetic compatibility and electrical safety of the device.

(5) Software verification, validation, and hazard analysis must be performed.

(6) Performance data must support the use life of the system by demonstrating continued system functionality over the labeled use life.

(7) Physician labeling must include:

(i) Information on how the device operates and the typical course of treatment;

(ii) A detailed summary of the device's technical parameters;

(iii) Validated methods and instructions for reprocessing of any reusable components; and

(iv) Instructions for preventing hearing loss by use of hearing protection.

(8) Patient labeling must include:

(i) Relevant contraindications, warnings, precautions, adverse effects, and complications;

(ii) Information on how the device operates and the typical course of treatment;

(iii) The probable risks and benefits associated with the use of the device;

(iv) Post-procedure care instructions; and

(v) Alternative treatments.

Dated: February 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04616 Filed 3–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[TD 9831]

RIN 1545–BL88

Balanced System for Measuring Organizational and Employee Performance Within the Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding management and personnel within the IRS. The final regulations relate to the ''employee satisfaction measures'' utilized by the IRS in its Balanced System for Measuring Organizational and Employee Performance. These regulations affect internal operations of the IRS and the systems employed to evaluate the performance of organizations within the IRS and individuals employed by the IRS.

DATES:

Effective Date: These regulations are effective on March 7, 2018.

Applicability Date: These regulations are applicable for the reporting of employee satisfaction information within the meaning of 26 CFR 801.5 that occurs on or after March 7, 2018.

FOR FURTHER INFORMATION CONTACT: Julie Barry, at (202) 317–5759 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2014, the IRS published in the **Federal Register** (79 FR 67351) a temporary regulation (TD 9703) modifying the regulations governing the IRS Balanced System for Measuring Organizational and Employee Performance. A notice of proposed rulemaking (REG–138605–13) cross-referencing the temporary regulation was published in the **Federal Register** (79 FR 67396) on the same day. The text of the temporary regulation served as the text of the proposed regulation.

Summary of Comments and Explanation of Revisions

The IRS provided an opportunity for comment and an opportunity for a public hearing. No public hearing was requested, and the IRS received one written comment. The written comment did not substantively address the proposed change, but instead expressed appreciation for the IRS's efforts to obtain public feedback to support an open, measurable, and user-friendly government.

The regulation being modified concerns ''employee satisfaction measures'' and requires the collection of information from employees through various means, including employee surveys. Once collected, the information is used to measure and report on employee satisfaction, one of three elements comprising the IRS balanced performance measurement system. To be consistent with other government-wide employee satisfaction surveys, the proposed regulation provides that employee satisfaction measures can be reported at a higher agency level.

Specifically, the proposed regulation relates to the employee satisfaction measure, § 801.5, of the IRS Balanced System for Measuring Organizational and Employee Performance (26 CFR part 801). As originally implemented in 1999, the employee satisfaction measure required the IRS to gauge and report the satisfaction of employees in pay and duty status (non-seasonal employees) to the first-level supervisor organizational level, as well as to all succeeding management levels of the organization. Consequently, the IRS utilized and modified a pre-existing survey to enable the reporting of data to first-level supervisors. Other surveys, such as OPM's Federal Employee Viewpoint Survey (FEVS), however, report employee satisfaction data to a level of agency management higher than that of the first-level supervisor. Consequently, the IRS conducted both the FEVS survey and the internal survey that complied with § 801.5. The administration of both surveys resulted in an unnecessary expenditure of funds, an undue burden on employees, and the duplication of efforts by the IRS.

The proposed regulation permits the IRS to report employee satisfaction data at higher organization levels, thereby permitting the IRS to use the FEVS and eliminate the use of its internal survey. The corresponding temporary regulation was effective on or after November 13, 2014, and expired on or before November 10, 2017. This document adopts, without modification, the proposed regulation as final and removes the corresponding temporary regulation.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the regulation would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to Section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Small Business Administration.

Drafting Information

The principal author of these regulations is Julie A. Barry, Office of Associate Chief Counsel (General Legal Services). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 801

Federal employees, Organization and functions (Government agencies).

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 801 is amended as follows:

PART 801—BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND EMPLOYEE PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

■ **Paragraph 1.** The authority citation for part 801 continues to read in part as follows:

Authority: 5 U.S.C. 9501 * * *

■ **Par. 2.** Section 801.5 is revised to read as follows:

§ 801.5 Employee satisfaction measures.

(a) The employee satisfaction numerical ratings to be given to a Business Operating Division (BOD) or equivalent office within the IRS will be determined on the basis of information gathered through various methods. For example, questionnaires, surveys, and other information gathering mechanisms may be employed to gather data regarding satisfaction. The information

gathered will be used to measure, among other factors bearing upon employee satisfaction, the quality of supervision, and the adequacy of training and support services. All full and part-time permanent employees of a BOD or equivalent office who are in pay and duty status will have an opportunity to provide information regarding employee satisfaction under conditions that guarantee them confidentiality.

(b) This section applies to the reporting of employee satisfaction information that occurs on or after March 7, 2018.

§ 801.5T [Removed]

■ **Par. 3.** Section 801.5 T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: January 24, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2018–04231 Filed 3–6–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1926, and 1915

[Docket No. OSHA–H005C–2006–0870]

RIN 1218–AB76

Occupational Exposure to Beryllium

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; OMB information collection approval.

SUMMARY: This rule is a technical amendment announcing that OMB has approved the collection of information contained in OSHA's standards for Occupational Exposure to Beryllium and Beryllium Compounds in General Industry, and revising OSHA's regulations to reflect that approval. The OMB approval number is 1218–0267.

DATES: Effective March 7, 2018.

FOR FURTHER INFORMATION CONTACT: Charles McCormick, OSHA, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: OSHA published a final rule on January 9, 2017, amending its existing standards for the Occupational Exposure to Beryllium and Beryllium Compounds. OSHA determined that employees exposed to beryllium at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for this rulemaking indicates that workers exposed to beryllium are at increased risk of developing chronic beryllium disease and lung cancer. The final rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meters (μg/m^3) of air as an 8-hour time weighted average and 2.0 μg/m^3 as a short term exposure limit determined over a sampling period of 15 minutes. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping.

OSHA issued three separate standards (one for general industry, one for shipyards, and one for construction) in order to tailor requirements to the circumstances found in these sectors. The effective date of those standards was March 10, 2017.

Consistent with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the **Federal Register** notice for the Occupational Exposure to Beryllium and Beryllium Compounds final rule states that employers do not have to comply with the collection of information until OMB approves those collections of information, and the Department of Labor publishes a notice in the **Federal Register** announcing this approval and the control number assigned by OMB to the final rule's collection of information. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) The collection of information displays a current, valid OMB control number, and (2) The Agency informs members of the public who are required to respond to the collection of information that they are not required to do so unless the agency displays a currently valid OMB control number for the collection of information.

The revision of these standards is a technical amendment to increase public awareness of OMB's approval of the collection of information. The Agency notes that the public has already had the opportunity to comment on the collections of information, and OMB has approved them. Opportunity for public comment on this final rule is therefore unnecessary.

The final Occupational Exposure to Beryllium and Beryllium Compounds standards impose new collections of information for the purposes of the PRA. The collections of information in the rule are needed to assist employers in identifying and controlling exposure to beryllium and beryllium compounds in the workplace, and to address adverse health effects related to beryllium. OSHA will also use records developed in response to these standards to determine compliance with OSHA standards.

COLLECTIONS OF INFORMATION REQUIREMENTS IN THE FINAL STANDARD

Number	General industry	Construction industry	Maritime industry
1	§ 1910.1024(d)(2) Performance Option	§ 1926.1124(d)(2) Performance Option	§ 1915.1024(d)(2) Performance Option.
2	§ 1910.1024(d)(3)(i), (ii), and (iii) Scheduled Monitoring Options.	§ 1926.1124(d)(3)(i), (ii), and (iii) Scheduled Monitoring Options.	§ 1915.1024(d)(3)(i), (ii), and (iii) Scheduled Monitoring Options.
3	§ 1910.1024(d)(3)(iv), (v), and (vi) Scheduled Monitoring Options.	§ 1926.1124(d)(3)(iv), (v), and (vi) Scheduled Monitoring Options.	§ 1915.1024(d)(3)(iv), (v), and (vi) Scheduled Monitoring Options.
4	§ 1910.1024(d)(4) Reassessment of Exposure.	§ 1926.1124(d)(4) Reassessment of Exposure.	§ 1915.1024(d)(4) Reassessment of Exposure.
5	§ 1910.1024(d)(6)(i) and (ii) Employee Notification of Assessment Results.	§ 1926.1124(d)(6)(i) and (ii) Employee Notification of Assessment Results.	§ 1915.1024(d)(6)(i) and (ii) Employee Notification of Assessment Results.
6	§ 1910.1024(e)(2)(i) and (ii) Demarcation of Beryllium Work Areas and Regulated Areas.	§ 1926.1124(e)(2) Competent Person	§ 1915.1024(e)(2) Regulated Areas—Demarcation.
7	§ 1910.1024(f)(1)(i), (ii), and (iii) Methods of Compliance—Written Exposure Control Plan.	§ 1926.1124(f)(1)(i), (ii), and (iii) Methods of Compliance—Written Exposure Control Plan.	§ 1915.1024(f)(1)(i), (ii), and (iii) Methods of Compliance—Written Exposure Control Plan.

COLLECTIONS OF INFORMATION REQUIREMENTS IN THE FINAL STANDARD—Continued

Number	General industry	Construction industry	Maritime industry
8	§ 1910.1024(g)(2) Respiratory Protection Program.	§ 1926.1124(g) Respiratory Protection Program.	§ 1915.1024(g) Respiratory Protection Program.
9	§ 1910.1024(h)(2)(v) Personal Protective Clothing and Equipment—Removal and Storage.	§ 1926.1124(h)(2)(v) Personal Protective Clothing and Equipment—Removal and Storage.	§ 1915.1024(h)(2)(v) Personal Protective Clothing and Equipment—Removal and Storage.
10	§ 1910.1024(h)(3)(iii) Personal Protective Clothing and Equipment—Cleaning and Replacement.	§ 1926.1124(h)(3)(iii) Personal Protective Clothing and Equipment—Cleaning and Replacement.	§ 1915.1024(h)(3)(iii) Personal Protective Clothing and Equipment—Cleaning and Replacement.
11	§ 1910.1024(j)(3)(i) and (ii) Housekeeping—Disposal.	§ 1926.1124(j)(3) Housekeeping—Disposal.	§ 1915.1024(j)(3) Housekeeping —Disposal.
12	§ 1910.1024(k)(1), (2), and (3) Medical Surveillance.	§ 1926.1124(k)(1), (2), and (3) Medical Surveillance.	§ 1915.1024(k)(1), (2), and (3) Medical Surveillance.
13	§ 1910.1024(k)(4) Medical Surveillance—Information Provided to the PLHCP.	§ 1926.1124(k)(4) Medical Surveillance—Information Provided to the PLHCP.	§ 1915.1024(k)(4) Medical Surveillance—Information Provided to the PLHCP.
14	§ 1910.1024(k)(5)(i), (ii), and (iii) Medical Surveillance—Licensed Physician's Written Medical Report for the Employee.	§ 1926.1124(k)(5)(i), (ii), and (iii) Medical Surveillance— Licensed Physician's Written Medical Report for the Employee.	§ 1915.1024(k)(5)(i), (ii), and (iii) Medical Surveillance—Licensed Physician's Written Medical Report for the Employee.
15	§ 1915.1024(k)(6) Medical Surveillance—Licensed Physician's Written Medical Opinion for the Employer.	§ 1926.1124(k)(6) Medical Surveillance—Licensed Physician's Written Medical Opinion for the Employer.	§ 1915.1024(k)(6) Medical Surveillance—Licensed Physician's Written Medical Opinion for the Employer.
16	§ 1910.1024(k)(7) Medical Surveillance—Referral to the CBD Diagnostic Center.	§ 1926.1124(k)(7) Medical Surveillance—Referral to the CBD Diagnostic Center.	§ 1915.1024(k)(7) Medical Surveillance—Referral to the CBD Diagnostic Center.
17	§ 1910.1024(l)(1) and (2) Medical Removal.	§ 1926.1124(l)(1) and (2) Medical Removal.	§ 1915.1024(l)(1) and (2) Medical Removal.
18	§ 1910.1024(m)(1) Communication of hazards.	§ 1926.1124(m)(1) Communication of hazards.	§ 1915.1024(m)(1) Communication of hazards.
19	§ 1910.1024(m)(2) Warning Signs	N/A	§ 1915.1024(m)(2) Warning Signs.
20	§ 1910.1024(m)(3) Warning labels	§ 1926.1124(m)(2) Warning labels	§ 1915.1024(m)(3) Warning labels.
21	§ 1910.1024(m)(4)(iv) Employee Information.	§ 1926.1124(m)(3)(iv) Employee Information.	§ 1915.1024(m)(4)(iv) Employee Information.
22	§ 1910.1024(n)(1)(i), (ii), and (iii) Recordkeeping—Air Monitoring Data.	§ 1926.1124(n)(1)(i), (ii), and (iii) Recordkeeping—Air Monitoring Data.	§ 1915.1024(n)(1)(i), (ii), and (iii) Recordkeeping—Air Monitoring Data.
23	§ 1910.1024(n)(2)(i), (ii), and (iii) Recordkeeping—Objective Data.	§ 1926.1124(n)(2)(i), (ii), and (iii) Recordkeeping—Objective Data.	§ 1915.1024(n)(2)(i), (ii), and (iii) Recordkeeping—Objective Data.
24	§ 1910.1024(n)(3)(i), (ii), and (iii) Recordkeeping—Medical Surveillance.	§ 1926.1124(n)(3)(i), (ii), and (iii) Recordkeeping—Medical Surveillance.	§ 1915.1024(n)(3)(i), (ii), and (iii) Recordkeeping—Medical Surveillance.
25	§ 1910.1024(n)(4)(i) and (ii) Recordkeeping—Training.	§ 1926.1124(n)(4)(i) and (ii) Recordkeeping—Training.	§ 1915.1024(n)(4)(i) and (ii) Recordkeeping—Training.
	§ 1910.1024(n)(5)(i) and (ii) Recordkeeping—Employee Access to Records.	§ 1926.1124(n)(5)(i) and (ii) Recordkeeping—Employee Access to Records.	§ 1915.1024(n)(5)(i) and (ii) Recordkeeping—Employee Access to Records.
	§ 1910.1024(n)(6) Recordkeeping—Transfer of Records.	§ 1926.1124(n)(6) Recordkeeping—Transfer of Records.	§ 1915.1024(n)(6) Recordkeeping—Transfer of Records.

Title: Beryllium Standards for General Industry (29 CFR 1910.1024), Construction (29 CFR 1926.1124), and Maritime (29 CFR 1915.1024).

Affected Public: Business and other for profit.

Number of Responses: 246,656.

Frequency of Response: Various.

Estimated Total Burden Hours: 194,261.

Estimated Costs (Operation and Maintenance): $46,158,266.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this rule.

Signed at Washington, DC, on February 26, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, the Occupational Safety and Health Administration amends 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—[AMENDED]

■ 1. The authority citation for part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Public Law 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

Subpart A—General

■ 2. Amend section 1910.8 by adding to the table, in the proper numerical sequence, the entry ''1910.1024'' to read as follows:

§ 1910.8 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * * * *	
1910.1024	1218–0267
* * * * *	

PART 1915—[AMENDED]

■ 3. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Subpart A—General

■ 4. Amend section 1915.8 by adding to the table, in the proper numerical sequence, the entry ''1915.1024'' to read as follows:

§ 1915.8 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * * * *	
1915.1024	1218–0267
* * * * *	

* * * * *

PART 1926—[AMENDED]

■ 5. The authority citation for part 1926 is revised to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

Subpart A—General

■ 6. Amend § 1926.5 by adding to the table, in the proper numerical sequence, the entry ''1926.1124'' to read as follows:

§ 1926.5 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
* * * * *	
1926.1124	1218–0267
* * * * *	

* * * * *

[FR Doc. 2018–04579 Filed 3–6–18; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2017–0472; FRL–9975–19–OAR]

RIN 2060–AT53

Protection of Stratospheric Ozone: Revision to References for Refrigeration and Air Conditioning Sector To Incorporate Latest Edition of Certain Industry, Consensus-Based Standards; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) received adverse comment on the direct final rule titled ''Protection of Stratospheric Ozone: Revision to References for Refrigeration and Air Conditioning Sector to Incorporate Latest Edition of Certain Industry, Consensus-based Standards,'' published on December 11, 2017. Therefore, through this document we are withdrawing that direct final rule.

DATES: The direct final rule published at 82 FR 58122 on December 11, 2017 is withdrawn effective March 7, 2018.

FOR FURTHER INFORMATION CONTACT: Chenise Farquharson, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–7768; email address: *farquharson.chenise@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA received adverse comment on the direct final rule ''Protection of Stratospheric Ozone: Revision to References for Refrigeration and Air Conditioning Sector to Incorporate Latest Edition of Certain Industry, Consensus-based Standards,'' published on December 11, 2017 (82 FR 58122). The direct final rule stated that if the Agency received adverse comment by January 25, 2018, the direct final rule would not take effect and EPA would publish a timely withdrawal in the **Federal Register**. Because we received adverse comment on that direct final rule during that comment period we are withdrawing the direct final rule in this document. We will address all significant comments in any subsequent final action, which would be based on the parallel proposed rule also published on December 11, 2017 (82 FR 58154). As stated in the direct final rule and the parallel proposed rule, there will not be a second comment period on this action.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Recycling, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: February 28, 2018.

E. Scott Pruitt,

Administrator.

Accordingly, the amendments to appendix R to subpart G of 40 CFR part 82 published on December 11, 2017 (82 FR 58122) are withdrawn effective March 7, 2018.

[FR Doc. 2018–04521 Filed 3–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0257; FRL–9973–44]

Fluopicolide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluopicolide in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes several previously established tolerances that are superseded by this final rule. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 7, 2018. Objections and requests for hearings must be received on or before May 7, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0257, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs

Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

Michael L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0257 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 7, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0257, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, June 22, 2016 (81 FR 40594) (FRL–9947–32), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8464) by IR–4 Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.627 be amended by establishing tolerances for residues of the fungicide, fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl] benzamide], including its metabolites and degradates, in or on the commodities: Basil, dried leaves at 200 parts per million (ppm); basil, fresh leaves at 30 ppm; bean, succulent at 0.9 ppm; citrus, dried pulp at 0.048 ppm; citrus, oil at 1.94 ppm; hop, dried cones at 15 ppm; fruit, citrus, group 10–10 at 0.02 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; and vegetable, fruiting, crop group 8–10 at 1.60 ppm. That document referenced a summary of the petition prepared by Valent, the registrant, which is available in the docket, *http://www.regulations.gov.* Two similar anonymous public comments were received in response to the notice of filing. The Agency's response to the comments is included in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing certain tolerances that differ from what the petitioner requested. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of, and to make a determination on aggregate exposure for fluopicolide including exposure resulting from the tolerances established by this action.

Fluopicolide shares a metabolite, 2,6-dichlorobenzamide (BAM), with another active ingredient, dichlobenil. Residues of BAM are assessed independently of fluopicolide and dichlobenil because it has its own toxicity database and endpoints of concern. The BAM assessment considers residues resulting from both fluopicolide and dichlobenil uses. EPA's safety finding for

fluopicolide considers the aggregate exposures to fluopicolide alone as well as the aggregate exposure to BAM from both fluopicolide and dichlobenil uses.

A. Toxicological Profile

EPA has evaluated the available toxicity database and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fluopicolide. Fluopicolide has low acute toxicity by the oral, dermal, and inhalation routes. Following subchronic and chronic exposures, increased liver weights and/or liver hypertrophy were observed in rats and mice. Additional liver lesions were seen in mice, including oval cell proliferation in a 90-day oral toxicity study and altered cell foci in the carcinogenicity study. Treatment-related effects in rats also included kidney and thyroid effects; however, these effects were not seen consistently across studies in the fluopicolide database. In the 28-day oral toxicity study in rats, there were indications of nephrotoxicity including pale kidneys and microscopic lesions (granulation, proteinaceous material, and hydronephrosis). Kidney effects were not observed in any other studies, except the reproduction toxicity study where slightly increased organ weights and kidney lesions were observed in parental animals. Thyroid toxicity was only observed in the combined chronic/carcinogenicity study in rats and consisted of increased thyroid weights, gross pathological observation of enlarged thyroids, and increased incidence of cystic follicular hyperplasia in males (slight to moderate severity).

Evidence of increased quantitative susceptibility was seen in the rat developmental toxicity study. Developmental effects (delayed ossification and fetal growth) were only seen at a relatively high dose (700 mg/kg/day) in the absence of maternal effects. There was no evidence of susceptibility in the rabbit developmental toxicity and rat reproduction toxicity studies. In the rabbit developmental toxicity study, late abortions/premature deliveries were observed at 60 mg/kg/day. Additional effects at this dose included late maternal deaths and decreased crown rump length in fetuses. In the rat reproduction toxicity study, offspring effects (decreased body weight) were seen in the presence of parental effects (kidney effects).

There is no evidence of neurotoxicity, immunotoxicity, or mutagenicity in the fluopicolide toxicity database. Due to the absence of treatment-related tumors in two adequate rodent carcinogenicity studies, fluopicolide is classified as ''Not Likely to be Carcinogenic to Humans''.

BAM. Acute toxicity studies on BAM demonstrated moderate acute toxicity via the oral route of exposure. In subchronic and chronic toxicity studies, the primary oral effects seen in the rat and dog were body weight changes. Adverse liver effects, including hepatocellular alterations and increased liver weights, were also observed. Toxicity to the olfactory sensory neurons has been observed following intraperitoneal exposure of mice to BAM, indicating potential neurotoxicity; however, no effects on the olfactory system were observed via the oral route. There is no evidence that BAM is either mutagenic or clastogenic nor is there evidence of endocrine mediated toxicity. A BAM combined chronic toxicity/carcinogenicity study in the rat is available; however, in the absence of a carcinogenicity study data for a second species, EPA has assumed that BAM's carcinogenic potential is similar to that of dichlobenil, the parent compound having the greatest carcinogenicity potential. Dichlobenil is classified as ''Group C, possible human carcinogen.'' Therefore, EPA has concluded that quantification of cancer risk using a non-linear approach (*i.e.,* RfD) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to dichlobenil, and therefore, to BAM.

Specific information on the studies received and the nature of the adverse effects caused by fluopicolide and BAM, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: Fluopicolide and 2,6-Dichlorobenzamide (BAM). Human Health Risk Assessment to Support Registration for Application of Fluopicolide on Basil, Succulent Bean, Hops, Small Vine Climbing Subgroup 13–07F, and Citrus Fruit Group 10–10 and Crop Group Conversion for Fruiting Vegetables 8–10, dated December 5, 2017 at pages 19–25 in docket ID number EPA–HQ–OPP–2016–0257.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fluopicolide and BAM used for human risk assessment is shown in Table 1 and Table 2, respectively, of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOPICOLIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	An endpoint attributable to a single dose was not identified from the available data.		
Chronic dietary (All populations)	Maternal NOAEL = 20 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1X	cRfD = cPAD = 0.2 mg/kg/day.	Developmental Toxicity Study in Rabbits. LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, and decreased food consumption. Co-critical: Chronic/Oncogenicity Study in Rats. NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on increased thyroid weight and increased incidence of thyroid lesions.
Incidental oral short- and intermediate-term (1–30 days, and 1–6 months).	Maternal NOAEL = 20 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1X	LOC for MOE <100	Developmental Toxicity Study in Rabbits. LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body-weight gain.
Dermal short- and intermediate-term (1–30 days, and 1–6 months).	Maternal NOAEL = 20 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1X (when applicable). DAF = 5%	LOC for MOE <100	Developmental Toxicity Study in Rabbits. LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption and body-weight gain. Co-critical: Chronic/Oncogenicity Study in Rats. NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on increased thyroid weight and increased incidence of thyroid lesions.
Inhalation short- and intermediate-term (1–30 days, and 1–6 months).	Maternal NOAEL = 20 mg/kg/day. Inhalation assumed equivalent to oral. UF_A = 10x UF_H = 10x FQPA SF = 1X, when applicable	LOC for MOE <100	Developmental Toxicity Study in Rabbits. LOAEL (maternal) = 60 mg/kg/day based on death, abortions/premature deliveries, decreased food consumption. Co-critical: Chronic/Oncogenicity Study in Rats. NOAEL = 31.5 mg/kg/day. LOAEL = 109.4 mg/kg/day based on and increased thyroid weight and increased incidence of thyroid lesions.
Cancer (Oral, dermal, inhalation).	Classification: ''Not Likely to be Carcinogenic to Humans'' based on the absence of treatment-related tumors in two adequate rodent carcinogenicity studies.		

Point of departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

TABLE 2—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR 2,6-DICHLOROBENZAMIDE (BAM) FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	LOAEL = 100 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF/UF_L= 10x	aRfD = aPAD = 0.1 mg/kg/day.	Dose-range finding assay for *in vivo* mouse erythrocyte micronucleus assay. LOAEL = 100 mg/kg/day based on lethargy after a single oral dose.
Chronic dietary (All populations)	NOAEL = 4.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1X	cRfD = cPAD = 0.045 mg/kg/day.	Chronic toxicity (dog). LOAEL = 12.5 mg/kg/day based on decreased body weight and body weight gain.
Incidental oral short- and intermediate-term (1–30 days, and 1–6 months).	NOAEL = 14 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1X	LOC for MOE <100	90-day oral (rat). LOAEL = 49 mg/kg/day based on decreased body weight gain (M) and reduced skeletal muscle tone (day 4 only in males; days 91 and 92 only in females).

TABLE 2—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR 2,6-DICHLOROBENZAMIDE (BAM) FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dermal short- and intermediate-term (1–30 days and 1–6 months).	NOAEL = 25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1X (when applicable)	LOC for MOE <100	5-day dermal using dichlobenil (mouse; literature study). LOAEL = 50 mg/kg/day based on olfactory epithelial damage.
Inhalation short- and intermediate-term (1–30 days and 1–6 months).	NOAEL = 12.1 mg/m^3. UF_A = 3X UF_H = 10X FQPA SF = 1X (when applicable)	LOC for MOE <100	28-day inhalation using dichlobenil (rat). LOAEL = 21 mg/m^3 based on nasal degeneration.
Cancer	Classification: unclassified; parent herbicide dichlobenil classified as ''Group C, possible human carcinogen'' with RfD approach utilized for quantification of human risk		

UF = uncertainty factor, UF_A = extrapolation from animal to human (interspecies), UF_H = potential variation in sensitivity among members of the human population (intraspecies), FQPA SF = FQPA Safety Factor, UF_L = use of a LOAEL to extrapolate a NOAEL, NOAEL = no-observed adverse-effect level, LOAEL = lowest-observed adverse-effect level, RfD = reference dose (a = acute, c = chronic), PAD = population-adjusted dose, MOE = margin of exposure, LOC = level of concern, N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopicolide and its metabolite BAM, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopicolide tolerances in 40 CFR 180.627 and the exposures from BAM from existing dichlobenil tolerances under 40 CFR 180.231. EPA assessed dietary exposures from fluopicolide and its metabolite BAM in food as follows:

a. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

i. *Fluopicolide.* A toxicity endpoint attributable to a single dose has not been identified in the toxicological studies for fluopicolide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *BAM.* Such effects were identified for BAM. In estimating acute dietary exposures to BAM, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. EPA conducted a partially refined acute dietary exposure assessment. As to residue levels in food, EPA assumed maximum BAM residue from either the fluopicolide or dichlobenil field trial data. The acute assessment assumed 100% crop treated for all commodities, except apples, blueberries, cherries, peaches, pears, and raspberries. These values reflect the dichlobenil percent crop treated estimates as fluopicolide is not registered for application to these crops. Default processing factors were used for commodities where empirical processing data were not available

b. *Chronic exposure*—i. *Fluopicolide.* In estimating chronic dietary exposure, EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID, Version 3.16). The software uses 2003–2008 food consumption data from the U.S. Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). The chronic analysis assumed tolerance-level residues or maximum field trial residues, 100% crop treated, default processing factors, and modeled drinking water estimates.

ii. *BAM.* In estimating chronic dietary exposures, EPA conducted a partially refined chronic dietary exposure assessment using DEEM–FCID (ver. 3.16) and USDA's NHANES/WWEIA (2003 through 2008). The chronic dietary assessment assumed the maximum BAM residue from either the fluopicolide or dichlobenil field trial data. The chronic assessment assumed 100% crop treated for all commodities except apple. These values reflect the dichlobenil percent crop treated estimates as fluopicolide is not registered for application to these crops. Default processing factors were used for commodities where empirical processing data were not available.

c. *Cancer.* Fluopicolide has been classified as ''not likely to be carcinogenic to humans.'' Therefore, a cancer dietary exposure assessment was not conducted for the parent fluopicolide. Additionally, EPA has determined BAM's potential for carcinogenicity is similar to that of dichlobenil, which is classified as ''group C, possible human carcinogen.'' Quantification of cancer risk is based on the reference dose (RfD) approach which requires comparison of the chronic exposure to the RfD. Using this methodology will adequately account for all chronic toxic effects, including carcinogenicity, likely to result from exposure to BAM. Hence, a separate cancer exposure assessment to BAM was not conducted.

d. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be

submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

EPA did not use anticipated residue or PCT information in the dietary assessment for fluopicolide. Tolerance level residues or maximum field trial residues and 100 PCT were assumed for all food commodities.

EPA used anticipated residues and PCT information for the acute and chronic dietary risk assessments for BAM. The BAM acute assessment assumed 100 PCT for all commodities except apples (2.5%), blueberries (2.5%), cherries (2.5%), peaches (2.5%), pears (5%) and raspberries (20%). The BAM chronic assessment assumed 100 PCT for all commodities except apples (1%). These values reflect the dichlobenil percent crop treated estimates as fluopicolide is not registered for application to these crops. Default processing factors were used for commodities where empirical processing data were not available.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 2.5%. The maximum PCT figure is the highest observed maximum value reported within the most recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except for situations in which the maximum PCT is less than 2.5%. In cases where the estimated value is less than 2.5% but greater than 1%, the average and maximum PCT used are 2.5%. If the estimated value is less than 1%, 1% is used as the average PCT and 2.5% is used as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which BAM may be found in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fluopicolide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluopicolide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide*.

No monitoring data are available for fluopicolide or BAM. Drinking water residues of fluopicolide (parent) estimates were generated using maximum annual application rate of 0.375 lbs ai/acre, and the surface water concentration calculator (SWCC version 1.106) for surface water, and the pesticide root zone model for groundwater (PRZM–GW version 1.07). The estimated drinking water concentrations (EDWCs) of fluopicolide for non-cancer chronic exposures are 12.90 ppb for surface water and 103 ppb for ground water.

Estimates of BAM residues in drinking water were generated using the Provisional Cranberry Model (PCM) and Pesticide Water Concentration Calculator (PWC) for surface water, and the PRZM–GW model for groundwater. BAM drinking water concentrations can result from the application of dichlobenil and fluopicolide. The BAM estimates resulting from application of dichlobenil are higher than those resulting from application of fluopicolide. The acute and chronic analyses assumed a BAM drinking water concentration of 239 ppb and 206 ppb, respectively, based on the PRZM–GW model from turf use (worst case scenario).

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment for BAM, the water concentration value of 239 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 206 ppb and 103 ppb were used to assess the contribution to drinking water for BAM and fluopicolide, respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluopicolide is currently registered for the following uses that could result in residential exposures: Residential turf grass and recreational sites; however, all registered fluopicolide product labels with residential use sites require that handlers wear specific clothing and/or use personal protective equipment (PPE). Therefore, the Agency has concluded that these products are not intended to be used by homeowners and did not conduct residential handler assessments. There is potential for post-application exposure for individuals entering areas that have been previously treated with fluopicolide. EPA assessed the following residential exposure scenarios for fluopicolide:

Post-application exposure to children, youth, and adults from treated lawns, turf, gardens, trees, and golf courses.

In the case of BAM, the Agency considered the potential for residential exposures to BAM from dichlobenil and fluopicolide uses. As noted above, fluopicolide is registered for use on residential turfgrass and recreational

sites, such as golf courses. These uses may also result in short-term dermal post-application exposure to BAM to youth and adults from treated gardens. Post-application exposures from treated turf is not expected since BAM was not detected in turf transferable residue studies with fluopicolide.

As discussed above, residential handler assessments were not performed for fluopicolide; therefore, a residential handler assessment for BAM is also not required. Residential handler exposure to BAM resulting from the application of dichlobenil is not expected. While dichlobenil is currently registered for residential uses on ornamental plants, they are approved for professional applicator use only. Post-application exposure of adults and children to dichlobenil and BAM exposure from the use of dichlobenil products on ornamental plants is expected to be negligible and, therefore, was not assessed.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide*.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluopicolide and any other substances. Fluopicolide shares a common metabolite, BAM, with dichlobenil. EPA's assessment of BAM from pesticide use of fluopicolide and dichlobenil has been updated for the current assessment and no risks of concern were identified. For the purposes of this tolerance action, therefore, EPA has not assumed that fluopicolide (parent) and its metabolite BAM have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at: *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* For fluopicolide, there is no evidence of increased susceptibility in the rabbit developmental or rat reproduction toxicity studies. There was evidence of increased quantitative susceptibility in the rat developmental toxicity study; however, the developmental effects were only seen at a relatively high dose (700 mg/kg/day), the effects are well-characterized with a clear NOAEL, and the selected endpoints are protective of the observed effects. For BAM, there was no evidence of increased susceptibility in the rabbit developmental study.

3. *Conclusion for fluopicolide.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluopicolide is complete.

ii. There is no indication that fluopicolide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence of increased susceptibility in the rabbit developmental or rat reproduction toxicity studies. Although there is evidence of increased quantitative susceptibility in the rat developmental toxicity study, the developmental effects were only seen at a relatively high dose, the effects are well characterized with a clear NOAEL, and the selected endpoints are protective of the observed effects. There are no residual uncertainties concerning prenatal and postnatal toxicity for fluopicolide.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to fluopicolide in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by fluopicolide.

4. *Conclusion for BAM:* EPA is retaining the FQPA SF of 10X for the acute dietary exposure scenario for the general population to account for the use of a LOAEL to extrapolate to a NOAEL. For all other exposure scenarios, the FQPA SF has been reduced to 1X. That decision is based on the following findings:

i. Acute, subchronic, and chronic oral studies are available for BAM and utilized for endpoint selection. For the dermal and inhalation routes of exposures, the Agency is relying on dichlobenil toxicity data, where olfactory toxicity was observed. Based on a comparison of toxicity via the intraperitoneal route of exposure, higher doses of BAM are needed to induce levels of olfactory toxicity that are similar to those caused by dichlobenil; therefore, the endpoints based on dichlobenil are considered protective of potential BAM toxicity.

ii. Although there is potential neurotoxicity in the olfactory system from BAM exposure, concern is low since the effects are well-characterized and selected endpoints based on dichlobenil are protective of these effects.

iii. There is no evidence of increased susceptibility in the developmental rabbit study.

iv. The assessments of BAM are unlikely to underestimate exposure and risks. Acute and chronic dietary assessments assumed maximum BAM residues from field trial data as well as conservative (protective) assumptions of BAM exposure in drinking water. Similar conservative assumptions were used to assess post-application exposure of children to BAM.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate

PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected for fluopicolide. Therefore, fluopicolide is not expected to pose an acute risk.

In the case of BAM, using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to BAM will occupy 81% of the aPAD for children 1 to <2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopicolide from food and water will utilize 15% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. In the case of BAM, chronic exposure to BAM from food and water will utilize 26% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluopicolide or BAM is not expected.

3. *Short-term/intermediate-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluopicolide is currently registered for uses that could result in short-term residential exposure and may result in post-application exposures of BAM. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluopicolide and BAM. There are no intermediate-term exposures expected for fluopicolide or BAM; however, the short-term aggregate assessment is considered protective of intermediate-term since the same endpoints were selected to evaluate short- and intermediate-term exposures.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined fluopicolide short-term food, water, and residential exposures for children 1–2 years old and children 6–11 years old result in aggregate MOEs of 490 and 670, respectively. In addition, an aggregate assessment conducted for adults resulted in an MOE of 500. Because EPA's level of concern for fluopicolide is a MOE of 100 or below, these MOEs are not of concern. For BAM, dermal and inhalation exposures may not be combined with oral exposures due to different toxicological effects used as the basis of the selected endpoints. As a result, the aggregate risk estimates are equivalent to the dietary risk estimates and are not of concern.

4. *Aggregate cancer risk for U.S. population.* Due to the absence of treatment-related tumors in two adequate rodent carcinogenicity studies, fluopicolide is classified as ''not likely to be carcinogenic to humans''; therefore, a quantitative cancer assessment is not required.

EPA has assumed BAM's potential for carcinogenicity is similar to that of dichlobenil, which is classified as ''group C, possible human carcinogen.''

Quantification of cancer risk is based on the RfD approach which requires comparison of the chronic exposure to the RfD. Therefore, the chronic risks discussed in Unit III.E.2. are considered protective of both non-cancer and cancer effects.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluopicolide residues, including its metabolite.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectroscopy (LC/MS/MS) enforcement method RM–43C–2) is available to enforce the tolerance expression. Enforcement methodology (LC/MS/MS Method, Methods 00782, 00782/M001, 00782/M002, and 00782/M003) is available to adequately enforce the tolerance expression for BAM.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established MRLs for basil, hop, bean, or citrus. The fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F tolerance is harmonized with Codex grape MRL. Codex established a tolerance for ''Fruiting vegetables other than cucurbits'' at 1.0 ppm. Based on the field trial data and the Organization for Economic Cooperation and Development (OECD) calculator, using the labeled application scenario may result in residues greater than 1.0 ppm in/on fruiting vegetables. As a result, harmonization of the vegetable, fruiting, crop group 8–10 tolerance with the Codex MRL could result in food containing residues exceeding tolerances despite legal application of the pesticide, which would not be appropriate.

C. Response to Comments on Notice of Filing

Two anonymous public comments were received on the notice of filing that center around opposing IR–4 and the uses of pesticides (toxic chemicals), such as fluopicolide, on food commodities including grape, citrus and basil, claiming these chemicals are harmful to human health.

EPA's Response: Aside from assertions that chemicals are toxic and linked to adverse human health effects, the commenters provided no information supporting these assertions that EPA could use to evaluate the safety of fluopicolide or BAM. The existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency evaluates all available data and assesses the potential for risk from aggregate exposure to the pesticide. As discussed in this rule, EPA examined all relevant data for fluopicolide and BAM and has concluded that there is a reasonable certainty that no harm will result from

aggregate human exposure to fluopicolide, including residues of its metabolite BAM. The commenters have presented no information to support reconsideration of that conclusion.

D. Revisions to Petitioned-For Tolerances

The established tolerances differ from the petitioner's requests as follows:

i. EPA is establishing a tolerance for ''basil fresh leaves'' at 40 ppm, rather than 30 ppm, as a result of removing certain inadequate residue data from the tolerance calculation.

ii. The petitioner requested a tolerance for residues of fluopicolide for the general category of ''bean, succulent'' at 0.9 ppm. This term is defined in EPA's regulations as including a variety of beans in succulent form (*see* 40 CFR 180.1(g)). At this time, EPA is establishing tolerances for only those beans included in the succulent bean definition that are also supported by the submitted snap bean field trial data. Those specific succulent beans are the following: ''bean, moth, succulent'', ''bean, yardlong, succulent'' (species of the *Vigna* genus), ''bean, runner, succulent'', ''bean, snap, succulent'', and ''bean, wax, succulent'' (species of the *Phaseolus* genus). Tolerances for the other beans contained within the definition of ''bean, succulent'' as contained in 180.1(g) are not being established at this time due to lack of adequate residue data. In addition, the Agency has adjusted the tolerance values for these beans (from 0.9 to 0.90) to be consistent with its current guidance on significant figures.

iii. Because all reported residue data on crops supporting the ''fruit, citrus, crop group 10–10'' were below the 0.01 ppm limit of quantitation, EPA is establishing a tolerance for this group at 0.01 ppm.

iv. The petitioner's requested tolerances for ''citrus, dried pulp'' at 0.048 ppm and ''citrus, oil'' at 1.94 ppm were based on the petitioned-for tolerance level for citrus group 10–10 at 0.02 ppm. Using the 0.01 ppm tolerance level for group 10–10 as indicated in the previous paragraph and applying appropriate processing factors yields tolerances of 0.03 for citrus, dried pulp and 1.0 for citrus, oil.

V. Conclusion

Therefore, tolerances are established for residues of the fungicide fluopicolide [2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates (determined by measuring the parent only), in or on Basil, fresh leaves at 40 ppm; Basil, dried leaves at 200 ppm; Bean, moth, succulent at 0.90 ppm; Bean, snap, succulent at 0.90 ppm; Bean, runner, succulent at 0.90 ppm; Bean, wax, succulent at 0.90 ppm; Bean, yardlong, succulent at 0.90 ppm; Citrus, dried pulp at 0.03 ppm; Citrus, oil at 1.0 ppm; Fruit, citrus, crop group 10–10 at 0.01 ppm; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; Hop, dried cones at 15 ppm; and Vegetable, fruiting, crop group 8–10 at 1.6 ppm. Also, the tolerances for ''Grape'' and ''Vegetable, fruiting, group 8'' in the table in paragraph (a) and for ''Hop, dried, cones'' in the table in paragraph (b) are deleted as they are superseded by this action. Finally, in an additional housekeeping measure, the expired tolerances for ''Potato, processed potato waste'' at 1.0 ppm and ''Vegetable, tuberous and corm, subgroup 1C'' at 0.3 ppm are deleted since they have no effect anymore and have been replaced by lower tolerances for those commodities as discussed in the **Federal Register** of September 26, 2016 (81 FR 65924).

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.627:
■ a. In the table to paragraph (a):
■ i. Add alphabetically the entries ''Basil, dried leaves''; ''Basil, fresh leaves''; ''Bean, moth, succulent''; ''Bean, runner, succulent''; ''Bean, snap, succulent''; ''Bean, wax, succulent''; ''Bean, yardlong, succulent''; ''Citrus, dried pulp''; ''Citrus, oil''; ''Fruit, citrus, crop group 10–10''; and ''Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F'';
■ ii. Remove the entry for ''Grape'';
■ iii. Add alphabetically the entry ''Hop, dried cones'';
■ iv. Remove the entry for ''Potato, processed potato waste [1] '';
■ v. Add alphabetically the entry ''Vegetable, fruiting, crop group 8–10''; and
■ vi. Remove the entries for ''Vegetable, fruiting, group 8'' and ''Vegetable, tuberous and corm, subgroup 1C [1] '' and footnote 1 of the table.
■ b. Revise paragraph (b).

The additions and revision read as follows:

§ 180.627 Fluopicolide; tolerances for residues.

(a) * * *

Commodity	Parts per million
Basil, dried, leaves	200
Basil, fresh leaves	40
Bean, moth, succulent	0.90
Bean, runner, succulent	0.90
Bean, snap, succulent	0.90
Bean, wax, succulent	0.90
Bean, yardlong, succulent	0.90
* * * * *	
Citrus, dried pulp	0.03
Citrus, oil	1.0
Fruit, citrus, crop group 10–10	0.01
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
* * * * *	
Hop, dried cones	15
* * * * *	
Vegetable, fruiting, crop group 8–10	1.6
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 752

RIN 0412–AA85

USAID Acquisition Regulation (AIDAR) Regarding Government Property—USAID Reporting Requirements

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing a final rule to amend the USAID Acquisition Regulation (AIDAR) that clarifies accountability for all mobile Information Technology equipment.

DATES: *Effective date:* April 6, 2018.

FOR FURTHER INFORMATION CONTACT: Carol Ketrick, Telephone: 202–567–4676 or Email: *cketrick@usaid.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 2016, USAID published a proposed rule at 81 FR 85916 revising the Agency for International Development Acquisition Regulation (AIDAR) to strengthen and clarify existing policy and procedures for accountability of all USAID mobile Information Technology (IT) equipment and access to agency facilities and information systems. This final rule clarifies the reporting requirements for all mobile IT equipment in the AIDAR clause section 752.245–70, Government Property—USAID reporting requirements. The clause is amended to clarify that all mobile Information Technology (IT) equipment is identified as accountable. This includes both mobile IT equipment that is USAID-owned and furnished to the contractor, as well as contractor acquired mobile IT equipment, title to which vests in the U.S. Government.

II. Discussion and Analysis

One respondent submitted a comment on the proposed rule.

USAID reviewed and considered the public comment in the development of this final rule. A discussion of the comment received is provided as follows:

Comment: The respondent suggested alternative clarifying revisions to the language in AIDAR section 752.245–70. Specifically, the comment stated:

It would be clearer if the definition of ''government property'' in (a)(2) was updated to include contractor acquired mobile IT equipment. Either by updating the clause itself (''The term Government property, . . . , shall mean Government-furnished property, non-expendable personal property title to which vests in the U.S. Government, and all contractor acquired mobile IT equipment'') or by updating the definition of non-expendable personal property to include mobile IT equipment regardless of service life or unit cost (''Non-expendable personal property, for purposes of this contract, is defined as personal property . . . and that has a unit cost of more than $500. Non-expendable personal property includes mobile IT equipment regardless of expected service life or unit cost'').

Response: The comment was considered and revisions have been made to this final AIDAR rule.

The format of the required Annual Report of Government Property in Contractor's Custody is corrected to read that all mobile IT equipment is accountable and must be reported. The format of the required Annual Report of Government Property in the Contractor's Custody is corrected to read that all Contractor acquired mobile IT equipment must be reported.

III. Regulatory Planning and Review

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866 Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

V. Paperwork Reduction Act

The rule clarifies but does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 75

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR chapter 7 as set forth below:

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 2. Revise section 752.245–70 to read as follows:

752.245–70 Government property—USAID reporting requirements.

USAID contracts, except those for commercial items, must contain the following preface and reporting requirement as additions to the appropriate Government Property clause prescribed by (48 CFR) FAR 45.107, per a GAO audit recommendation.

Preface: To be inserted preceding the text of the FAR clause.

Government Property—USAID Reporting Requirements (OCT 2017)

(a)(1) The term Government-furnished property, wherever it appears in the following clause, shall mean (i) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor, and (ii) personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. All mobile Information Technology (IT) equipment, including but not limited to, mobile phones (*e.g.* smartphones), laptops, tablets, and encrypted devices provided as government furnished property, title to which vests in the U.S. Government, are considered accountable personal property.

(2) The term Government property, wherever it appears in the following clause, shall mean Government-furnished property, Contractor acquired mobile IT equipment and non-expendable personal property title to which vests in the U.S. Government under this contract.

(3) Non-expendable personal property, for purposes of this contract, is defined as personal property that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and that has a unit cost of more than $500.

(b) *Reporting Requirement:* To be inserted following the text of the (48 CFR) FAR clause.

Reporting Requirements: The Contractor will submit an annual report on all Government property in a form and manner acceptable to USAID substantially as follows:

Annual Report of Government Property in Contractor's Custody

[Name of Contractor as of (end of contract year), 20XX]

	Motor vehicles	Furniture and furnishings—		Other Government property
		Office	Living quarters	
A. Value of property as of last report				
B. Transactions during this reporting period				
1. Acquisitions (add):				
a. Contractor acquired property [1]				
b. Government furnished [2]				
c. Transferred from others, without reimbursement [3]				
2. Disposals (deduct):				
a. Returned to USAID				
b. Transferred to USAID—Contractor purchased				
c. Transferred to other Government agencies [3]				
d. Other disposals [3]				
C. Value of property as of reporting date				
D. Estimated average age of contractor held property				
	Years	Years	Years	Years

[1] Non-expendable property and all mobile IT equipment.
[2] Government-furnished property listed in this contract as nonexpendable or accountable, including all mobile IT equipment.
[3] Explain if transactions were not processed through or otherwise authorized by USAID.

Property Inventory Verification

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained for Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature _____

Name _____

Title _____

Date _____

(End of clause)

Dated: February 15, 2018.

Mark Walther,

Acting Chief Acquisition Officer.

[FR Doc. 2018–04498 Filed 3–6–18; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG075

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2018 Pacific cod total allowable catch allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 4, 2018, through 1200 hours, A.l.t., April 1, 2018.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea

and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2018 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI is 29,768 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2018 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 28,268 mt and is setting aside the remaining 1,500 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 1, 2018.

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

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

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

Dated: March 2, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–04623 Filed 3–2–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 45
Wednesday, March 7, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2018–C–0617]

GW Cosmetics GmbH; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that we have filed a petition, submitted by GW Cosmetics GmbH, proposing that the color additive regulations be amended to provide for the safe use of silver nitrate in professional-use only cosmetics to color eyebrows and eyelashes.

DATES: Submit either electronic or written comments on the petitioner's environmental assessment by April 6, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 6, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 6, 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–2018–C–0617 for ''GW Cosmetics GmbH; Filing of Color Additive Petition.'' 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: Laura A. Dye, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1275.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 721(d)(1) (21 U.S.C. 379e(d)(1))), we are giving notice that we have filed a color additive petition (CAP No. 8C0312), submitted by GW Cosmetics GmbH, c/o EAS Consulting Group, LLC, 1700 Diagonal Rd., Suite 750, Alexandria, VA 22314. The petition proposes to amend the color additive regulations in 21 CFR part 73 *Listing of Color Additives Exempt From Certification* to provide for the safe use of silver nitrate in professional-use only cosmetics to color eyebrows and eyelashes.

We are reviewing the potential environmental impact of this petition. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), we are placing the environmental assessment submitted

with the petition that is the subject of this notice on public display at the Dockets Management Staff (see **ADDRESSES**) for public review and comment.

We will also place on public display, in the Dockets Management Staff and at *https://www.regulations.gov,* any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on our review, we find that an environmental impact statement is not required, and this petition results in a regulation, we will publish the notice of availability of our finding of no significant impact and the evidence supporting that finding with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: March 1, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04619 Filed 3–6–18; 8:45 am]

BILLING CODE 4164–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4022, 4041, 4043, and 4044

RIN 1212–AB24

Owner-Participant Changes to Guaranteed Benefits and Asset Allocation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) proposes to amend its regulations on guaranteed benefits and asset allocation. These amendments would incorporate statutory changes to the rules for participants with certain ownership interests in a plan sponsor. PBGC seeks public comment on its proposal.

DATES:

Deadline for comments: Comments must be submitted on or before May 7, 2018.

Applicability: Like the provisions of the Pension Protection Act of 2006 (PPA 2006) that this rule would incorporate, the amendments in this proposed rule would be applicable to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 31, 2005, and

(B) under section 4042 of ERISA with respect to which notices of determination are provided under that section after December 31, 2005.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB24, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* (Follow the online instructions for submitting comments.)
- *Email: reg.comments@pbgc.gov.*
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions must include the RIN for this rulemaking (RIN 1212–AB24). Comments received will be posted to *www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Samantha M. Lowen (*lowen.samantha@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–326–4400, extension 3786. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3786.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is necessary to conform the regulations of PBGC to current law and practice. PBGC proposes to incorporate statutory changes affecting guaranteed benefits and asset allocation when a plan has one or more participants with certain ownership interests in the plan sponsor. PBGC's legal authority for this action comes from sections 4002(b)(3), 4022, and 4044 of ERISA. Section 4002(b)(3) authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. Sections 4022 and 4044 authorize PBGC to prescribe regulations regarding the determination of guaranteed benefits and the allocation of assets within priority categories, respectively.

Major Provisions

This proposed rule would amend PBGC's benefit payment regulation by replacing the guarantee limitations applicable to substantial owners with a new limitation applicable to majority owners.[1] Additionally, this proposed rule would amend PBGC's asset allocation regulation by prioritizing funding of all other benefits in priority category 4 ahead of those benefits that would be guaranteed but for the new, owner-participant limitation. The proposed rule also clarifies that plan administrators may continue to use the simplified calculation in the existing rule to estimate benefits funded by plan assets. Finally, it provides new examples to aid in implementation.

Background

PBGC administers the pension insurance program under title IV of ERISA. ERISA sections 4022 and 4044 cover PBGC's guarantee of plan benefits and allocation of plan assets, respectively, under terminated single-employer plans. Special provisions within these sections apply to ''owner-participants,'' who have certain ownership interests in their plan sponsors. PPA 2006 made changes to these provisions. PBGC has been operating in accordance with the amended provisions since they became effective, but has not yet updated its regulations nor issued guidance on implementation. With this rulemaking, PBGC intends to increase transparency into its operations and to clarify for plan administrators the impact of the statutory changes.

Before PPA 2006, the owner-participant provisions applied to any participant who was a ''substantial owner'' at any time within the 60 months preceding the date on which the determination was made. ERISA defines a substantial owner as an individual who owns the entire interest in an unincorporated trade or business, or a partner or shareholder who owns more than 10 percent of the partnership or corporation. PPA 2006 revised the owner-participant provisions, in large part, by making them applicable to ''majority owners'' instead of substantial owners. ERISA defines a majority owner as an individual who owns the entire interest in an unincorporated trade or business, or a partner or shareholder who owns 50 percent or more of the entity.

[1] In this preamble, substantial owners and majority owners are referred to interchangeably as ''owner-participants.''

Guaranteed Benefits Before and After PPA 2006

ERISA section 4022 imposes several limitations on PBGC's guarantee of plan benefits, including the ''phase-in limitation.'' As the name of this limitation suggests, PBGC's guarantee of a plan's benefits is phased in over a specified time period. Before PPA 2006, this time period was drastically different for owner-participants and for all other participants; the benefits of owner-participants were phased in over 30 years, whereas the benefits of non-owner-participants were phased in over five years. In addition, the extent to which an owner-participant's benefit was phased in was unique to each owner-participant and based on the number of years he or she was an active participant in the plan; whereas the extent to which all other participants' benefits were phased in was based on the number of years a plan provision—specifically, one that increased benefits—was in effect before the plan terminated.

PPA 2006 greatly simplified the method for determining PBGC's guarantee of owner-participants' benefits by eliminating the 30-year phase-in and making the five-year phase-in of benefit increases applicable to owner-participants and non-owner-participants alike. PPA 2006 then applies a separate, additional limitation—the ''owner-participant limitation''—to an owner-participant's otherwise guaranteed benefit. This owner-participant limitation is similar to the five-year phase-in limitation on benefit increases, as it is calculated based on a plan's age; however, it is based on the length of time the original plan was in existence, regardless of whether the plan increased benefits, and the phase-in period is 10 years. The owner-participant limitation bears little resemblance to the 30-year phase-in limitation, and the calculations are much simpler. This proposed rule would incorporate these changes to PBGC's benefit payment regulation.

Phase-In Limitation

Sections 4022.25 and 4022.26 of PBGC's benefit payment regulation provide the procedures for calculating the five-year phase-in of benefit increases for non-owner-participants and the 30-year phase-in of all benefits for owner-participants, respectively. Section 4022.25 provides, generally, that benefit increases (as defined in § 4022.2) of non-owner-participants are phased in by the greater of $20 or 20 percent of the increase for each full year the increase was effective. Section 4022.26 provides the much more complicated procedures for calculating the guaranteed benefits of owner-participants—based on a 30-year phase-in—before PPA 2006; different procedures apply depending on whether or not there have been any benefit increases. As explained above, PPA 2006 eliminated the 30-year phase-in limitation and made the five-year phase-in of benefit increases applicable to all participants, including owner-participants. Accordingly, PBGC proposes to amend the benefit payment regulation by removing the distinction between owner-participants and all other participants under § 4022.25, and PBGC proposes to amend § 4022.26 by replacing the 30-year phase-in limitation with a new ''owner-participant limitation,'' as discussed next.

Owner-Participant Limitation

PPA 2006 provided a new formula for determining PBGC's guarantee of an owner-participant's benefit. Under this owner-participant limitation, an owner-participant's guaranteed benefit is limited to the product of the owner-participant's otherwise-guaranteed benefit and a fraction, not to exceed one. The numerator of this fraction equals the number of years that the plan was in existence (from the later of its effective date or adoption date), and the denominator equals 10.

Compared to the 30-year phase-in under the old statute—implemented at § 4022.26 of the benefit payment regulation—the owner-participant limitation is much simpler to calculate and generally provides a much more generous guarantee. Before PPA 2006, PBGC needed to make individualized determinations about the length of time each substantial owner was an active participant in a plan over a 30-year period. Additionally, a substantial owner needed to have been an active participant for at least 30 years in order for his or her benefit to be fully guaranteed (to the extent that other limitations on PBGC's guarantee did not apply). Under PPA 2006, PBGC needs only to calculate a single fraction, based on the age of the plan, and then to multiply the benefit of each majority owner under the plan by that same fraction. In addition, all majority owners' benefits are now fully guaranteed (to the extent that other limitations on PBGC's guarantee do not apply) once a plan has been in existence for 10 years.

Consistent with these statutory changes, PBGC proposes to amend the benefit payment regulation by replacing references to ''substantial owner'' with ''majority owner'' and by revising § 4022.26 to provide the formula for calculating the owner-participant limitation, in the place of the 30-year phase-in limitation.

Asset Allocation in Priority Category 4 Before and After PPA 2006

ERISA section 4044 prescribes the method for allocating a terminated single-employer plan's assets to its benefit liabilities. Under section 4044, plan assets must be allocated to six priority categories (PC1 through PC6, with PC1 being the highest) into which all plan benefits are sorted. Benefits affected by the owner-participant limitation are assigned to priority category 4 (PC4). PPA 2006 changed the method for allocating assets within PC4 when there are benefits affected by the owner-participant limitation.

PC4 includes three kinds of benefits: (1) Guaranteed benefits, other than employee contributions and benefits that could have been in pay status three or more years before a plan's termination (or before the plan sponsor's bankruptcy filing date, for plans subject to ERISA section 4022(g)); (2) benefits that would be guaranteed but for the aggregate limit of ERISA section 4022B; and (3) benefits that would be guaranteed but for the owner-participant limitation (based on substantial ownership before PPA 2006 and majority ownership after PPA 2006).[2] If a plan's assets are sufficient to cover all PC4 benefits or are insufficient to cover any PC4 benefits, the PPA 2006 changes for owner-participants have no bearing on the allocation; however, if assets are sufficient to cover some, but not all, PC4 benefits (*i.e.,* if assets are ''exhausted in PC4''), the allocation rules differ before and after PPA 2006.

Before PPA 2006, if assets were exhausted in PC4, then assets were to be allocated pro rata among all three kinds of PC4 benefits. Under PPA 2006, if assets are exhausted in PC4, then assets must first be allocated to the first two PC4 groups; only if assets cover all benefits in these two groups will any assets be allocated to benefits that

[2] Strictly speaking, this description applies to benefits in ''net PC4,'' given that ''PC4'' (or, more accurately, ''gross PC4'') technically includes the three kinds of benefits listed, as well as all benefits in higher priority categories. Without using the terms ''gross'' or ''net,'' PBGC's asset allocation regulation makes this distinction at paragraph (c) of § 4044.10 (''[t]he value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category''). Nevertheless, PBGC recognizes that colloquial descriptions of benefits in a given priority category usually refer to the net benefits in that category, and this preamble follows that common usage, unless otherwise indicated.

would be guaranteed but for the majority-owner limitation. In accordance with these statutory changes, PBGC proposes to amend the asset allocation regulation by prioritizing assets in PC4 to other benefits ahead of benefits affected by the majority-owner limitation.

Calculation of Estimated Benefits

In a distress termination, § 4022.61 of the benefit payment regulation—implementing section 4041(c)(3)(D) of ERISA—requires plan administrators to limit benefit payments to estimates of the amounts that PBGC is expected to pay, in order to minimize potential overpayments and exhaustion of plan assets before PBGC becomes trustee and is able to assume benefit payments. As trustee, PBGC pays each participant the greater of his or her guaranteed benefit or asset-funded benefit.[3] Accordingly, § 4022.61 requires plan administrators to limit benefits in pay status to the greater of each participant's estimated guaranteed benefit or estimated asset-funded benefit, beginning on the proposed termination date.[4]

Estimated Guaranteed Benefits

A participant's estimated guaranteed benefit is determined as of the proposed termination date and is the portion of the participant's plan benefit (viz., the benefit to which the participant would be entitled under the terms of the plan if the plan did not terminate) that does not exceed the estimated legal limits of PBGC's guarantee. Section 4022.62 of the benefit payment regulation prescribes the method for estimating PBGC's guarantee limitations and for calculating a participant's estimated guaranteed benefit.

As discussed above, the changes under PPA 2006 greatly affected the calculation of guaranteed benefits of owner-participants. Therefore, in order to ensure that administrators of plans with owner-participants understand how to accurately estimate these benefits in distress terminations, PBGC must update the calculation procedures.

Section 4022.62 provides two methods for calculating estimated guaranteed benefits. One method—given at paragraph 4022.62(c)—applies to non-owner-participants, while the other—given at paragraph 4022.62(d)—applies to owner-participants. Both methods' calculations use the amount calculated under paragraph 4022.62(b) as a starting point. Paragraph 4022.62(b) estimates a participant's benefit that would be guaranteed before application of any phase-in limitation. Paragraph 4022.62(c) estimates the effect of the five-year phase-in limitation on the 4022.62(b) amount. Paragraph 4022.62(d) estimates the effect of the 30-year phase-in limitation applicable to owner-participants before PPA 2006 on the 4022.62(b) amount.

In order to reflect the changes to PBGC's guarantee limitations for owner-participants under PPA 2006, PBGC proposes to revise paragraph 4022.62(d) in its entirety. As revised, paragraph 4022.62(d) would no longer estimate the effect of the 30-year phase-in limitation on the 4022.62(b) amount; rather, paragraph 4022.62(d) would estimate the effect of the owner-participant limitation (using the $^{n}/_{10}$ ratio that PPA 2006 introduced) on the 4022.62(c) amount. The revised paragraph 4022.62(d) would use the 4022.62(c) amount instead of the 4022.62(b) amount because the five-year phase-in limitation is now applicable to all participants (including majority owners).

Estimated Asset-Funded Benefits

A participant's estimated asset-funded benefit is the portion of the participant's plan benefit that plan assets are expected to be sufficient to fund through PC4, based on estimated plan assets and benefits in each priority category. Section 4022.63 of the benefit payment regulation prescribes two methods for calculating estimated asset-funded benefits; one applies to non-owner-participants and the other applies to owner-participants. Essentially, § 4022.63 provides that a non-owner-participant's estimated asset-funded benefit equals his or her estimated PC3 benefit and that an owner-participant's estimated asset-funded benefit equals the greater of his or her estimated PC3 benefit or estimated PC4 benefit. The PPA 2006 changes for owner-participants have no bearing on estimated PC3 benefits; however, the PPA 2006 change to asset allocation has the potential to affect the calculation of estimated PC4 benefits, which are payable only to owner-participants.

An owner-participant's estimated PC4 benefit equals the product of what would be his or her estimated guaranteed benefit if the participant were not an owner-participant and the ''PC4 funding ratio.'' The PC4 funding ratio is calculated one of two ways, depending on whether a plan has any benefits in PC3 (viz., whether a plan has benefits that were or could have been in pay status three years before the proposed termination date). If a plan has no PC3 benefits, the PC4 funding ratio essentially equals the estimated amount of plan assets divided by the estimated amount of vested benefits under the plan.[5] If a plan has PC3 benefits, the PC4 funding ratio essentially equals the estimated amount of plan assets minus the present value of all benefits in pay status, all divided by the estimated amount of vested benefits not in pay status.[6]

By calculating and then using a plan's PC4 funding ratio, an administrator is able to estimate the amount of assets available to fund all benefits in PC4. This ratio does not distinguish between owner-participants' benefits and all other benefits in PC4, as this distinction was not necessary before PPA 2006, when assets were to be allocated equally among the three kinds of PC4 benefits. As a result, while the PC4 funding ratio is a useful tool for estimating assets available to fund all benefits in PC4 (including those of substantial owners before PPA 2006), it does not account for the requirement under PPA 2006 to fund the benefits of majority owners only if assets remain after funding all other benefits in PC4.

Under PPA 2006, continued use of the PC4 funding ratio is more likely to result in an inflated estimate of assets available to fund a majority owner's benefit. While this potential overestimation increases the likelihood that a majority owner's estimated benefit will exceed his or her actual benefit entitlement, it has no bearing on—in particular, it does not reduce—the estimated benefits of other participants. This is because the PC4 ratio is used only when calculating the estimated asset-funded benefit of an owner-participant. As stated above, the estimated asset-funded benefits of non-owner-participants equal the participants' estimated PC3 benefits. Because PC3 benefits receive higher allocation priority than PC4 benefits, the estimated asset-funded benefit of any non-owner-participant would not be affected by the allocation of assets in PC4.

[3] A participant's asset-funded benefit is essentially the portion of the participant's plan benefit that plan assets are sufficient to fund when assets are allocated according to the distribution rules of ERISA section 4044.

[4] PBGC's benefit payment regulation does not currently include the term ''estimated asset-funded benefit''; the term ''estimated title IV benefit'' is used instead. As discussed later in this preamble, PBGC proposes to replace the term ''estimated title IV benefit'' with ''estimated asset-funded benefit.'' Consistent with the proposed terminology change, this preamble refers to estimated asset-funded benefits and not to estimated title IV benefits, except where otherwise indicated.

[5] The PC4 funding ratio excludes assets and benefits that are attributable to employee contributions. See 29 CFR 4022.63(d)(2).

[6] See note 5.

Even without any potential harm to other participants, the concern remains for potentially overpaying majority owners who receive estimated benefits. Weighed against this concern is consideration of the potential burden on plan administrators that more robust estimation procedures would impose. Modifying the PC4 funding ratio to account for the funding prioritization of other PC4 benefits ahead of those of majority owners would require additional calculations that would seem to undermine the requirement of administrators to ''estimate'' asset-funded benefits, as opposed to performing more precise calculations outright. Moreover, far fewer participants are likely to be majority owners, compared to the number likely to have been substantial owners before PPA 2006. This is because majority owners must have an ownership interest of at least 50 percent and because the majority-owner limitation does not apply to any plan that existed for at least 10 years before terminating.

Having weighed the concerns and chiefly recognizing the limited number of cases where a plan will have one or more majority owners as well as assets sufficient to fund some, but not all, benefits in PC4, PBGC proposes to leave its estimated asset-funded benefit provisions at § 4022.63 substantively unchanged, with the sole exception of revising Example 2 under paragraph (e). Example 2 illustrates how to calculate the estimated asset-funded benefit of an owner-participant and describes the related calculation of the owner-participant's estimated guaranteed benefit under § 4022.62. The proposed revisions to Example 2 would reflect the proposed changes to § 4022.62 discussed above.

Related Regulatory Amendments

PBGC proposes to make conforming amendments to its regulations on Terminology, Termination of Single-employer Plans, and Reportable Events and Certain Other Notification Requirements.

PBGC also proposes to correct paragraph (e) of § 4022.62, which currently provides that in a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' in paragraph (c) of § 4022.62, by making the substitution applicable to both paragraph (c) (applicable to non-owner-participants) and paragraph (d) (applicable to owner-participants) of § 4022.62. It is clear from the preamble to the final rule that added paragraph (e) that PBGC intended, consistent with PPA 2006, to have the applicable ''bankruptcy filing date'' substituted when calculating the estimated benefits of all participants, regardless of ownership status.[7]

Amendments Unrelated to PPA 2006

PBGC proposes to make minor, non-substantive changes to the examples not involving owner-participants at §§ 4022.62 and 4022.63 of the benefit payment regulation, in order to improve readability. Additionally, PBGC proposes to correct two clerical errors that were made when PBGC previously amended the regulation; the first duplicated paragraph (f) of § 4022.62, and the second duplicated the designation of paragraph (c)(1) of § 4022.63. Lastly, PBGC proposes to replace the term ''estimated title IV benefit'' with ''estimated asset-funded benefit'' at § 4022.63.

The use of the term ''estimated title IV benefit'' at § 4022.63 of the benefit payment regulation is confusing, in light of the definition of ''title IV benefit'' at § 4001.2 of the terminology regulation. Section 4001.2 provides, generally, that a participant's title IV benefit equals the greater of his or her guaranteed benefit or asset-funded benefit. Given this definition, one might assume that the estimated title IV benefit equals the greater of the estimate of a participant's guaranteed benefit or the estimate of a participant's asset-funded benefit; however, § 4022.63 provides that the estimated title IV benefit is essentially an estimate of a participant's asset-funded benefit (through PC4) only. Accordingly, PBGC proposes to rename the ''estimated title IV benefit'' referred to in § 4022.63 as the ''estimated asset-funded benefit.'' This term only appears in § 4022.63; the proposed change would not require any conforming amendments elsewhere in PBGC's regulations.

Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

PBGC has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866 and, accordingly, that the provisions of Executive Order 13771 do not apply. Because this rulemaking is not a significant regulatory action, OMB has not reviewed this proposed rule. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. If a regulatory action is significant under Executive Order 12866, Executive Order 13771 imposes additional requirements on the agency.

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this proposed rule. PBGC has concluded that because the key aspects of this proposed rule would merely incorporate statutory changes that have been effective since 2006, neither the public nor PBGC would assume any additional costs due to this regulatory action. Moreover, because PBGC has been following the statute as amended in 2006, and not the inconsistent provisions in its regulations, this proposal would improve the transparency of PBGC operations to the public and would provide helpful guidance to plan administrators. By leaving unchanged the estimated asset-funded benefit calculation procedures under § 4022.63, PBGC would enable plan administrators to continue to rely confidently on these relatively simple procedures, rather than creating more complex procedures that could be contemplated in light of the statutory changes. Finally, the proposed revisions to the examples at §§ 4022.62 and 4022.63 would assist plan administrators in complying with the law. Accordingly, this proposed rule would result in a net benefit to the public.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), federal agencies must comply with additional requirements when engaging in certain rulemaking activities that are subject to notice and public comment. An agency must satisfy these requirements if a proposed rule is likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the

[7] See 76 FR 34590, 34596 (June 14, 2011) (''[t]he final regulation provides that for any PPA 2006 bankruptcy termination, those estimated benefits [calculated under 29 CFR 4022.62–4022.63] are based on the rules described above relating to the bankruptcy filing date'').

proposed rule. The agency's analysis must describe the impact of the rule on small entities, and the agency must seek public comment on the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act, with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This criterion is consistent with certain requirements in title I of ERISA [8] and the Internal Revenue Code,[9] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[10] While some large employers maintain both small and large plans, most small plans are maintained by small employers. In light of this, PBGC believes that assessing the impact of the proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. Notably, the definition of small entity considered appropriate for this purpose differs from the definition of small business—based on size standards—at 13 CFR 0121.201, which the Small Business Administration promulgated pursuant to the Small Business Act. Therefore, PBGC requests public comment on its proposed definition of small entity, as applied to this proposed rule.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this proposed rule would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this proposed rule is not likely to have a significant economic impact on any entity, regardless of size. This is because nearly all aspects of this proposed rule would merely incorporate statutory changes that have been effective for more than a decade, while, as discussed in the context of Executive Order 12866 above, the remaining few would provide clarity on the accurate estimation of benefits required by law, at no additional cost to the public.

[8] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[9] See, *e.g.,* Code section 430(g)(2)(B), which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[10] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

List of Subjects

29 CFR Part 4001

Business and industry, Employee benefit plans, Pension insurance.

29 CFR Parts 4022, 4041, and 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4001, 4022, 4041, 4043, and 4044 as follows.

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. In § 4001.2:
■ a. Add in alphabetical order a definition for ''majority owner''; and
■ b. Remove the definition of ''substantial owner''.

The addition reads as follows:

§ 4001.2 Definitions.

* * * * *

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly (taking into account the constructive ownership rules of section 414(b) and (c) of the Code)—

(1) The entire interest in an unincorporated trade or business;

(2) 50 percent or more of the capital interest or the profits interest in a partnership; or

(3) 50 percent or more of either the voting stock of a corporation or the value of all of the stock of a corporation.

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

§ 4022.2 [Amended]

■ 4. In § 4022.2 introductory text:
■ a. Remove the words ''guaranteed benefit'' and add in their place the words ''guaranteed benefit, majority owner''; and
■ b. Remove the words ''substantial owner,'';
■ 5. Amend § 4022.24 by revising paragraphs (a) and (b) to read as follows:

§ 4022.24 Benefit increases.

(a) *Scope.* This section applies to all benefit increases, as defined in § 4022.2, that have been in effect for less than five years preceding the termination date.

(b) *General rule.* Benefit increases described in paragraph (a) of this section are guaranteeable only to the extent provided in § 4022.25.

* * * * *

§ 4022.25 [Amended]

■ 6. In § 4022.25:
■ a. Amend the section heading by removing the words ''for participants other than substantial owners''; and
■ b. Amend paragraph (a) by removing the words ''with respect to participants other than substantial owners''.
■ 7. Revise § 4022.26 to read as follows:

§ 4022.26 Benefit guarantee for participants who are majority owners.

(a) *Scope.* This section applies to the guarantee of all benefits described in subpart A of this part (subject to the limitations in § 4022.21) with respect to participants who are majority owners at the termination date or who were majority owners at any time within the five-year period preceding that date.

(b) *Formula.* Benefits provided by a plan are guaranteed to the extent provided in the following formula: The amount of the participant's benefit that PBGC would otherwise guarantee under section 4022 of ERISA and this part if the participant were not a majority owner, multiplied by a fraction not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10.

■ 8. In § 4022.62:
■ a. Amend paragraphs (a) and (c) introductory text by removing the four instances of the word ''substantial'' and adding in their place the word ''majority'';
■ b. Revise paragraph (d);
■ c. Amend paragraph (e) by removing the words ''paragraph (c)'' and adding in their place the words ''paragraphs (c) and (d)'';
■ d. Remove the first paragraph (f); and
■ e. Revise remaining paragraph (f).

The revisions read as follows:

§ 4022.62 Estimated guaranteed benefit.

* * * * *

(d) *Estimated guaranteed benefit payable with respect to a majority owner.* For benefits payable with respect to each participant who is a majority owner, the estimated guaranteed benefit is the benefit to which he or she would be entitled under paragraph (c) of this section but for his or her status as a

majority owner, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the proposed termination date and the denominator of which is 10.

* * * * *

(f) *Examples.* This section is illustrated by the following examples. (For an example addressing issues specific to a PPA 2006 bankruptcy termination, see § 4022.25(f).)

(1) Example 1. (i) *Facts.* A participant who is not a majority owner retired on December 31, 2011, at age 60 and began receiving a benefit of $600 per month. On January 1, 2009, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of 1/15 for each year by which his or her actual retirement age preceded age 65. On January 1, 2012, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 2012. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 2012.

(ii) *Estimated guaranteed benefit.* No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 2009, resulted in a ''new benefit'' because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by 5/15, which is more than the 20-percent increase threshold under paragraph (c)(2)(i) of this section. The amendment of January 1, 2012, which increased the participant's benefit to $750 per month, is a ''benefit improvement'' because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether an increase in a pay status benefit is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for three full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the one-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55 × $750) per month.

(2) Example 2. (i) *Facts.* A participant who is not a majority owner terminated employment on December 31, 2010. On January 1, 2012, she reached age 65 and began receiving a benefit of $250 per month. She had completed three years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 2008. Under the schedule in effect before the amendment, a participant with five years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 2012.

(ii) *Estimated guaranteed benefit.* No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for four full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80 × $250) per month.

(3) Example 3. (i) *Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for seven full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Consequently, the amount of this participant's estimated guaranteed benefit is $1,400 ($2,000 × 7/10) per month.

(4) Example 4. (i) *Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for 12 full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Since the plan was in effect for more than 10 years as of the proposed termination date, the amount of this participant's estimated guaranteed benefit is $2,000 per month.

■ 9. In § 4022.63:

■ a. Revise the section heading;

■ b. Amend paragraph (a) by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the three instances of the words ''estimated title IV benefit'' and adding in their place the words ''estimated asset-funded benefit'';

■ c. Amend paragraph (b) introductory text by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the words ''estimated title IV benefit'' and adding in their place the words ''estimated asset-funded benefit'';

■ d. Amend paragraph (c)(1) by removing the two instances of the word ''substantial'' and adding in their the word ''majority'' and by removing the two instances of the words ''estimated title IV benefit'' and adding in the place of each the words ''estimated asset-funded benefit'';

■ e. Amend paragraphs (d) introductory text by removing the two instances of the word ''substantial'' and adding in the place the word ''majority'' and by removing the two instances of the words ''estimated title IV benefit'' and adding in the place of each the words ''estimated asset-funded benefit'';

■ f. Amend paragraph (d)(1) and by removing the two instances of the word ''substantial'' and adding in the place the word ''majority''; and

■ g. Revise paragraph (e).

The revisions read as follows:

§ 4022.63 Estimated asset-funded benefit.

* * * * *

(e) *Examples.* This section is illustrated by the following examples:

(1) Example 1. (i) *Facts.* A participant who is not a majority owner was eligible to retire 3.5 years before the proposed termination date. The participant retired two years before the proposed termination date with 20 years of service. Her final five years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61(b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final five years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1.5 percent. The amendments improving benefits were put into effect 3.5 years before the proposed termination date. There were no other amendments during the five-year period.

The participant's estimated guaranteed benefit computed under § 4022.62(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

(ii) *Estimated asset-funded benefit.* For a participant who is not a majority owner, the amount of the estimated asset-funded benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of

the normal retirement benefit under the provisions of the plan in effect five years before the proposed termination date and the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan five years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated asset-funded benefit is $1,125 (0.015/0.020 × $1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is $1,350 per month.

(iii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, the methodology would be the same, but ''bankruptcy filing date'' would be substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in the example, and the numbers would change accordingly.

(2) Example 2. (i) *Facts.* A participant who is a majority owner retired on the proposed termination date of October 31, 2012. The original plan had been in effect for seven full years as of the proposed termination date. Under the provisions of the plan in effect five years before the proposed termination date, the participant is entitled to a single life annuity of $500 per month. The plan was amended to increase benefits three full years before the proposed termination date. Under these plan amendments, the participant is entitled to a single life annuity of $1,000 per month.

The participant's estimated guaranteed benefit computed under § 4022.62(d) is $455 per month ($1,000 × 0.65 × 7/10).

It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

(ii) *Estimated asset-funded benefit.* Paragraph (d) of this section provides that the amount of the estimated asset-funded benefit payable with respect to a participant who is a majority owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is $500 ($1,000 × $500/$1,000) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (*i.e.,* as if the participant were not a majority owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is $1,000 per month times 0.65 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $650 per month. Multiplying $650 by the category 4 funding ratio of 2/3 (($2 million − $1.5 million)/$0.75 million) produces an estimated category 4 benefit of $433.33 per month.

Because the estimated category 4 benefit so computed is less than the estimated category 3 benefit so computed, the estimated category 3 benefit is the estimated asset-funded benefit. Because the estimated category 3 benefit so computed is greater than the estimated guaranteed benefit of $455 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated priority category 3 benefit of $500 per month.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 10. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

§ 4041.2 [Amended]

■ 11. In § 4041.2:

■ a. Amend the introductory text by removing the words ''mandatory employee contributions'' and adding in their place the words ''majority owner, mandatory employee contributions''; and

■ b. Remove the definition of ''majority owner''.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATIONS

■ 12. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

■ 13. In § 4043.2:

■ a. Amend the introductory text by removing the words ''single-employer plan, and substantial owner'' and by adding in their place the words ''and single-employer plan''.

■ b. Add in alphabetical order a definition for ''substantial owner''.

The addition reads as follows:

§ 4043.2 Definitions.

* * * * *

Substantial owner means a substantial owner as defined in section 4021(d) of ERISA.

* * * * *

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 14. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.2 [Amended]

■ 15. In § 4044.2(a):

■ a. Remove the words ''irrevocable commitment'' and add in their place the words ''irrevocable commitment, majority owner''; and

■ b. Remove the words ''substantial owner,''.

■ 16. Amend § 4044.10 by revising paragraph (e) to read as follows:

§ 4044.10 Manner of allocation.

* * * * *

(e) *Allocating assets within priority categories.* Except for priority categories 4 and 5, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 4 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of all participants' nonforfeitable benefits that would be assigned to priority category 4 other than those impacted by the majority-owner limitation under § 4022.26. If assets available for allocation to priority category 4 are sufficient to fully satisfy the value of those other benefits, the remaining assets shall then be allocated to the value of the benefits that would be guaranteed but for the majority-owner limitation. These remaining assets shall be distributed among the majority owners according to the ratio that the value of each majority owner's benefit that would be guaranteed but for the majority-owner limitation bears to the total value of all benefits that would be guaranteed but for the majority-owner limitation. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 4044.15 after reduction for the

value of benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the five-year period immediately preceding the termination date. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall then be allocated to the value of the benefit increase under the oldest amendment during the five-year period immediately preceding the termination date, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the five-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

* * * * *

§ 4044.14 [Amended]

■ 17. In § 4044.14, remove the word ''phase-in'' and add the word ''guarantee'' in its place; and remove the word ''substantial'' and add the word ''majority'' in its place.

Issued in Washington, DC.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–04609 Filed 3–6–18; 8:45 am]

BILLING CODE 7709–02–P

Notices

Federal Register

Vol. 83, No. 45

Wednesday, March 7, 2018

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0071]

Availability of an Environmental Assessment and Finding of No Significant Impact for the Biological Control of Yellow Toadflax

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release of a stem gall weevil, *Rhinusa pilosa,* for the biological control of yellow toadflax (*Linaria vulgaris*). Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2327.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of a stem gall weevil, *Rhinusa pilosa,* into the continental United States for use as a biological control agent to reduce the severity of yellow toadflax (*Linaria vulgaris*) infestations.

On October 2, 2017, we published in the **Federal Register** (82 FR 45796–45797, Docket No. APHIS–2017–0071) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the continental United States.

We solicited comments on the EA for 30 days ending November 1, 2017, and extended the comment period by an additional 15 days at the request of a stakeholder. We received one comment by the November 16, 2017, close of the extended comment period. The commenter raised several issues related to the EA and asked for additional data and clarification on the monitoring of non-target impacts at initial release sites for the stem gall weevil, the expected efficacy of releasing the stem gall weevil and interactions among existing biocontrol agents, the expected results of interactions between the stem gall weevil and the non-native parasitoid wasp *Pteromalus microps,* and the use of an integrated pest management (IPM) approach to the control of yellow toadflax.

We note in response that the release permit would require that the permittee conduct monitoring of non-target impacts at initial release sites, and provide additional requested data on the efficacy and increased suitability of the stem gall weevil as a biocontrol agent, as well as interactions among existing biocontrol agents, in Appendix 5 of the final EA. In our extended written response in Appendix 5, we also explain the unlikely impact of the non-native parasitoid wasp *P. microps* on the effectiveness of *R. pilosa* in controlling yellow toadflax, and note that the use of an IPM approach to control yellow toadflax, while important, is beyond the scope of the EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *Rhinusa pilosa* into the continental United States for use as a biological control agent to reduce the severity of yellow toadflax infestations. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the EA and FONSI are also available for public inspection in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 1st day of March 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–04576 Filed 3–6–18; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, extension of comment period, EA and FONSI, and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071.*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee To Discuss the Barriers to Voting Report

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 that the Louisiana Advisory Committee (Committee) will hold a meeting on Friday, March 16, 2018, at 1:00:00 p.m. Central for a discussion on Hearing preparations for the Barriers to Voting in Louisiana report.

DATES: The meeting will be held on Friday, March 16, 2018, at 1:00 p.m. Central.

ADDRESSES: Public call information: Dial: 888–510–1785, Conference ID: 2078052

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–510–1785, conference ID: 2078052. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Louisiana Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=251&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of Barriers to Voting—post-hearing
Next Steps
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance that this project will inform the Commission's FY2018 statutory enforcement report on voting rights and is therefore under a very tight timeline.

Dated: March 1, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04611 Filed 3–6–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing 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 briefing meeting of the Maine Advisory Committee to the Commission will convene at 12:30 p.m. (EDT) on Wednesday, March 21, 2018 in the auditorium at City Hall in Lewiston, Maine, located at 27 Pine Street in Lewiston, ME 04240. The purpose of the briefing is to hear from government officials, advocates, and others on Voting Rights in Maine.

DATES: Wednesday, March 21, 2018 (EDT).

Time: 12:30 p.m.

ADDRESSES: 27 Pine St., Lewiston, Maine 04240.

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

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Wednesday, April 18, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=252* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Tentative Agenda

Wednesday, March 21, 2018

I. Welcome and Introductions, 12:30 p.m.
II. Briefing, 12:30 p.m.
  Panel One: Government Officials
  Panel Two: Advocates
III. Open Session—conclusion of panels
IV. Adjournment

Dated: March 1, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04553 Filed 3–6–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on: Friday, March 16, 2018. The purpose of the meeting is to review a report on police practices.

DATES: Friday, March 16, 2018 at 12:00 p.m. EDT.

ADDRESSES: Public call-in information: Conference call-in number: 877–857–6163 and conference ID #7575052.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–857–6163 and conference ID #7575052. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–857–6163 and conference ID #7575052.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 55 West Monroe Street, Suite 410, Chicago, IL 60603, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, March 16

- Open—Roll Call
- Update on Report
- Next Steps
- Open Comment
- Adjourn

Dated: March 1, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04612 Filed 3–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council: Meeting of the United States Investment Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Investment Advisory Council (Council) will hold a meeting on Tuesday, March 20, 2018. The Council was chartered on April 6, 2016, to advise the Secretary of Commerce on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, members will deliberate and vote on a set of recommendations to Secretary Ross on the facilitation of foreign direct investment into the United States, including deregulation and the streamlining of processes that affect business investment opportunities across U.S. regions, the facilitation of infrastructure investment, and mechanisms to increase investment competitiveness, in addition to other topics. The agenda may change to accommodate Council business. The final agenda will be posted on the Department of Commerce website for the Council at *http://trade.gov/IAC,* at least one week in advance of the meeting.

DATES: Tuesday, March 20, 2018, 11:00 a.m.–1:30 p.m. EDT. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on March 13, 2018.

ADDRESSES: The meeting will be held at the Department of Commerce, 1401 Constitution Avenue NW, Washington, DC. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: United States Investment Advisory Council, U.S. Department of Commerce, Room 30032, 1401 Constitution Avenue NW, Washington, DC 20230, *IAC@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Anthony Diaz, United States Investment Advisory Council, Room 30032, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: 202–482–5729, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council advises the Secretary of Commerce on matters relating to the promotion and retention of foreign direct investment in the United States.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on March 13, 2018, for inclusion in the meeting records and for circulation to the members of the Council.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Anthony Diaz at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on March 13, 2018, to ensure transmission to the Council members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Comments and statements will be posted on the United States Investment Advisory Council website (*http://trade.gov/IAC*) without change, including any business or personal information provided such as

names, addresses, email addresses, or telephone numbers.

All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Anthony Diaz,

Executive Secretary, United States Investment Advisory Council.

[FR Doc. 2018–04554 Filed 3–6–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG069

Surveys of Marine Recreational Fishing Effort on the U.S. Atlantic Coast and in the Gulf of Mexico; Marine Recreational Information Program (MRIP); Center for Independent Experts; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Access-Point Angler Intercept Survey (APAIS), which collects information on angler catch from Maine to Louisiana, was redesigned prior to implementation in 2013. A conversion factor is needed to account for any consistent effects of the redesign on catch rate estimates produced by the APAIS. NMFS is convening a peer review of a statistical approach proposed for the conversion by the Marine Recreational Information Program (MRIP). Applying the conversion factor to APAIS estimates produced prior to 2013 will provide revised historical catch statistics that are comparable to those produced by the new APAIS. The revised estimates will be used in fisheries science and management.

The peer review includes reviewers appointed by the Center for Independent Experts (CIE), as well as reviewers recommended by the Atlantic States Marine Fisheries Commission (ASMFC), and the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Regional Fishery Management Councils. This notice lists the time and place of the Peer Review Workshop.

DATES: The Workshop will be held from 9 a.m. on March 20, 2018, until 12 p.m. on March 22, 2018.

ADDRESSES: The Workshop will be held at the Sheraton Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910; Phone: 301/589–0800.

FOR FURTHER INFORMATION CONTACT: Dr. David Van Voorhees, Chief of Fisheries Statistics Division of NMFS Office of Science and Technology; phone 301/427–8189; FAX 301/427–4520; email: *Dave.Van.Voorhees@noaa.gov.*

SUPPLEMENTARY INFORMATION: On the Atlantic and Gulf coasts, APAIS is conducted at public marine fishing access points (boat ramps, marinas, piers, beaches, jetties, and bridges) to collect representative data on individual angler fishing trips. The catch data collected include: Species identification, total number of each species caught, length and weight measurements of individual fish, as well as the numbers and disposition of fish caught. Catch data are combined with information from MRIP effort surveys to produce an estimate of total recreational catch. This estimate is then combined with other sources of information to assess the health of U.S. fish stocks, set catch limits, and inform the regulatory process.

The Peer Review Workshop will provide an assessment of the statistical approach developed by MRIP for this purpose. The product of the Workshop will be a summary report documenting panel opinions regarding the strengths and weaknesses of the proposed conversion approach. The panel of reviewers will include individuals selected by the Center for Independent Experts (CIE) as well as individuals selected by the Regional Fishery Management Councils and ASMFC. The panel will be chaired by an individual also selected by the Councils and ASMFC. The agenda is subject to change, and the latest version will be posted at *http://www.countmyfish.noaa.gov.* The workshop will also be accessible by webinar in listen-only mode. Requests for webinar access should be directed to NMFS (see **FOR FURTHER INFORMATION CONTACT**) three days prior to the workshop.

Special Accommodations

This workshop will be physically accessible to people with disabilities. Requests for auxiliary aids should be directed to NMFS (see **FOR FURTHER INFORMATION CONTACT**) three (3) days prior to the meeting.

Note: The times and sequence specified in the agenda are subject to change.

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

Dated: March 1, 2018.

Edward C. Cyr,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2018–04571 Filed 3–6–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0113]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Experimental Sites Initiative Reporting Tool 2017

AGENCY: Federal Student Aid (FSA), Department of Education (ED),

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an additional 30 day public comment period for a new information collection.

DATES: Interested persons are invited to submit comments on or before April 6, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0113. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–42, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Warren Farr, 202–377–4380.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department

assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Experimental Sites Initiative Reporting Tool 2017.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 300.

Total Estimated Number of Annual Burden Hours: 5,400.

Abstract: Federal Student Aid (FSA) is requesting an additional 30 day public comment period, for this Experimental Sites Initiatives (ESI) information clearance request, to ensure that all affected parties will have an opportunity to review and respond to these proposed additional questions. Based on public comments received during the 30 day public comment period, which closed January 18, 2018, FSA is incorporating 40 new questions across the Institutional Surveys for seven of the experiments. The additional questions can be viewed as directed in the **ADDRESSES** section of this notice. FSA has determined that responding to the additional questions will add, on average, one hour of additional burden to affected parties. The collection of this data and the results of these experiments will help the Department in its continuing efforts to improve Title IV program administration.

Dated: March 1, 2018.

Tomakie Washington,

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

[FR Doc. 2018–04580 Filed 3–6–18; 8:45 am]

BILLING CODE 4000–01–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: ER12–1943–001; ER12–2529–001.
Applicants: KODE Novus I, LLC, KODE Novus II, LLC.
Description: Notice of Change in Status of KODE Novus I, LLC, et al.
Filed Date: 3/1/18.
Accession Number: 20180301–5180.
Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–224–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–02–28_Deficiency Response re Certain MISO TOs revisions to Att Os for ADIT to be effective 1/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5185.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–224–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–02–28 Amendment to Certain MISO TOs revisions to Attachment O for ADIT to be effective 1/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5186.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–718–002.
Applicants: Guzman Energy Partners LLC.
Description: Tariff Amendment: Market-Based Rate Tariff #1 Amendment to be effective 10/4/2017.
Filed Date: 3/1/18.
Accession Number: 20180301–5105.
Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–936–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SP Pawpaw Solar LGIA Amendment Filing to be effective 2/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5207.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–937–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–02–28 Refund requirements for non-public utility TOs re EL16–99; EL18–18 to be effective 10/26/2017.
Filed Date: 2/28/18.
Accession Number: 20180228–5211.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–937–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–02–28 Refund requirements for non-public utility TOs re EL16–99; EL18–18 to be effective 10/26/2017.
Filed Date: 2/28/18.
Accession Number: 20180228–5226.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–938–000.
Applicants: Matador Power Marketing, Inc.
Description: Baseline eTariff Filing: Baseline new to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5222, 20180228–5283.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–939–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Membership Agreement Revisions in Response to Orders in EL16–91 and EL18–19 to be effective 8/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5234.
Comments Due: 5 p.m. ET 3/21/18.

Docket Numbers: ER18–940–000.
Applicants: ISO New England Inc.
Description: Twelfth Forward Capacity Auction Results of ISO New England Inc.
Filed Date: 2/28/18.
Accession Number: 20180228–5279.
Comments Due: 5 p.m. ET 4/13/18.

Docket Numbers: ER18–942–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits ECSA Nos. 4922, 4923 and 4924 to be effective 5/1/2018.
Filed Date: 3/1/18.
Accession Number: 20180301–5103.
Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–943–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Pacific Wind Development (Karankawa 2) IA to be effective 2/8/2018.
Filed Date: 3/1/18.
Accession Number: 20180301–5104.
Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–944–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Tariff Revisions Related to a Market Participant's FCM Financial Assurance Req. to be effective 6/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5158.

Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–945–000.

Applicants: Mid-Atlantic Interstate Transmission, LL, Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT and TrAIL Co submit Interconnection Agreement Nos. 3743, 4577 and 4578 to be effective 2/1/2017.

Filed Date: 3/1/18.

Accession Number: 20180301–5198.

Comments Due: 5 p.m. ET 3/22/18.

Docket Numbers: ER18–946–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Pulaski County Solar 2 (Hawkinsville 2 Solar) LGIA Filing to be effective 2/14/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5216.

Comments Due: 5 p.m. ET 3/22/18.

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: March 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04594 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

NYISO Electric System Planning Working Group Meeting

March 13, 2018, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2018-03-13.*

NYISO Business Issues Committee Meeting

March 15, 2018, 10:00 a.m.–2:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2018-03-15.*

NYISO Operating Committee Meeting

March 16, 2018, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2018-03-16.*

NYISO Management Committee Meeting

March 28, 2018, 10:00 a.m.–2:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2018-03-28.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER17–2327.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04600 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–938–000]

Matador Power Marketing, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 21, 2018.

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

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

The filings in the above-referenced proceeding are accessible in the

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

Dated: March 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04598 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–882–000]

Elk City Renewables II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 21, 2018.

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

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

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

Dated: March 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04596 Filed 3–6–18; 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: RP18–477–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Fuel Filing—Eff. April 1, 2018 to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5025.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–478–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Quarterly FRP Filing to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5035.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–479–000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: 2018 Sabine Annual Fuel and Line Loss Reimbursement Filing 2–28–18 to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5036.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–480–000.
Applicants: Black Hills Shoshone Pipeline, LLC.
Description: § 4(d) Rate Filing: Annual Adjustment of Lost and Unaccounted For Gas Percentage to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5038.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–483–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TGS Mar 18) to be effective 3/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5064.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–484–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 022818 Negotiated Rates—Mercuria Energy America, Inc. H–7540–89 to be effective 3/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5068.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–485–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Qrtly LUF and Fuel Filing to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5070.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–486–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (PH 41455 to BP 49051, Texla 49052, Sequent 49064) to be effective 3/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5082.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–487–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various eff 3–1–2018) to be effective 3/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5083.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–488–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: NWP 2018 Summer Fuel Filing to be effective 4/1/2018.
Filed Date: 2/28/18.
Accession Number: 20180228–5087.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–489–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: NWP 2018 South Seattle Incremental Rate Update Filing to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5088.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–490–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: Fuel Filing 2018 to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5092.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–491–000.

Applicants: Empire Pipeline, Inc.

Description: Compliance filing Settlement (RP16–300) Refund Report.

Filed Date: 2/28/18.

Accession Number: 20180228–5112.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–492–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement (MRC Permian) to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5113.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–493–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts (Munford 20593 and Poplar Grove 20592) to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5183.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–494–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (RE Gas 35433, 34955 to BP 36939, 36940) to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5184.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–495–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: AVC Storage Loss Retainage Factor Update—2018 to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5220.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–496–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2018–02–28 ARM 949128 to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5223.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–497–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: 3–1–2018 Formula-Based Negotiated Rates to be effective 3/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5227.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–498–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: § 4(d) Rate Filing: DECP—2018 Annual EPCA to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5229.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–499–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: § 4(d) Rate Filing: DECP—2018 Annual Fuel Retainage to be effective 4/1/2018.

Filed Date: 2/28/18.

Accession Number: 20180228–5233.

Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–494–001.

Applicants: Texas Gas Transmission, LLC.

Description: Tariff Amendment: Amendment to Filing in Docket No. RP18–494–000 to be effective 3/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5036.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–500–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—3/1/2018 to be effective 3/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5000.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–501–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: § 4(d) Rate Filing: Fuel Filing on 3–1–18 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5028.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–502–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 3–1–18 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5029.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–503–000.

Applicants: Southwest Gas Storage Company.

Description: § 4(d) Rate Filing: Fuel Filing on 3–1–18 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5030.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–504–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 3–1–18 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5031.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–505–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 3–1–18 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5032.

Comments Due: 5 p.m. ET 3/13/18.

Docket Numbers: RP18–506–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Annual LMCRA—Spring 2018 to be effective 4/1/2018.

Filed Date: 3/1/18.

Accession Number: 20180301–5033.

Comments Due: 5 p.m. ET 3/13/18.

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: March 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04595 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10482–118]

Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-capacity amendment of license.

b. *Project No.:* 10482–118.

c. *Date Filed:* January 26, 2018.

d. *Applicants:* Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC.

e. *Name of Project:* Swinging Bridge Hydroelectric Project.

f. *Location:* Mongaup River in Sullivan County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robert Gates, Executive Vice President Operations, Eagle Creek Renewable Energy, LLC, 65 Madison Avenue, Suite 500, Morristown, NJ 07960, (973) 998–8400, *bob.gates@eaglecreekre.com*.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–10482–118.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to install a new minimum base flow turbine-generator unit (Unit No. 3) in a new approximately 30-foot-long by 30-foot-wide powerhouse directly adjacent to the existing powerhouse for Unit No. 2 at the Swinging Bridge Development. The installed capacity of Unit No. 3 will replace the inoperable turbine-generator unit (Unit No. 1). The authorized installed capacity of the project will decrease from 11.75 MW to 7.85 MW with the proposed amendment and the licensee does not propose any modifications to reservoir elevations or flows.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE,'' (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04603 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2685–029]

New York Power Authority; Notice of Settlement Agreement, Soliciting Comments, and Modification of Procedural Schedule

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2685–029.

c. *Date filed:* February 23, 2018.

d. *Applicant:* New York Power Authority (NYPA).

e. *Name of Project:* Blenheim-Gilboa Pumped Storage Project.

f. *Location:* On Schoharie Creek, in the Towns of Blenheim and Gilboa in

Schoharie County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Robert Daly, Licensing Manager, New York Power Authority 123 Main Street, White Plains, New York 10601. Telephone: (914) 681–6564, Email: *Rob.Daly@nypa.gov.*

i. *FERC Contact:* Andy Bernick, (202) 502–8660 or *andrew.bernick@ferc.gov.*

j. *Deadline for filing comments:* Comments on the Settlement Agreement, and comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions in response to the Commission's January 4, 2018 Notice of Application Ready for Environmental Analysis (REA Notice) are due within 20 days of this notice. Reply comments are due within 65 days of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2685–029.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. NYPA filed a Comprehensive Relicensing Settlement Agreement (Settlement Agreement) on behalf of itself, the United States Fish and Wildlife Service, the New York State Department of Environmental Conservation, and the New York State Office of Parks, Recreation and Historic Preservation. The purpose of the Settlement Agreement is to resolve among the signatories all issues associated with issuance of a new license for the project, and provides plans regarding the management of water, lands, recreation, and historic properties, and ecological enhancement associated with the project. NYPA requests that the Commission approve the Settlement Agreement by including in any new license issued for the project, without modification, the proposed license articles provided in Appendix A of the Settlement Agreement, and by reference, five management plans provided in Appendix B. The signatories to the Settlement Agreement also request a 50-year license term for the project.

l. A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. Copies of the Settlement Agreement are also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

m. *Procedural Schedule:*

The Commission's January 4, 2018, REA Notice established March 5, 2018 as the deadline for filing comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions regarding NYPA's license application. In order to allow adequate time for stakeholder comments regarding the license application and the Settlement Agreement, we have modified the comment period to allow stakeholders to submit comments on the Settlement Agreement and comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions regarding the license application on the same date, and allow NYPA sufficient time to submit reply comments. The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate. If the due date falls on a weekend or holiday, the due date is the following business day.

Milestone	Target date
Filing of comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions (per the REA Notice) and comments on the Settlement Agreement.	March 21, 2018.
Reply comments due	May 5, 2018.
Commission Issues Draft EA	September 1, 2018.
Comments on Draft EA	October 1, 2018.
Modified terms and conditions due	November 30, 2018.
Commission issues Final EA	February 28, 2019.

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04601 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–122–000]

Minden, Louisiana v. Southwestern Electric Power Company; Notice of Complaint

Take notice that on February 28, 2018, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rules 206 and 212 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, the City of Minden, Louisiana (Minden or Complainant) filed a complaint against Southwestern Electric Power Company (SWEPCO or Respondent) alleging that the 11.1 percent return on equity used in calculating rates for requirements service pursuant to the Power Supply Agreement is unjust and unreasonable, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on Respondent via electronic mail through its counsel.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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 March 20, 2018.

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04599 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–15–000]

Andeavor Field Services, LLC v. Mid-America Pipeline Company, LLC, Enterprise Products Operating LLC; Notice of Complaint

Take notice that on February 27, 2018, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),[1] section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings,[2] and sections 1(4), 1(6), 2, 3(1), 6(1), 6(3), 6(7), 13(1), 15(1) and 15(13) of the Interstate Commerce Act,[3] Andeavor Field Services, LLC (Andeavor Field Services or Complainant) filed a formal complaint against Mid-America Pipeline Company, LLC (MAPL) and Enterprise Products Operating LLC, (Enterprise) (jointly, Respondents) alleging that, MAPL's interpretation of a Term Service Agreement violates Commission policy and that MAPL unlawfully seized Complainant's line fill, all as more fully explained in the complaint.

The Complainant states that a copy of the complaint has been served on the Respondents.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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 March 29, 2018.

Dated: February 28, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04588 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.206 (2017).

[2] 18 CFR 343.2.

[3] 49 App. U.S.C. 1(4), 1(6), 2, 3(1), 6(1), 6(3), 6(7), 13(1), 15(1) and 15(13) (1988).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–59–000]

Red Pine Wind Project, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 28, 2018, the Commission issued an order in Docket No. EL18–59–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the proposed Rate Schedule of Red Pine Wind Project, LLC may be unjust and unreasonable. *Red Pine Wind Project, LLC,* 162 FERC ¶ 61,177 (2018).

The refund effective date in Docket No. EL18–59–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–59–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2017), within 21 days of the date of issuance of the order.

Dated: February 28, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04589 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–038]

Cocheco Falls Associates; 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.:* 4718–038.

c. *Date Filed:* January 2, 2018.

d. *Submitted By:* Cocheco Falls Associates.

e. *Name of Project:* Cocheco Falls Dam Project.

f. *Location:* On the Cocheco River in Dover, Strafford County, New Hampshire. 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:* John Webster, Cocheco Falls Associates, P.O. Box 178, 10 Butler Street, South Berwick, Maine 03908; (207) 384–5334; email at *Hydromagnt@gwi.net.*

i. *FERC Contact:* Amy Chang at (202) 502–8250; or email at *amy.chang@ferc.gov.*

j. Cocheco Falls Associates filed its request to use the Traditional Licensing Process on January 2, 2018, and provided public notice of the request on January 12, 2018. In a letter dated March 1, 2018, the Director of the Division of Hydropower Licensing approved Cocheco Falls Associates' 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 New Hampshire 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. With this notice, we are designating Cocheco Falls Associates as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Cocheco Falls Associates filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 4718. 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 December 31, 2020.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04602 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13239–002]

Parker Knoll Hydro, LLC.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Unconstructed Project.

b. *Project No.:* 13239–002.

c. *Date filed:* November 30, 2011.

d. *Applicant:* Parker Knoll Hydro, LLC.

e. *Name of Project:* Parker Knoll Pumped Storage Hydroelectric Project.

f. *Location:* The proposed project would be located at Parker Mountain, near the Town of Richfield, Piute County, Utah. The project would occupy 458.7 acres of federal lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Daniel Dygert, Attorney, Parker Knoll Hydro, LLC, 399 North Main Street, Suite 250, Logan, Utah; (435) 512–4977, *dan@dygert-law.com.*

i. *FERC Contact:* John Mudre, (202) 502–8902, *john.mudre@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888

First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–13239–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed project would be a closed-loop pumped storage system, with an initial fill from the existing Otter Creek reservoir, and would include the following new facilities: (1) An approximately 175-foot-high upper main dam with a crest length of approximately 1,650 feet and one saddle dam; (2) an upper reservoir with a storage capacity of approximately 6,780 acre-feet and a surface area of approximately 110 acres; (3) an approximately 100-foot-high lower dam with a crest length of approximately 1,750 feet and two saddle dams; (4) a lower reservoir with storage capacity of approximately 6,760 acre-feet and a surface area of approximately 130 acres; (5) a 2,390-foot-long and 27-foot-diameter headrace tunnel; (6) a 2,200-foot-long and 27-foot-diameter vertical shaft; (7) a 1,000-foot-long and 27-foot-diameter steel-lined penstock tunnel; (8) a 7,126-foot-long and 35-foot-diameter tailrace tunnel; (9) a powerhouse containing four variable speed, reversible pump-turbine units with a minimum rating of 250 megawatt (MW); (10) an approximately 585-foot by 340-foot substation; (11) a 16-inch-diameter and 68,000-foot-long fill pipeline and system; (12) approximately one mile of 345-kV transmission line; and (13) appurtenant facilities. The project would occupy 458.7 acres of federal land and would have an estimated annual generation of 2,630 gigawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h, above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Commission issues draft EIS—December 2018.

Comments on draft EIS—January 2019.

Commission issues final EIS—June 2019.

Dated: March 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04604 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–929–000]

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

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

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

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 21, 2018.

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

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

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

Dated: March 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04597 Filed 3–6–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1204]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 6, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1204.

Title: Deployment of Text-to-911.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other-for-profit and state, local and tribal governments.

Number of Respondents and Responses: 2,649 Respondents; 51,730 Responses.

Estimated Time per Response: 1–8 hours.

Frequency of Response: One-time; annual reporting requirements and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Total Annual Burden: 69,883 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: In a Second Report and Order released on August 13, 2014, FCC 14–118, published at 79 FR 55367, September 16, 2014, the Commission adopted final rules—containing information collection requirements—to enable the Commission to implement text-to-911 service. The text-to-911 rules provide enhanced access to emergency services for people with disabilities and fulfilling a crucial role as an alternative means of emergency communication for the general public in situations where

sending a text message to 911 as opposed to placing a voice call could be vital to the caller's safety. The Second Report and Order adopted rules to commence the implementation of text-to-911 service with an initial deadline of December 31, 2014 for all covered text providers to be capable of supporting text-to-911 service. The Second Report and Order also provided that covered text providers would then have a six-month implementation period. They must begin routing all 911 text messages to a Public Safety Answering Point (PSAP) by June 30, 2015 or within six months of a valid PSAP request for text-to-911 service, whichever is later. To implement these requirements, the Commission seeks to collect information primarily for a database in which PSAPs voluntarily register that they are technically ready to receive text messages to 911. As PSAPs become text-ready, they may either register in the PSAP database (or submit a notification to PS Docket Nos. 10–255 and 11–153), or provide other written notification reasonably acceptable to a covered text messaging provider. Either measure taken by the PSAP constitutes sufficient notification pursuant to the rules in the Second Report and Order. PSAPs and covered text providers may also agree to an alternative implementation timeframe (other than six months). Covered text providers must notify the FCC of the dates and terms of any such alternate timeframe within 30 days of the parties' agreement. Additionally, the rules adopted by the Second Report and Order include other information collections for third party notifications necessary for the implementation of text-to-911, including notifications to consumers, covered text providers, and the Commission. These notifications are essential to ensure that all affected parties are aware of the limitations, capabilities, and status of text-to-911 services. These information collections enable the Commission to meet the objectives for implementation of text-to-911 service and for compliance by covered text providers with the six-month implementation period in furtherance of the Commission's core mission to ensure the public's safety.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04565 Filed 3–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has modified an existing system of records, FCC/OGC–5, Pending Civil Cases, subject to the *Privacy Act of 1974,* as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Office of the General Counsel (OGC) uses the personally identifiable information (PII) in this system to update information or furnish additional data for the Government agency handling the pending civil case.

DATES: This action will become effective on March 7, 2018. The routine uses in this action will become effective on April 6, 2018 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the proposed alterations to this system of records).

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OGC–5, Pending Civil Cases, as a result of an increased use of electronic information technology. The substantive changes and modifications to the previously published version of the FCC/OGC–5 system of records include:

1. Change to the Security Classification to note OMB's guidance that this system's records are not classified.

2. Addition of 31 U.S.C. 3729–3733 to the Authorities for Maintenance of the System.

3. Numerous changes to the Record Source Categories to include individuals who file or are subjects of civil cases; attorneys or representatives of claimants and subjects of civil cases; communication between FCC bureaus and offices, Justice Department and U.S. attorneys, and other Federal agencies including U.S. District Courts; and parties to civil cases and proceedings and investigative materials, related documentation, and decisions including appeals, amendments, litigation, and related matters.

4. Deletion of one routine use: (2) Public Access, since releases under the FOIA are covered by 5 U.S.C. 552a(b)(2), so a separate routine use for them is not needed.

5. Updating language, adding information, and/or renumbering five routine uses: (1) Adjudication and Litigation (previously (2)); (2) Law Enforcement and Investigation; (3) Congressional Inquiries; and (4) Government-wide Program Management and Oversight.

6. Adding three new routine uses: (5) Breach Notification to address real or suspected data breach situations at the FCC; (6) Assistance to Federal Agencies and Entities for assistance with other Federal agencies' data breach situations; and (7) For Non-Federal Personnel to allow contractors performing or working on a contract for the Federal Government access to information. Routine Uses (5) and (6) are required by OMB Memorandum m-17–12.

7. Adding a new section: Reporting to a Consumer Reporting Agency to address valid and overdue debts owed by individuals to the FCC under the *Debt Collection Act,* as recommended by OMB.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retrieval, and retention and disposal of the records; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OGC–5, Pending Civil Cases.

SECURITY CLASSIFICATION:

No information in this system is classified.

SYSTEM LOCATION:

Office of General Counsel (OGC), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel (OGC), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 401 and 402; 31 U.S.C. 3729–3733.

PURPOSE(S):

Information in this system of records is used by Commission attorneys to update information or furnish additional data for the Government agency handling the pending civil case.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has a miscellaneous case involving the Federal Communications Commission (FCC) before any District Court, before any Court of Appeals, and before the Supreme Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records may include, but is not limited to letters, memoranda, pleadings, briefs, and bankruptcy papers.

RECORD SOURCE CATEGORIES:

The sources for the information in this system of records include but are not limited to:

(a) Individuals filing claims in civil cases;

(b) Individuals who are the subjects of such claims in civil cases;

(c) Attorneys or representatives of the claimants and the subjects of the claims in civil cases;

(d) Communication between FCC organizational units (bureaus and offices), the Justice Department including U.S. Attorneys, and other Federal agencies including U.S. District Courts; and

(e) Parties to the proceedings and the investigative materials and related documentation and decisions that involve, but are not limited to appeals, amendments, and litigation concerning such claims in civil cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Adjudication and Litigation—To disclose information the Department of Justice (DOJ), or other administrative body before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where DOJ or the FCC has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

2. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. Government-wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Breach Notification –To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

7. For Non-Federal Personnel—To disclose information to contractors performing or working on a contract for the Federal Government.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the *Debt Collection Act,* 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in the Office of General Counsel, and in the bureaus and offices (B/Os) of the FCC staff who provide the responses to such claims. The electronic records, files, and data are stored in the FCC's computer network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the name of the individual filing or subject of the claim.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the agency records control schedule N1–173–91–001, Item 6, approved by the National Archives and Records Administration (NARA).

The records are destroyed 3 years after closure of the matter or when no longer required for administrative purposes, whichever is sooner.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The file cabinets containing paper records in this system are maintained in file cabinets in ''non-public'' rooms in the Office of General Counsel and in the bureau or office (B/O) suites. The OCG and B/O file cabinets are locked at the end of the business day. Access to these offices is through key and card-coded main doors. Only authorized OCG and B/O supervisors and staff, who are responsible for responding to them, may have access to these paper records. The electronic records, files, and data are housed in the FCC's computer network. Access to the electronic files is restricted to staff in the bureaus and

offices who are responsible for responding to such claims, and to the Information Technology (IT) staff and contractors who maintain the FCC's computer network. Other FCC employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's IT privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standards and Technology (NIST) and the *Federal Information Security Modernization Act of 2014* (FISMA).

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology (IT), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554, or email *Leslie.Smith@fcc.gov.*

Individuals must furnish reasonable identification by showing any two of the following: social security card; driver's license; employee identification card; Medicare card; birth certificate; bank credit card; or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 0, subpart E).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The FCC previously gave notice of this system of records, FCC/OGC–5, by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17244).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2018–04562 Filed 3–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 7, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2,840 respondents; 5,543 responses.

Estimated Time per Response: 30–50 hours.

Frequency of Response: On occasion, annual, biennial and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151–155, 201–205, 208, 251–271, 403, 502 and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 195,890 hours.

Total Annual Cost: $1,369,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On April 28, 2017, the Commission released the *Business Data Services Order,* WC Docket No. 16–143 *et al.,* FCC 17–43, which establishes a new regulatory framework for business data services. Under this framework, price cap incumbent LECS are no longer subject to price cap regulation of their: (a) Packet-based business data services; (b) time-division multiplexing (TDM) transport business data services; (c) TDM business data services with bandwidth in excess of a DS3; and (d) DS1 and DS3 end user channel terminations, and other lower bandwidth TDM business data services, to the extent a price cap incumbent LEC provides them in counties deemed competitive under the Commission's competitive market test or in counties for which the price cap incumbent LEC had obtained Phase II pricing flexibility under the Commission's prior regulatory regime. The *Business Data Services Order* required that, within 36 months of its effective date (*i.e.,* by August 1, 2020), price cap incumbent LECs must remove all business data services that are no longer subject to price cap regulation from their interstate tariffs. The Order also required that, by that same deadline, competitive LECs must remove all business data services from their interstate tariffs.

The information collected through the carriers' tariffs is used by the Commission and state commissions to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04564 Filed 3–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 7, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Next Gen TV/ATSC 3.0 Local Simulcasting Rules; 47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV) and FCC Form 2100 (Next Gen TV License Application).

Form Number: FCC Form 2100 (Next Gen TV License Application).

Type of Review: New collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents and Responses: 1,130 respondents; 4,760 responses.

Estimated Time per Response: 0.017–8 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

Total Annual Burden: 3,504 hours.

Total Annual Cost: $130,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: On November 20, 2017, the Commission released a Report and Order (Order), FCC 17–158, in GN Docket No. 16–142, authorizing television broadcasters to use the ''Next Generation'' broadcast television (Next Gen TV) transmission standard, also called ''ATSC 3.0'' or ''3.0,'' on a voluntary, market-driven basis. This authorization is subject to broadcasters continuing to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called ''ATSC 1.0'' or ''1.0,'' to their viewers. The requirement to continue to provide ATSC 1.0 service is called ''local simulcasting.'' The local simulcasting rules (47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV),) contain the following information collection requirements which require OMB approval.

License Application to FCC/FCC Form 2100 (Reporting Requirement; 47 CFR 73.3801(f), 73.6029(f), and 74.782(g)): A broadcaster must file an application (FCC Form 2100) with the Commission, and receive Commission approval, before: (i) Moving its ATSC 1.0 signal to the facilities of a host station, moving that signal from the facilities of an existing host station to the facilities of a different host station, or discontinuing an ATSC 1.0 guest signal; (ii) commencing the airing of an ATSC 3.0 signal on the facilities of a host station (that has already converted to ATSC 3.0 operation), moving its ATSC 3.0 signal to the facilities of a different host station, or discontinuing an ATSC 3.0 guest signal; or (iii) converting its existing station to transmit an ATSC 3.0 signal or converting the station from ATSC 3.0 back to ATSC 1.0 transmissions. As directed by the Commission, the Media Bureau will be amending FCC Form

2100 and the relevant schedules (Schedules B, D & F)(See Schedule B—Full Power License to cover application (OMB control number 3060–0837); Schedule D—LPTV/Translator License to cover application (OMB control number 3060–0017); and Schedule F—Class A License to cover application (OMB control number 3060–0928)) as necessary to implement the Next Gen TV licensing process and collect the required information (detailed below). The form will be revised to establish the streamlined ''one-step'' licensing process for Next Gen TV applicants, including adding the above listed purposes (i–iii) to the form. FCC staff will use the license application to determine compliance with FCC rules and to determine whether the public interest would be served by grant of the application for a Next Gen TV station license.

Next Gen TV Broadcaster On-Air Notices to Consumers (Third-Party Disclosure Requirement; 47 CFR 73.3801(g), 73.6029(g), and 74.782(h)): Commercial and noncommercial educational (NCE) broadcast TV stations that relocate their ATSC 1.0 signals (*e.g.,* moving to a host station's facility, subsequently moving to a different host, or returning to its original facility) are required to air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. Stations that transition directly to ATSC 3.0 will be required to air daily PSAs or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations. Broadcaster on-air notices to consumers will be used to inform consumers if stations they watch will be changing channels and encouraged to rescan their receivers for new channel assignments.

Next Gen TV Broadcaster Written Notices to MVPDs (Third-Party Disclosure Requirement; 47 CFR 73.3801(h), 73.6029(h), and 74.782(i)): Next Gen TV stations relocating their ATSC 1.0 signals (*e.g.,* moving to a temporary host station's facilities, subsequently moving to a different host, or returning to its original facility) must provide notice to MVPDs that: (i) No longer will be required to carry the station's ATSC 1.0 signal due to the relocation; or (ii) carry and will continue to be obligated to carry the station's ATSC 1.0 signal from the new location. Broadcaster notices to multichannel video programming distributors (MVPDs) will be used to notify MVPDs that carry a Next Gen TV broadcast station about channel changes and facility information.

Local Simulcasting Agreements (Recordkeeping Requirement; 47 CFR 73.3801(e), 73.6029(e), and 74.782(f)): Broadcasters must maintain a written copy of any local simulcasting agreement and provide it to the Commission upon request. FCC staff will review the local simulcasting agreement (when applicable) to determine compliance with FCC rules and to determine whether the public interest would be served by grant of the application for a Next Gen TV station license.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04566 Filed 3–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 7, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Rules and Policies Regarding Calling Number Identification Service—Caller ID, CC Docket No. 91–281.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 46,291 pool of respondents; 1,705 responses.

Estimated Time per Response: .083 hours (5 minutes).

Frequency of Response: Monthly and on-going reporting requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 222, 47 U.S.C. 222. The Commission's implementing rules are codified at 47 CFR 64.1600–01.

Total Annual Burden: 142 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission amended rules requiring that carriers honor privacy requests to state that § 64.1601(b) of the Commission's rules shall not apply when calling party number (CPN) delivery is made in connection with a threatening call. Upon report of such a threatening call by law enforcement on behalf of the threatened party, the carrier will provide any CPN of the calling party to law enforcement and, as directed by law enforcement, to security personnel for the called party for the purpose of identifying the party responsible for the threatening call. Carriers now have a recordkeeping requirement in order to quickly provide law enforcement with information relating to threatening calls.

The Commission also amended rules to allow non-public emergency services to receive the CPN of all incoming calls from blocked numbers requesting assistance. The Commission believes amending its rules to allow non-public emergency services access to blocked Caller ID promotes the public interest by ensuring timely provision of emergency services without undermining any countervailing privacy interests. Carriers now have a recordkeeping requirement in order to provide emergency serve providers with the information they need to assist callers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–04567 Filed 3–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Delmar Allan Benton, Madisonville, Tennessee*; to retain voting shares of Peoples Bancshares of Tennessee Inc., and thereby indirectly retain shares of Peoples Bank of East Tennessee, both of Madisonville, Tennessee.

Board of Governors of the Federal Reserve System, March 1, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–04592 Filed 3–6–18; 8:45 am]

BILLING CODE 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 April 2, 2018.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Stark Bancshares, Inc., Canton, Ohio;* to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Financial Corporation, Bolivar, Missouri, and thereby indirectly acquire Farmers State Bank, SB, Schell City, Missouri.

Board of Governors of the Federal Reserve System, March 1, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–04591 Filed 3–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0776]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

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 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 information collection related to Reclassification Petitions for Medical Devices.

DATES: Submit either electronic or written comments on the collection of information by May 7, 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 May 7, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of May 7, 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–2011–N–0776 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices.'' 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, 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.

Reclassification Petitions for Medical Devices—21 CFR Section 860.123

OMB Control Number 0910–0138—Extension

Under sections 513(e) and (f), 514(b), 515(b), and 520(*l*) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(*l*)) and part 860 (21 CFR part 860), subpart C, FDA has the responsibility to collect data and information contained in reclassification petitions. The reclassification provisions of the FD&C Act allow any person to petition for reclassification of a device from any of the three classes, *i.e.,* I, II, and III, to another class. The reclassification content regulation (§ 860.123) requires the submission of valid scientific evidence demonstrating that the proposed reclassification will provide a reasonable assurance of safety and effectiveness of the device type for its indications for use.

The reclassification procedure regulation requires the submission of specific data when a manufacturer is petitioning for reclassification. This includes a ''Supplemental Data Sheet,'' Form FDA 3427, and a ''General Device Classification Questionnaire,'' Form FDA 3429. Both forms contain a series of questions concerning the safety and effectiveness of the device type.

In the **Federal Register** of March 25, 2014 (79 FR 16252), FDA issued a

proposed rule that would eliminate the need for Forms FDA 3427 and 3429. However, because the proposed rule has not been finalized, we continue to include the forms in the burden estimate for this information collection.

The reclassification provisions of the FD&C Act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device type, or to seek reclassification from a lower to a higher class, thereby increasing the regulatory requirements applicable to that device type. If approved, petitions requesting classification from class III to class II or class I provide an alternative route to market in lieu of premarket approval for class III devices. If approved, petitions requesting reclassification from class I or II, to a different class, may increase requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Supporting data for reclassification petition—21 CFR 860.123		6	1	6	497	2,982
Supplemental Data Sheet	3427	6	1	6	1.5	9
General Device Classification Questionnaire	3429	6	1	6	1.5	9
Total						3,000

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

Based on reclassification petitions received in the last 3 years, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who: (1) Are familiar with the requirements for submission of a reclassification petition, (2) have consulted and advised manufacturers on these requirements, and (3) have reviewed the documentation submitted.

The burden estimate for this information collection has not changed since the last OMB approval.

Dated: February 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04613 Filed 3–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0263]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before April 6, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: 0990–0263—Extension Protection of Human Subjects Assurance Identification/IRB Certification/ Declaration of Exemption (Common Rule) form.

Abstract: Assistant Secretary for Health, Office for Human Research Protections is requesting an extension on a currently approved information collection by the Office of Management and Budget, OMB, on the Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form. That form is designed to provide a simplified procedure for institutions engaged in research conducted or supported by the Department of Health and Human Services (HHS) to satisfy the requirements of HHS regulations for the protection of human subjects at 45 CFR 46.103. The respondents for this collection are institutions engaged in research involving human subjects where the research is supported by HHS. Institutional use of the form is also relied upon by other federal departments and agencies that have codified or follow the Federal Policy for the Protection of Human Subjects (Common Rule) which is identical to 45 CFR part 46, subpart A.

Likely Respondents: Individuals, business or other for-profit, not for-profit institutions, Federal, State, Local or Tribal Governments.

ESTIMATE ANNUALIZED BURDEN IN HOURS TABLE

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption	14,000	2	0.5	14,000
Total				14,000

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2018–04617 Filed 3–6–18; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0260]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 7, 2018.

ADDRESSES: Submit your comments to *Sherette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference., to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: 0990–0260—Extension Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation.

Abstract: Assistant secretary for Health, Office for Human Research Protections is requesting an extension on a currently approved information collection by the Office of Management and Budget, on the Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/ Consent Documentation. The purpose of the Federal Policy for the Protection of Human Subjects (also known as the Common Rule) is to provide a uniform government-wide standard for institutions engaged in research conducted or supported by the Department of Health and Human Services (HHS) to apply regarding the protection of human subjects involved in research. The HHS codification of the Common Rule is at 45 CFR part 46 subpart A. The respondents for this collection are institutions engaged in such research. Institutional adherence to the Common Rule also is required by other federal departments and agencies that have codified or follow the Common Rule which is identical to 45 CFR part 46, subpart A.

Likely Respondents: Institutions engaged in nonexempt human subject's research.

ESTIMATE ANNUALIZED BURDEN IN HOURS TABLE

Title	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
.103(b)(4), .109(d)IRB Actions, .116 and .117 Informed Consent	6,000	39.33	1	235,980
.115(a) IRB Recordkeeping	6,000	15	10	900,000
.103(b)(5) Incident Reporting, .113 Suspension or Termination Reporting	6,000	0.5	45/60	2,250
Total				1,138,230

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2018–04618 Filed 3–6–18; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: May 8, 2018.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 8–9, 2018.

Open: May 8, 2018, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 8, 2018, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 9, 2018, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on May 8–9, 2018.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: February 28, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04551 Filed 3–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0111]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 6, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0111 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on December 21, 2017, at 82 FR 60756, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0011 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for a CNMI-Only Nonimmigrant Transitional Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–129CW; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW–1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

USCIS collects biometrics from aliens present in the CNMI at the time of requesting initial grant of CW–1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW–1 status.

The CW–1 classification is unique in that Form I–129CW is a petition for the CW–1 classification as well as a ''grant of status.'' A ''grant of status'' allows beneficiaries lawfully present in the CNMI to change status directly from their CNMI classification or DHS-issued parole to the CW–1 classification. *See* 8 CFR 214.2(w)(1)(v). When a beneficiary is granted CW–1 status, the adjudicating officer is granting admission and status to the beneficiary without requiring the beneficiary to depart the CNMI, obtain a visa abroad, and seek admission with CBP. Because we are granting the CW–1 status to the beneficiary, we use biometrics to make a determination of admissibility prior to adjudicating the Form I–129CW petition. The checks are used to confirm identity and ensure that CW–1 status is not granted to anyone who is inadmissible. As the CW program progresses, the need to take biometrics in most cases has diminished, as the Form I–129CW is increasingly used for extension of status of persons who had already had their biometrics taken at the initial grant stage rather than for initial grants of status in the CNMI, but the authority will continue to be used in those initial grant cases that do arise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129CW is 3,749 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,247 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $459,252.50.

Dated: March 1, 2018.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–04590 Filed 3–6–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2017–0099; FXIA16710900000–178–FF09A30000]

Endangered Foreign Species and Protected Marine Mammals; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign endangered species and marine mammals. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities. The ESA also requires that we invite public comment before issuing these permits.

DATES: We must receive comments by April 6, 2018.

ADDRESSES:

Document availability: The applications, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–HQ–IA–2017–0099 at *http://www.regulations.gov.*

Submitting Comments: 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–2017–0099.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2017–0099; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# at the beginning of your comment. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Joyce Russell, 703–358–2280.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods listed above under *Submitting Comments* in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**.

Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above in **ADDRESSES**.

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the

Privacy Act or Freedom of Information Act. 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.

C. Who will see my comments?

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: IDEXX Reference Laboratories, Westbrook, ME; PRT–57489C

The applicant requests a permit to import blood samples derived from captive-bred black rhinoceros (*Diceros bicornis*) from African Safari, Puebla, Mexico, for scientific research. This notification is for a single import.

Applicant: American Museum of Natural History, New York, NY; PRT–26682C

The applicant requests a permit to export, re-export, and import biological samples, parts, and products from live, dead, wild, and captive-born endangered mammals (excluding marine mammals), birds, reptiles, fish, amphibians, and invertebrates from worldwide locations for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: OdySea Aquarium, Scottsdale, AZ; PRT–62534C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the African penguin (*Spheniscus demersus*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: East Texas Ranch, LP, Athens, TX; PRT–37142A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: East Texas Ranch, LP, Athens, TX; PRT–51951C

The applicant requests a permit authorizing the culling of excess barasingha (*Rucervus duvaucelli*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophies

The following applicants each request a permit to import sport-hunted trophies of a male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Alan Long, Talala, OK; PRT–63010C

Applicant: Michael Towbin, Kirkland, WA; PRT–59012C

Applicant: Terry Anderson, Bozeman, MT; PRT–52689C

Applicant: Robert Gwin, Oklahoma City, OK; PRT–55023C

Applicant: Scott Roleson, Whiting, NJ; PRT–54410C

B. Marine Mammals

Applicant: USGS-Southeast Ecological Science CTR, Gainesville, FL; PRT–791721

The applicant requests authorization to renew and amend their permit to export, import, and re-export biological samples of live and dead Sirenia (all species of manatees and dugongs, including *Trichechus manatus latirostris, T. m. manatus, Trichechus inunguis, Trichechus senegalensis,* and *Dugong dugon*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

IV. Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the **Federal Register** notice announcing the permit issuance date by searching *http://www.regulations.gov* under the permit number listed in this document (*e.g.,* PRT–12345c).

V. Authority

Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*); Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–04608 Filed 3–6–18; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1353 and 1356 (Final)]

Carbon and Certain Alloy Steel Wire Rod From South Africa and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of carbon and certain alloy steel wire rod from South Africa and Ukraine, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

(''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective March 28, 2017, following receipt of a petition filed with the Commission and Commerce by Charter Steel, Saukville, Wisconsin; Gerdau Ameristeel US Inc., Tampa, Florida; Keystone Consolidated Industries, Inc., Peoria, Illinois; and Nucor Corporation, Charlotte, North Carolina. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of carbon and certain alloy steel wire rod from South Africa and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 20, 2017 (82 FR 44001). The hearing was held in Washington, DC, on November 16, 2017 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on March 1, 2018. The views of the Commission are contained in USITC Publication 4766, March 2018, entitled *Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine: Investigation Nos. 731–TA–1353 and 1356 (Final).*

By order of the Commission.

Issued: March 1, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04585 Filed 3–6–18; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission also finds that imports of wire rod subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on South Africa.

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. W.A. Foote Memorial Hospital, d/b/a Allegiance Health; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Notification of Settlement and Explanation of Consent Decree Procedures, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Michigan in *United States and State of Michigan* v. *W.A. Foote Memorial Hospital,* Civil Action No. 15–cv–12311 (JEL) (DRG). On June 25, 2015, the United States and the State of Michigan filed a Complaint alleging that Defendant W.A. Foote Memorial Hospital d/b/a Allegiance Health (''Allegiance'') entered into an agreement with Hillsdale Community Health Center that unlawfully allocated customers in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and 2 of the Michigan Antitrust Reform Act, MCL 445.772. The proposed Final Judgment, filed February 9, 2018, prohibits Allegiance from agreeing with other healthcare providers to prohibit or limit marketing or to divide any geographic market or territory. The proposed Final Judgment also prohibits Allegiance from communicating with competing healthcare systems regarding its marketing plans, with limited exceptions. The proposed Final Judgment also imposes an antitrust compliance officer and other training and monitoring requirements on Allegiance.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment on the proposed Final Judgment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter J. Mucchetti, Chief, Healthcare & Consumer Products Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and State of Michigan, and Plaintiffs, v. *Hillsdale Community Health Center, W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Community Health Center of Branch County*, and *Promedica Health System, Inc.,* Defendants.

Case No.: 2:15–cv–12311–JEL–DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

COMPLAINT

The United States of America and the State of Michigan bring this civil antitrust action to enjoin agreements by Defendants Hillsdale Community Health Center (''Hillsdale''), W.A. Foote Memorial Hospital, d/b/a Allegiance Health (''Allegiance''), Community Health Center of Branch County (''Branch''), and ProMedica Health System, Inc. (''ProMedica'') (collectively, ''Defendants'') that unlawfully allocate territories for the marketing of competing healthcare services and limit competition among Defendants.

NATURE OF THE ACTION

1. Defendants are healthcare providers in Michigan that operate the only general acute-care hospital or hospitals in their respective counties. Defendants directly compete with each other to provide healthcare services to the residents of south-central Michigan. Marketing is a key component of this competition and includes advertisements, mailings to patients, health fairs, health screenings, and outreach to physicians and employers.

2. Allegiance, Branch, and ProMedica's Bixby and Herrick Hospitals (''Bixby and Herrick'') are Hillsdale's closest Michigan competitors. Hillsdale orchestrated agreements to limit marketing of competing healthcare services. Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County.'' Branch's CEO described the Branch agreement with Hillsdale as a ''gentlemen's agreement not to market services.'' A ProMedica communications specialist described the ProMedica agreement with Hillsdale

in an email: ''The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project.''

3. The Defendants' agreements have disrupted the competitive process and harmed patients, physicians, and employers. For instance, all of these agreements have deprived patients, physicians, and employers of information they otherwise would have had when making important healthcare decisions. In addition, the agreement between Allegiance and Hillsdale has deprived Hillsdale County patients of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, it denied Hillsdale County employers the opportunity to develop relationships with Allegiance that could have allowed them to improve the quality of their employees' medical care.

4. Defendants' senior executives created and enforced these agreements, which lasted for many years. On certain occasions when a Defendant violated one of the agreements, executives of the aggrieved Defendant complained about the violation and received assurances that the previously agreed upon marketing restrictions would continue to be observed going forward.

5. Defendants' agreements are naked restraints of trade that are *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The State of Michigan brings this action in its sovereign capacity under its statutory, equitable and/or common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants' violations of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

7. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4 (as to claims by the United States); Section 16 of the Clayton Act, 15 U.S.C. § 26 (as to claims by the State of Michigan); and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1367.

8. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391 and Section 12 of the Clayton Act, 15 U.S.C. § 22. Each Defendant transacts business within the Eastern District of Michigan, all Defendants reside in the State of Michigan, and at least two Defendants reside in the Eastern District of Michigan.

9. Defendants all engage in interstate commerce and in activities substantially affecting interstate commerce. Defendants provide healthcare services to patients for which employers, health plans, and individual patients remit payments across state lines. Defendants purchase supplies and equipment from out-of-state vendors that are shipped across state lines.

DEFENDANTS

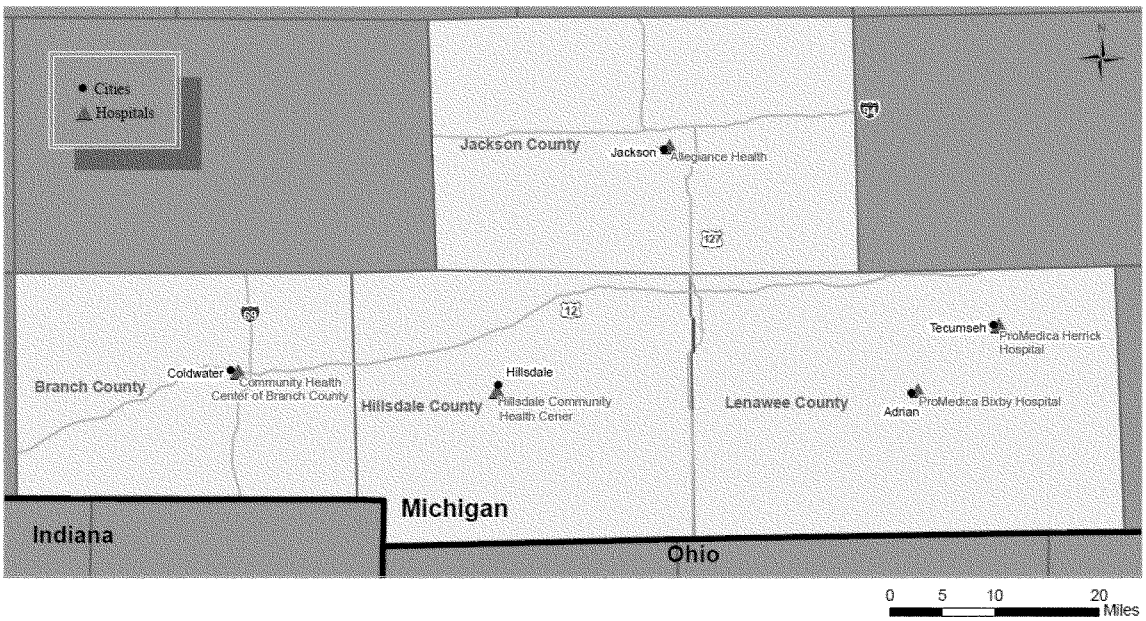
10. Hillsdale is a Michigan corporation headquartered in Hillsdale, Michigan. Its general acute-care hospital, which is in Hillsdale County, Michigan, has 47 beds and a medical staff of over 90 physicians.

11. Allegiance is a Michigan corporation headquartered in Jackson, Michigan. Its general acute-care hospital, which is in Jackson County, Michigan, has 480 beds and a medical staff of over 400 physicians.

12. Branch is a Michigan corporation headquartered in Coldwater, Michigan. Its general acute-care hospital, which is in Branch County, Michigan, has 87 beds and a medical staff of over 100 physicians.

13. ProMedica is an Ohio corporation headquartered in Toledo, Ohio, with facilities in northwest Ohio and southern Michigan. ProMedica's Bixby and Herrick Hospitals are both in Lenawee County, Michigan. Bixby is a general acute-care hospital with 88 beds and a medical staff of over 120 physicians. Herrick is a general acute-care hospital with 25 beds and a medical staff of over 75 physicians.

Map of Defendants' Hospitals



BACKGROUND ON HOSPITAL COMPETITION

14. Hillsdale competes with each of the other Defendants to provide many of the same hospital and physician services to patients. Hospitals compete on price, quality, and other factors to sell their services to patients, employers, and insurance companies. An important tool that hospitals use to compete for patients is marketing aimed at informing patients, physicians, and employers about a hospital's quality and scope of services. An executive from each Defendant has testified at deposition that marketing is an important strategy through which hospitals seek to increase their patient volume and market share.

15. Defendants' marketing includes advertisements through mailings and media such as local newspapers, radio, television, and billboards. Allegiance's marketing to patients also includes the provision of free medical services, such as health screenings, physician seminars, and health fairs. Some Defendants also market to physicians through educational and relationship-building meetings that provide physicians with information about those Defendants' quality and range of services. Allegiance also engages in these marketing activities with employers.

HILLSDALE'S UNLAWFUL AGREEMENTS

16. Hillsdale has agreements limiting competition with Allegiance, ProMedica, and Branch.

Unlawful Agreement Between Hillsdale and Allegiance

17. Since at least 2009, Hillsdale and Allegiance have had an agreement that limits Allegiance's marketing for competing services in Hillsdale County. As Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County.''

18. In compliance with this agreement, Allegiance has excluded Hillsdale County from marketing campaigns since at least 2009. For example, Allegiance excluded Hillsdale County from the marketing plans outlined in the above-referenced 2013 oncology marketing plan. And according to a February 2014 board report, Allegiance excluded Hillsdale from marketing campaigns for cardiovascular and orthopedic services.

19. On at least two occasions, Hillsdale's CEO complained to Allegiance after Allegiance sent marketing materials to Hillsdale County residents. Both times—at the direction of Allegiance CEO Georgia Fojtasek—Allegiance's Vice President of Marketing, Anthony Gardner, apologized in writing to Hillsdale's CEO. In one apology he said, ''It isn't our style to purposely not honor our agreement.'' Mr. Gardner assured Hillsdale's CEO that Allegiance would not repeat this mistake.

20. Allegiance also conveyed its hands-off approach to Hillsdale in 2009 when Ms. Fojtasek told Hillsdale's CEO that Allegiance would take a ''Switzerland'' approach towards Hillsdale, and then confirmed this approach by mailing Hillsdale's CEO a Swiss flag.

21. Allegiance executives and staff have discussed the agreement in numerous correspondences and business documents. For example, Allegiance staff explained in a 2012 cardiovascular services analysis: ''Hillsdale does not permit [Allegiance] to conduct free vascular screens as they periodically charge for screenings.'' As a result, around that time, Hillsdale County patients were deprived of free vascular-health screenings.

22. In another instance, in 2014 Allegiance discouraged one of its newly employed physicians from giving a seminar in Hillsdale County relating to competing services. In response to the physician's request to provide the seminar, the Allegiance Marketing Director asked the Vice President of Physician Integration and Business Development: ''Who do you think is the best person to explain to [the doctor] our restrictions in Hillsdale? We're happy to do so but often our docs find it hard to believe and want a higher authority to confirm.''

23. The agreement between Hillsdale and Allegiance has deprived Hillsdale County patients, physicians, and employers of information regarding their healthcare-provider choices and of free health-screenings and education.

Unlawful Agreement Between Hillsdale and ProMedica

24. Since at least 2012, Hillsdale and ProMedica have agreed to limit their marketing for competing services in one another's county.

25. This agreement has restrained marketing in several ways. For example, in June 2012, Bixby and Herrick's President asked Hillsdale's CEO if he would have any issue with Bixby marketing its oncology services to Hillsdale physicians. Hillsdale's CEO replied that he objected because his hospital provided those services. Bixby and Herrick's President responded that he understood. Bixby and Herrick then refrained from marketing their competing oncology services in Hillsdale County.

26. Another incident occurred around January 2012, when Hillsdale's CEO complained to Bixby and Herrick's President about the placement of a ProMedica billboard across from a physician's office in Hillsdale County. At the conclusion of the conversation, Bixby and Herrick's President assured Hillsdale's CEO that he would check into taking down the billboard.

27. ProMedica employees have discussed and acknowledged the agreement in multiple documents. For example, after Hillsdale's CEO called Bixby and Herrick's President to complain about ProMedica's billboard, a ProMedica communications specialist described the agreement to marketing colleagues via email: ''According to [Bixby and Herrick's President] any potential marketing (including network development) efforts targeted for the Hillsdale, MI market should be run by him so that he can talk to Hillsdale Health Center in advance. The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project.''

28. The agreement between Hillsdale and ProMedica deprived patients, physicians, and employers of Hillsdale and Lenawee Counties of information regarding their healthcare-provider choices.

Unlawful Agreement Between Hillsdale and Branch

29. Since at least 1999, Hillsdale and Branch have agreed to limit marketing in one another's county. In the fall of 1999, Hillsdale's then-CEO and Branch's CEO reached an agreement whereby each hospital agreed not to market anything but new services in the other hospital's county. Branch's CEO testified recently in deposition that ''There's a gentlemen's agreement not to market services other than new services.''

30. Branch has monitored Hillsdale's compliance with the agreement. For example, in November 2004, Hillsdale promoted one of its physicians through an advertisement in the Branch County newspaper. Branch's CEO faxed Hillsdale's then-CEO a copy of the advertisement, alerting him to the violation of their agreement.

31. In addition to monitoring Hillsdale's compliance, Branch has directed its marketing employees to abide by the agreement with Hillsdale. For example, Branch's 2013 guidelines

for sending out media releases instructed that it had a ''gentleman's agreement'' with Hillsdale and thus Branch should not send media releases to the *Hillsdale Daily News.*

32. The agreement between Hillsdale and Branch deprived Hillsdale and Branch County patients, physicians, and employers of information regarding their healthcare-provider choices.

NO PROCOMPETITIVE JUSTIFICATIONS

33. The Defendants' anticompetitive agreements are not reasonably necessary to further any procompetitive purpose.

VIOLATIONS ALLEGED

First Cause of Action: Violation of Section 1 of the Sherman Act

34. Plaintiffs incorporate paragraphs 1 through 33.

35. Allegiance, Branch, and ProMedica are each a horizontal competitor of Hillsdale in the provision of healthcare services in south-central Michigan. Defendants' agreements are facially anticompetitive because they allocate territories for the marketing of competing healthcare services and limit competition among Defendants. The agreements eliminate a significant form of competition to attract patients.

36. The agreements constitute unreasonable restraints of trade that are *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1. No elaborate analysis is required to demonstrate the anticompetitive character of these agreements.

37. The agreements are also unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, under an abbreviated or ''quick look'' rule of reason analysis. The principal tendency of the agreements is to restrain competition. The nature of the restraints is obvious, and the agreements lack legitimate procompetitive justifications. Even an observer with a rudimentary understanding of economics could therefore conclude that the agreements would have anticompetitive effects on patients, physicians, and employers, and harm the competitive process.

Second Cause of Action: Violation of MCL 445.772

38. Plaintiff State of Michigan incorporates paragraphs 1 through 37 above.

39. Defendants entered into unlawful agreements with each other that unreasonably restrain trade and commerce in violation of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

REQUESTED RELIEF

The United States and the State of Michigan request that the Court:

(A) judge that Defendants' agreements limiting competition constitute illegal restraints of interstate trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

(B) enjoin Defendants and their members, officers, agents, and employees from continuing or renewing in any manner the conduct alleged herein or from engaging in any other conduct, agreement, or other arrangement having the same effect as the alleged violations;

(C) enjoin each Defendant and its members, officers, agents, and employees from communicating with any other Defendant about any Defendant's marketing in its or the other Defendant's county, unless such communication is related to the joint provision of services, or unless the communication is part of normal due diligence relating to a merger, acquisition, joint venture, investment, or divestiture;

(D) require Defendants to institute a comprehensive antitrust compliance program to ensure that Defendants do not establish any similar agreements and that Defendants' members, officers, agents and employees are fully informed of the application of the antitrust laws to hospital restrictions on competition; and

(E) award Plaintiffs their costs in this action, including attorneys' fees and investigation costs to the State of Michigan, and such other relief as may be just and proper.

Dated: June 25, 2015.
Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

William J. Baer,
Assistant Attorney General for Antitrust.

David I. Gelfand,
Deputy Assistant Attorney General.

\s\

Katrina Rouse (D.C. Bar #1013035),
Jennifer Hane,
Barry Joyce,

Attorneys, Litigation I, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530, (202) 305–7498, email: katrina.rouse@usdoj.gov.

LOCAL COUNSEL:

Barbara L. McQuade,
United States Attorney.

\s\ with the consent of Peter Caplan

Peter Caplan,
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FOR PLAINTIFF STATE OF MICHIGAN:

Bill Schuette, Attorney General, State of Michigan.

\s\ *with the consent of Joseph Potchen*

Joseph Potchen,
Division Chief.

\s\ with the consent of Mark Gabrielse

Mark Gabrielse (P75163),
D.J. Pascoe,

Assistant Attorney Generals, Michigan Department of Attorney General, Corporate Oversight Division, G. Mennen Williams Building, 6th Floor, 525 W. Ottawa Street, Lansing, Michigan 48933, (517) 373–1160, Email: gabrielsem@michigan.gov.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and *State Of Michigan, Plaintiffs,* v. *W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Defendant.*

Case No.: 5:15–cv–12311–JEL–DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

[PROPOSED] FINAL JUDGMENT

Whereas, Plaintiffs, the United States of America and the State of Michigan, filed their joint Complaint on June 25, 2015, alleging that W.A. Foote Memorial Hospital, d/b/a/Allegiance Health; Hillsdale Community Health Center; Community Health Center of Branch County; and ProMedica Health System, Inc. violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

And Whereas, Plaintiffs and W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And Whereas, Plaintiffs require Allegiance to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

And Whereas, Plaintiffs require Allegiance to agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

Now Therefore, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Allegiance regarding any issue of fact or law, and upon consent of the parties to this action, it is *Ordered, Adjudged, and Decreed*:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. 28 U.S.C. §§ 1331, 1337(a), 1345, 1367(a). The Complaint states a claim upon which relief may be granted against Allegiance under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Allegiance'' means Defendant W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health, a corporation organized and existing under the laws of the State of Michigan and affiliated with the Henry Ford Health System with headquarters in Detroit, Michigan, (i) its successors and assigns, (ii) all subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures that are controlled by Henry Ford Allegiance Health, and (iii) their directors, officers, managers, agents, and employees.

B. ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner.

D. ''Communication'' means any discussion, disclosure, transfer, dissemination, or exchange of information or opinion.

E. ''Joint Provision of Services'' means any past, present, or future coordinated delivery of any healthcare services by two or more healthcare providers, including a clinical affiliation, joint venture, management agreement, accountable care organization, clinically integrated network, group purchasing organization, management services organization, or physician hospital organization.

F. ''Marketing'' means any past, present, or future activities that are involved in making persons aware of the services or products of the hospital or of physicians employed or with privileges at the hospital, including advertising, communications, public relations, provider network development, outreach to employers or physicians, and promotions, such as free health screenings and education.

G. ''Marketing Manager'' means any company officer or employee at the level of director, or above, with responsibility for or oversight of Marketing.

H. ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

I. ''Provider'' means any physician or physician group and any inpatient or outpatient medical facility including hospitals, ambulatory surgical centers, urgent care facilities, and nursing facilities.

III. APPLICABILITY

This Final Judgment applies to Allegiance and all other persons in active concert or participation with Allegiance who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

A. Allegiance shall not enter into, attempt to enter into, maintain, or enforce any Agreement with any other Provider that:

(1) prohibits or limits Marketing; or

(2) allocates any service, customer, or geographic market or territory between or among Allegiance and any other Provider, unless such Agreement is reasonably necessary for and ancillary to a bona fide Agreement providing for the Joint Provision of Services.

B. Allegiance shall not Communicate with any other Provider about Allegiance's Marketing in its or the Provider's county, except Allegiance may:

(1) Communicate with any Provider about joint Marketing if the Communication is related to the Joint Provision of Services;

(2) Communicate with any Provider about Marketing if the Communication is part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture; or

(3) Market to Providers, including through its physician liaison program.

C. Allegiance shall not exclude or eliminate Hillsdale County from its Marketing or business development opportunities.

V. REQUIRED CONDUCT

A. Within thirty days of entry of this Final Judgment, Allegiance shall hire and appoint an Antitrust Compliance Officer. The Antitrust Compliance Officer may be a current employee of Henry Ford and must be approved by Plaintiffs.

B. Antitrust Compliance Officer shall:

(1) within sixty days of entry of the Final Judgment, furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1 to (a) all of Allegiance's Marketing Managers and other employees engaged, in whole or in part, in activities relating to Allegiance's Marketing or business development activities; (b) all direct reports of Allegiance's CEO; and (c) Allegiance's officers and directors (including their Boards of Directors);

(2) within thirty days of any person's succession to any position described in Section V.B.(1) above, furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1;

(3) annually brief each person designated in Section V.B.(1) and (2) on the meaning and requirements of this Final Judgment and the antitrust laws;

(4) obtain from each person designated in Section V.B.(1) and (2), within sixty days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not already been reported to Allegiance; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against Allegiance and/or any person who violates this Final Judgment;

(5) maintain a record of certifications received pursuant to Section V.B.(4);

(6) annually communicate to Allegiance's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

(7) ensure that each person identified in Section V.B.(1) and (2) of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this Final Judgment and the antitrust laws, such training to be delivered by the Antitrust Compliance Officer or an attorney with relevant experience in the field of antitrust law;

(8) maintain a log of telephonic, electronic, in-person, and other communications regarding Marketing with any Officers or Directors of any healthcare system Provider and make it available to Plaintiffs for inspection upon either Plaintiff's request; and

(9) provide to Plaintiffs annually, on or before the anniversary of the effective date of this order, a written statement affirming Allegiance's compliance with Section V of this order, and including the training or instructional materials used or supplied by Allegiance or Henry Ford in connection with the training as required by Section V.B.(7).

C. Allegiance shall:

(1) upon learning of any violation or potential violation of any of the terms

and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment;

(2) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, within thirty days of its becoming known, file with each Plaintiff a statement describing any violation or potential violation, and any steps taken in response to the violation, which statement shall include a description of any communication constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication; and

(3) certify to each Plaintiff annually on the anniversary date of the entry of this Final Judgment that Allegiance has complied with the provisions of this Final Judgment.

VI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice or the Office of the Michigan Attorney General, including consultants and other retained persons, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, and on reasonable notice to Allegiance, be permitted:

(1) access during Allegiance's office hours to inspect and copy, or at the option of the United States or the State of Michigan, to require Allegiance to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Allegiance, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Allegiance's officers, directors, employees, or agents, who may have individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Allegiance.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, Allegiance shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States or the State of Michigan to any person other than an authorized representative of the executive branch of the United States or the State of Michigan, except in the course of legal proceedings to which the United States or the State of Michigan is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allegiance to the United States or the State of Michigan, Allegiance represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Allegiance marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States and the State of Michigan shall give Allegiance ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. INVESTIGATION FEES AND COSTS

Allegiance shall pay to the United States the sum of $5,000.00 for pre-trial litigation costs and the State of Michigan the sum of $35,000.00 to partially cover transcripts and related litigation costs.

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time prior to the expiration of this Final Judgment for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. ENFORCEMENT OF FINAL JUDGMENT

A. Plaintiffs retain and reserve all rights to enforce the provisions of this Final Judgment, including their right to seek an order of contempt from this Court. Allegiance agrees that in any civil contempt action, any motion to show cause, or any similar action brought by Plaintiffs regarding an alleged violation of this Final Judgment, Plaintiffs may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Allegiance waives any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that Allegiance has violated this Final Judgment, Plaintiffs may apply for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Allegiance agrees to reimburse the Plaintiffs for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States or the State of Michigan shall be sent to the persons at the addresses set forth below (or such other address as the United States or the State of Michigan may specify in writing to Allegiance):

Chief
Healthcare & Consumer Products Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, Suite 4100
Washington, DC 20530

Division Chief
Corporate Oversight Division
Michigan Department of Attorney General
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909

XII. PUBLIC INTEREST DETERMINATION

The parties, as required, have complied with the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

Exhibit 1

[Letterhead of Allegiance]
[Name and Address of Antitrust Compliance Officer]
Dear [XX]:

I am providing you this notice to make sure you are aware of a court order recently entered by the Honorable Judith E. Levy, a federal judge in Ann Arbor, Michigan. This court order applies to our institution and all of its employees, including you, so it is important that you understand the obligations it imposes on us. Ms. Georgia Fojtasek has asked me to let each of you know that they expect you to take these obligations seriously and abide by them.

In a nutshell, the order prohibits us from agreeing with other healthcare providers, including hospitals and physicians, to limit marketing or to divide any geographic market, territory, customers, or services between healthcare providers. This means you cannot give any assurance to another healthcare provider that Henry Ford Allegiance Health will refrain from marketing our services, and you cannot ask for any assurance from them that they will refrain from marketing. The court order also prohibits communicating with any health care system provider, or their employees about our marketing plans or about their marketing plans. There are limited exceptions to this restriction on communications, such as discussing joint projects, but you should check with me before relying on those exceptions.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,

[Allegiance's Antitrust Compliance Officer]

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and *State of Michigan, Plaintiffs,* v. *W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Defendant.*

Case No.: 5:15-cv-12311-JEL-DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

COMPETITIVE IMPACT STATEMENT

Plaintiff the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment concerning W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health (''Allegiance'') submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 25, 2015, the United States and the State of Michigan filed a civil antitrust Complaint alleging that Allegiance, Hillsdale Community Health Center (''HCHC''), Community Health Center of Branch County (''Branch''), and ProMedica Health System, Inc. (''ProMedica'') violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. Concerning Allegiance, the Complaint alleged that Allegiance entered into an agreement with HCHC to limit marketing of competing healthcare services in Hillsdale County. This agreement eliminated a significant form of competition to attract patients and substantially diminished competition in Hillsdale County, depriving consumers, physicians, and employers of important information and services. The hospitals' agreement to allocate territories for marketing is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

With the Complaint, the United States and the State of Michigan filed a Stipulation and proposed Final Judgment (''Original Judgment'') with respect to HCHC, Branch, and ProMedica. That Original Judgment settled this suit as to those three defendants. Following a Tunney Act review process, the Court granted Plaintiffs' Motion for Entry of the Original Judgment (Dkt. 36) and dismissed HCHC, Branch, and ProMedica from the case (Dkt. 37). The case against Allegiance continued.

Allegiance has now agreed to a proposed Final Judgment, which contains terms that are similar to those in the Original Judgment, as well as additional terms. The United States filed this proposed Final Judgment with respect to Allegiance (''proposed Final Judgment'') on February 9, 2018 (Dkt. 122–1). The proposed Final Judgment is described in more detail in Section III below.

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. Background on Allegiance and Its Marketing Activities

Allegiance is a nonprofit general medical and surgical hospital in Jackson County, which is adjacent to HCHC's location in Hillsdale County in South Central Michigan. Allegiance is the only hospital in its county. Allegiance directly competes with HCHC to provide many of the same hospital and physician services to patients.

An important tool that hospitals use to compete for patients is marketing aimed at informing consumers, physicians, and employers about a hospital's quality and scope of services. Allegiance and HCHC's marketing includes advertisements through mailings and media, such as local newspapers, radio, television, and billboards, as well as the provision of free medical services, such as health screenings, physician seminars, and health fairs. Allegiance and HCHC also market to physicians and employers through educational and relationship-building meetings that provide physicians and employers with information about the hospitals' quality and range of services.

B. Allegiance's Unlawful Agreement with HCHC to Limit Marketing

Allegiance agreed with HCHC to suppress its marketing in Hillsdale County, and since at least 2009 to the time of filing of the Complaint in June 2015, Allegiance and HCHC's agreement limited Allegiance's marketing for competing services in Hillsdale County. Allegiance believed that HCHC might refer more complicated cases to Allegiance because of Allegiance's agreement to pull its competitive punches in Hillsdale County. Allegiance executives acknowledged the agreement in numerous documents. The hospitals' senior executives, including their CEOs, created, monitored, and enforced the agreement, which lasted for many years. The harmful effects of the agreement continue to the present day.

In compliance with this agreement, Allegiance routinely excluded Hillsdale County from many of its marketing campaigns. As Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center . . . to not conduct marketing activity in Hillsdale County.'' Allegiance employees repeatedly referred in internal documents to an ''agreement'' or a ''gentleman's agreement'' with HCHC, with a high-ranking executive

describing Allegiance's ''relationship with HCHC'' as ''one of seeking 'approval' to provide services in their market.'' Allegiance executives on occasion apologized in writing to HCHC for violating the agreement and assured HCHC executives that Allegiance would honor the previously agreed-upon marketing restrictions going forward: ''It isn't our style to purposely not honor our agreement.'' Allegiance even reduced the number of free health benefits, such as physician seminars and health screenings, offered to residents of Hillsdale County because of the agreement. This unlawful agreement between Allegiance and HCHC has deprived Hillsdale County consumers, physicians, and employers of valuable free health screenings and education and information regarding their healthcare provider choices.

C. Allegiance's Marketing Agreement Is Per Se Illegal

The agreement between Allegiance and HCHC disrupted the competitive process and harmed consumers. The agreement deprived consumers of information they otherwise would have had when making important healthcare decisions. The agreement also deprived Hillsdale County consumers of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, Allegiance's agreement with HCHC denied employers the opportunity to receive information and to develop relationships that could have allowed them to improve the quality of their employees' medical care. And the agreement diminished Allegiance's and HCHC's incentives to compete on quality or to improve patient experience, all to the detriment of South Central Michigan consumers.

The agreement to restrict marketing constituted a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. *See United States* v. *Topco Assocs., Inc.,* 405 U.S. 596, 607–08 (1972) (holding that naked market allocation agreements among horizontal competitors are plainly anticompetitive and illegal per se); *United States* v. *Cooperative Theatres of Ohio,* Inc., 845 F.2d 1367, 1371, 1373 (6th Cir. 1988) (holding that the defendants' agreement to not ''*actively* solicit[] each other's customers'' was ''undeniably a type of customer allocation scheme which courts have often condemned in the past as a *per se* violation of the Sherman Act''); *Blackburn* v. *Sweeney,* 53 F.3d 825, 828 (7th Cir. 1995) (holding that the ''[a]greement to limit advertising to different geographical regions was intended to be, and sufficiently approximates[,] an agreement to allocate markets so that the *per se* rule of illegality applies''). Allegiance's agreement with HCHC was not reasonably necessary to further any procompetitive purpose.

The antitrust laws would not prohibit a hospital from making its own marketing decisions and conducting marketing activities as it sees fit, so long as it does so unilaterally. By agreeing with a competitor to restrict marketing, however, Allegiance engaged in concerted action. By doing so, Allegiance deprived consumers of the benefits of competition and ran afoul of the antitrust laws.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and will restore the competition restrained by the anticompetitive agreement between Allegiance and HCHC. Section X of the proposed Final Judgment provides that these provisions will expire five years after its entry.

A. Prohibited Conduct

Under Section IV of the proposed Final Judgment, Allegiance cannot agree with any healthcare provider to prohibit or limit marketing. Allegiance also cannot allocate any services, customers, or geographic markets or territories, subject to narrow exceptions relating to the provision of certain services jointly with another healthcare provider. Allegiance is prohibited from communicating with any healthcare provider about Allegiance's marketing in its or the provider's county, subject to narrow exceptions relating to legitimate procompetitive activities.

Additionally, Allegiance is prohibited from excluding Hillsdale County from its marketing or business development activities. This prohibition restores competition that was eliminated during the course of the agreement, which Allegiance implemented in part by carving out Hillsdale County from many of its marketing activities. This prohibition ensures that Hillsdale County consumers will benefit from competition.

B. Compliance and Inspection

The proposed Final Judgment sets forth various provisions to ensure Allegiance's compliance with the proposed Final Judgment. Section V of the proposed Final Judgment requires Allegiance to hire and appoint an Antitrust Compliance Officer within thirty days of the Final Judgment's entry. The Antitrust Compliance Officer may be a current employee of Henry Ford Health System, and Allegiance must obtain Plaintiffs' approval for the person appointed to this position.

The Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and a notice explaining the Final Judgment's obligations to Allegiance's officers and directors (including its Board of Directors), direct reports to Allegiance's Chief Executive Officer, marketing managers at the level of director and above, and all other employees engaged in activities relating to Allegiance's marketing or business development activities. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agrees to abide by the terms of the Final Judgment. The Antitrust Compliance Officer must maintain a record of all certifications received. The Antitrust Compliance Officer shall annually brief each person receiving a copy of the Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. In addition, the Antitrust Compliance Officer shall ensure that each recipient of the Final Judgment and this Competitive Impact Statement receives at least four hours of training annually on the meaning and requirements of the Final Judgment and the antitrust laws.

Section V of the proposed Final Judgment requires the Antitrust Compliance Officer to communicate annually to Allegiance's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws. In addition, the Antitrust Compliance Officer shall maintain a log of communications relating to marketing between Allegiance staff and any officers or directors of other healthcare system providers. Annually, for the term of the Final Judgment, the Antitrust Compliance Officer must provide to Plaintiffs written confirmation of Allegiance's compliance with Section V, including providing copies of the training materials used for Allegiance's antitrust training program.

Additionally, within thirty days of learning of any violation or potential violation of the terms and conditions of the Final Judgment, Allegiance must file with the United States a statement describing the violation and the actions Allegiance took to terminate it.

To ensure Allegiance's compliance with the Final Judgment, Section VI of the proposed Final Judgment requires Allegiance to grant the United States and the State of Michigan access, upon reasonable notice, to Allegiance's records and documents relating to matters contained in the Final Judgment. Upon request, Allegiance also must make its employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the Final Judgment.

After entering into the settlement and specifically agreeing not to carve out Hillsdale County from its marketing campaigns, Allegiance issued a press release that claimed that it was allowed to ''continue [its] marketing strategies.'' John Commins, *Henry Ford Allegiance ''Reluctantly'' Settles DOJ Antitrust Suit,* HealthLeaders Media, Feb. 12, 2018, *http://www.healthleadersmedia.com/marketing/henry-ford-allegiance-reluctantly-settles-doj-antitrust-suit#.* This statement demonstrates that Allegiance's need for an effective antitrust compliance program is particularly acute and underscores the importance of provisions in the proposed Final Judgment to allow Plaintiffs to closely monitor Allegiance's actions to ensure compliance.

C. Investigation Fees and Costs

The proposed Final Judgment requires Allegiance to reimburse Plaintiffs for a portion of their litigation costs. Allegiance is required to pay the United States the sum of $5,000.00 and the State of Michigan the sum of $35,000.00.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of consent decrees as effective as possible. Paragraph IX(A) provides that Plaintiffs retain and reserve all rights to enforce the provisions of the proposed Final Judgment, including their rights to seek an order of contempt from the Court. Under the terms of this paragraph, Allegiance has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by Plaintiffs regarding an alleged violation of the Final Judgment, Plaintiffs may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Allegiance has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph IX(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Allegiance has violated the Final Judgment, Plaintiffs may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph IX(B) requires Allegiance to reimburse Plaintiffs for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Allegiance.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, which conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Peter J. Mucchetti
Chief, Healthcare and Consumer Products Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Allegiance. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and ensure that consumers, physicians, and employers benefit from competition. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market

> or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B).[1] In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (describing the public-interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. One court explained:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of [e]nsuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft,* 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language captured Congress's intent when it enacted the Tunney Act in 1974. Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 27, 2018
Respectfully submitted,
FOR PLAINTIFF UNITED STATES OF AMERICA:

Peter Caplan (P–30643),
Assistant United States Attorney, U.S. Attorney's Office, Eastern District of Michigan, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226, (313) 226–9784, *peter.caplan@usdoj.gov.*
\s\Katrina Rouse
Katrina Rouse (D.C. Bar No. 1013035),
Garrett Liskey,
Andrew Robinson,
Jill Maguire,
Healthcare & Consumer Products Section, Antitrust Division, U.S. Department of Justice, 450 Fifth St., NW, Washington, DC 20530, (415) 934–5346, *Katrina.Rouse@usdoj.gov.*

Certificate of Service

I hereby certify that on February 27, 2018, I electronically filed the foregoing paper with the Clerk of Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 5:15-cv-12311–JEL–DRG, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

\s\Garrett Liskey

Garrett Liskey (D.C. Bar No. 1000937)
Antitrust Division, Healthcare and Consumer Products Section, U.S. Department of Justice, 450 Fifth St., NW, Washington, DC 20530, (202) 598–2849, *Garrett.Liskey@usdoj.gov.*

[FR Doc. 2018–04593 Filed 3–6–18; 8:45 am]
BILLING CODE 4410–11–P

[3] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93-298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liabiilty Act

On February 22, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of New York in a lawsuit entitled *United States* v. *Steel of West Virginia,* Civil Action No. 18–1661.

In this action the United States seeks, as provided under the Comprehensive Environmental Response, Compensation and Liability Act, recovery of response costs from Steel of West Virginia regarding the Port Refinery Superfund Site (''Site'') in the Village of Rye Brook, New York. The proposed Consent Decree resolves the United States' claims and requires Steel of West Virginia to pay $35,829 in reimbursement of the United States' past response costs regarding the Site.

The publication of this notice opens a public comment period on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Steel of West Virginia,* Civil Action No. 18–1661, D.J. Ref. 90–11–3–1142/4. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–04570 Filed 3–6–18; 8:45 am]
BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of 2 years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the Charter for the Advisory Committee on the Medical Uses of Isotopes for the 2 year period commencing on March 1, 2018, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional

qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

FOR FURTHER INFORMATION CONTACT: Sophie Holiday, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–7865; email *Sophie.Holiday@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of March, 2018.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–04610 Filed 3–6–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–174]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 9, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–174; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* March 1, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Timothy J. Schwuchow; *Comments Due:* March 9, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–04615 Filed 3–6–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82801; File No. SR–OCC–2017–022]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Related to The Options Clearing Corporation's Margin Methodology

March 2, 2018.

I. Introduction

On November 13, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2017–022 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 4, 2017.[3] On January 18, 2018, the Commission designated a longer period of time for Commission action on the Proposed Rule Change.[4] As of February 20, 2018,[5] the Commission has received one comment letter on the proposal contained in the Advance Notice.[6] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82161 (Nov. 28, 2017), 82 FR 57306 (Dec. 4, 2017) (File No. SR–OCC–2017–022) (''Notice''). On November 13, 2017, OCC also filed a related advance notice (SR–OCC–2017–811) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published in the **Federal Register** on December 27, 2017. Securities Exchange Act Release No. 82371 (Dec. 20, 2017), 82 FR 61354 (Dec. 27, 2017) (SR–OCC–2017–811).

The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission. *See* 12 U.S.C. 5465(e).

[4] Securities Exchange Act Release No. 82534 (Jan. 18, 2018), 83 FR 3376 (Jan. 24, 2018) (File No. SR–OCC–2017–022).

[5] The comment period closed on December 26, 2017.

[6] *See* letter from Michael Kitlas, dated November 28, 2017, to Eduardo A. Aleman, Assistant Secretary, Commission, *available at https://www.sec.gov/comments/sr-occ-2017-022/occ2017022.htm* (''Kitlas Letter''). After reviewing

Continued

publishing this order to institute proceedings pursuant to Section 19(b)(2)(B)[7] of the Act to determine whether to approve or disapprove the Proposed Rule Change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, nor does it mean that the Commission will ultimately disapprove the Proposed Rule Change. Rather, as discussed below, the Commission seeks additional input on the Proposed Rule Change and issues presented by the proposal.

II. Description of the Proposed Rule Change[8]

OCC's Current Margin Methodology

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''), calculates clearing member margin requirements.[9] STANS utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a clearing member's margin requirement.[10] The STANS margin requirement is calculated at the portfolio level of clearing member accounts with positions in marginable securities and consists of an estimate of a 99% expected shortfall[11] over a two-day time horizon and an add-on margin charge for model risk (the concentration/dependence stress test charge).[12] The STANS methodology is used to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral.[13]

A ''risk factor'' within OCC's margin system may be defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product.[14] The majority of risk factors utilized in the STANS methodology are total returns on individual equity securities. Other risk factors considered include: Returns on equity indexes; returns on implied volatility risk factors that are a set of nine chosen volatility pivots per product; changes in foreign exchange rates; securities underlying equity-based products; and changes in model parameters that sufficiently capture the model dynamics from a larger set of data.[15]

Under OCC's current margin methodology, OCC obtains monthly price data for most of its equity-based products from a third-party vendor.[16] These data arrive around the second week of every month in arrears and require approximately four weeks for OCC to process prior to installing into OCC's margin system.[17] As a result, correlations and statistical parameters for risk factors at any point in time represent back-dated data and therefore may not be representative of the most recent market data.[18] In the absence of daily updates, OCC employs an approach where one or more identified market proxies (or ''scale-factors'') are used to incorporate day-to-day market volatility across all associated asset classes throughout.[19] The scale-factor approach, however, assumes a perfect correlation of the volatilities between the security and its scale-factor, which gives little room to capture the idiosyncratic risk of a given security and which may be different from the broad market risk represented by the scale-factor.[20] In addition, OCC imposes a floor on volatility estimates for its equity-based products using a 500-day look back period.[21]

OCC believes that using monthly price data, coupled with the dependency of margins on scale-factors and the volatility floor can result in imprecise changes in margins charged to clearing members, specifically across periods of heavy volatility when the correlation between the risk factor and a scale-factor fluctuate.[22]

OCC's current methodology for estimating covariance and correlations between risk factors relies on the same monthly data described above, resulting in a similar lag time between updates.[23] In addition, correlation estimates are based off historical returns series, with estimates between a pair of risk factors being highly sensitive to the volatility of either risk factor in the chosen pair.[24] Accordingly, OCC believes that the current approach results in potentially less stable correlation estimates that may not be representative of current market conditions.[25]

In addition, under OCC's existing margin methodology, theoretical price scenarios for ''defaulting securities''[26] are simulated using uncorrelated return scenarios with an average zero return and a pre-specified volatility called ''default variance.''[27] The default variance is estimated as the average of the top 25 percent quantile of the conditional variances of all securities.[28] As a result, OCC believes that these default estimates may be impacted by extremely illiquid securities with discontinuous data.[29] In addition, OCC believes that the default variance (and the associated scale-factors used to scale up volatility) is also subject to sudden jumps with the monthly simulation installations across successive months because it is derived from monthly data updates, as opposed to daily updates, which are prone to wider fluctuations and are subject to adjustments using scale-factors.[30]

Proposed Changes to Current Margin Methodology[31]

1. Daily Updates of Price Data

OCC proposes to introduce daily updates for price data for equity products, including daily corporate action-adjusted returns of equities, Exchange Traded Funds (''ETFs''), Exchange Traded Notes (''ETNs'') and

the Kitlas Letter, the Commission believes that it is nonresponsive to the Proposed Rule Change and therefore outside the scope of the proposal.

Since the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, the Commission considered all public comments received on the proposal regardless of whether the comments were submitted on the Proposed Rule Change or the Advance Notice.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The description of the Proposed Rule Change is substantially excerpted from the Notice. *See* Notice, 82 FR at 57306–57313.

[9] *See* Securities Exchange Act Release No. 53322 (Feb. 15, 2006), 71 FR 9403 (Feb. 23, 2006) (File No. SR–OCC–2004–20).

[10] *See* OCC Rule 601; *see also* Notice, 82 FR at 57307.

[11] *See* Notice, 82 FR at 57307.

The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. *See* Notice, 82 FR at 57307, note 8.

[12] *See* Notice, 82 FR at 57307. A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/*. *See* Notice, 82 FR at 57307, note 9.

[13] *See* Notice, 82 FR at 57307.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* Notice, 82 FR at 57307–57308.

In risk management, it is a common practice to establish a floor for volatility at a certain level in order to protect against procyclicality in the model. *See* Notice, 82 FR at 57307–57308, note 14.

[22] *See* Notice, 82 FR at 57308.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] Within the context of OCC's margin system, securities that do not have enough historical data for calibration are classified as ''defaulting securities.'' *See* Notice, 82 FR at 57308, note 15.

[27] *See* Notice, 82 FR at 57308.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] In addition to the proposed methodology changes described herein, OCC also would make some clarifying and clean-up changes, unrelated to the proposed changes described above, to update its margin methodology to reflect existing practices for the daily calibration of seasonal and non-seasonal energy models and the removal of methodology language for certain products that are no longer cleared by OCC. *See* Notice, 82 FR at 57308, note 17.

certain indexes.[32] OCC believes that the proposed change would help ensure that OCC's margin methodology is reliant on data that is more representative of current market conditions, thereby resulting in more accurate and responsive margin requirements.[33] In addition, OCC believes that the introduction of daily price updates would enable OCC's margin methodology to better capture both market and idiosyncratic risk by allowing for daily updates to the parameters associated with the econometric model (discussed below) that captures the risk associated with a particular product, and therefore help ensure that OCC's margin requirements are based on more current market conditions.[34] As a result, OCC would also reduce its reliance on the use of scale-factors to incorporate day-to-day market volatility, which OCC believes give little room to capture the idiosyncratic risk of a given security and which may be different from the broad market risk represented by the scale-factor.[35]

2. Proposed Enhancements to the Econometric Model

OCC is proposing the following enhancements to its econometric model for calculating statistical parameters for all qualifying risk factors that reflect the most recent data obtained: [36]

i. Daily Updates for Statistical Parameters

Under the proposal, the statistical parameters for the model would be updated on a daily basis using the new daily price data obtained by OCC from a reliable third-party (as described above).[37] As a result, OCC would no longer need to rely on scale-factors to approximate day-to-day market volatility for equity-based products.[38] OCC believes that calibrating statistical parameters on a daily basis would allow OCC to calculate more accurate margin requirements that represent the most recent market data.[39]

ii. Proposed Enhancements To Capture Asymmetry in Conditional Variance

The current approach for forecasting the conditional variance for a given risk factor does not consider the asymmetric volatility phenomenon observed in financial markets (also called the ''leverage effect'') where volatility is more sensitive and reactive to market downturns.[40] Under the proposal, OCC would amend its econometric model to include new features (*i.e.,* incorporating asymmetry into its forecast volatility) designed to allow the conditional volatility forecast to be more sensitive to market downturns and thereby capture the most significant dynamics of the relationship between price and volatility observed in financial markets.[41] OCC believes the proposed enhancement would result in more accurate and responsive margin requirements, particularly in market downturns.[42]

iii. Proposed Change in Statistical Distribution

OCC also proposes to change the statistical distribution used to model the returns of equity prices. OCC's current methodology uses a fat tailed distribution [43] to model returns; [44] however, price scenarios generated using very large log-return scenarios (positive) that follow this distribution can approach infinity and could potentially result in excessively large price jumps, a known limitation of this distribution.[45] Under the proposal, OCC would adopt a more defined distribution (Standardized Normal Reciprocal Inverse Gaussian or NRIG) for modeling returns, which OCC believes would more appropriately simulate future returns based on the historical price data for the products in question and allows for more appropriate modeling of fat tails.[46] As a result, OCC believes that the proposed change would lead to more consistent treatment of log returns both on the upside as well as downside of the distribution.[47]

iv. Second Day Volatility Forecast

OCC further proposes to introduce a second-day forecast for volatility into the econometric model to estimate the two-day scenario distributions for risk factors.[48] Under the current methodology, OCC typically uses a two-day horizon to determine its risk exposure to a given portfolio.[49] This is done by simulating 10,000 theoretical price scenarios for the two-day horizon using a one-day forecast conditional variance; the value at risk and expected shortfall components of the margin requirement are then determined from the simulated profit/loss distributions.[50] These one-day and two-day returns scenarios are both simulated using the one-day forecast conditional variance estimate.[51] OCC believes that this could lead to a risk factor's coverage differing substantially on volatile trading days.[52] As a result, OCC proposes to introduce a second-day forecast variance for all equity-based risk factors.[53] The second-day conditional variance forecast would be estimated for each of the 10,000 Monte Carlo returns scenarios, resulting in more accurately estimated two-day scenario distributions, and therefore more accurate and responsive margin requirements.[54]

v. Anti-Procyclical Floor for Volatility Estimates

In addition, OCC proposes to modify its floor for volatility estimates. OCC currently imposes a floor on volatility estimates for its equity-based products using a 500-day look back period.[55] Under the proposal, OCC would extend this look back period to 10 years (2520 days) in the enhanced model and apply this floor to volatility estimates for other products (excluding implied volatility risk factor scenarios).[56] OCC believes that using a longer 10-year look back period will help ensure that OCC captures sufficient historical events/market shocks in the calculation of its anti-procyclical floor.[57]

3. Proposed Enhancements to Correlation Estimates

As described above, OCC's current methodology for estimating covariance and correlations between risk factors relies on the same monthly price data feeding the econometric model, resulting in a similar lag time between

[32] *See* Notice, 82 FR at 57308.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *See* Notice, 82 FR at 57308–57309.

[37] *See* Notice, 82 FR at 57309. OCC notes that this change would apply to most risk factors with the exception of certain equity indexes, Treasury securities, and energy futures products, which are already updated on a daily basis. *See* Notice, 82 FR 57309, at note 18.

[38] *See* Notice, 82 FR at 57309.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] A data set with a ''fat tail'' is one in which extreme price returns have a higher probability of occurrence than would be the case in a normal distribution. *See* Notice, 82 FR at 57309, note 21.

[44] *See* Notice, 82 FR at 57309.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.* This proposed change would not apply to STANS implied volatility scenario risk factors. For those risk factors, OCC's existing methodology would continue to apply. *See* Notice, 82 FR at 57309, note 23.

[49] *See* Notice, 82 FR at 57309.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

updates.[58] In addition, correlation estimates are based off historical returns series, with estimates between a pair of risk factors being highly sensitive to the volatility of either risk factor in the chosen pair.[59] The current approach therefore results in correlation estimates being sensitive to volatile historical data.[60]

In order to address these limitations, OCC proposes to enhance its methodology for calculating correlation estimates by moving to a daily process for updating correlations (with a minimum of one-week's lag) to help ensure clearing member account margins are more current and thus more accurate.[61] Moreover, OCC proposes to enhance its approach to modeling correlation estimates by de-volatizing[62] the returns series to estimate the correlations.[63] Under the proposed approach, OCC would first consider the returns excess of the mean (*i.e.,* the average estimated from historical data sample) and then further scale them by the corresponding estimated conditional variances.[64] OCC believes that using de-volatized returns would lead to normalizing returns across a variety of asset classes and make the correlation estimator less sensitive to sudden market jumps and therefore more stable.[65]

4. Defaulting Securities Methodology

Under the proposal, OCC would enhance its methodology for estimating the defaulting variance in its model.[66] OCC's margin system is dependent on market data to determine clearing member margin requirements.[67] Securities that do not have enough historical data are classified as to be a ''defaulting security'' within OCC systems.[68] As noted above, within current STANS systems, the theoretical price scenarios for defaulting securities are simulated using uncorrelated return scenarios with a zero mean and a default variance, with the default variance being estimated as the average of the top 25 percent quantile of the conditional variances of all securities.[69] As a result, these default estimates may be impacted by extremely illiquid securities with discontinuous data.[70] In addition, the default variance (and the associated scale-factors used to scale up volatility) is also subject to sudden jumps with the monthly simulation installations across volatile months.[71] To mitigate these concerns, OCC proposes to: (i) Use only optionable equity securities to estimate the defaulting variance; (ii) use a shorter time series to enable calibration of the model for all securities; and (iii) simulate default correlations with the driver Russell 2000 index (''RUT'').[72]

i. Proposed Modifications to Securities and Quantile Used in Estimation

Under the proposal, only optionable equity securities, which are typically more liquid, would be considered while estimating the default variance.[73] This limitation would eliminate from the estimation almost all illiquid securities with discontinuous data that could contribute to high conditional variance estimates and thus a high default variance.[74] In addition, OCC proposes to estimate the default variance as the lowest estimate of the top 10 percent of the floored conditional variance across the risk factors.[75] OCC believes that this change in methodology would help ensure that while the estimate is aggressive it is also robust to the presence of outliers caused by a few extremely volatile securities that influence the location parameter of a distribution.[76] Moreover, as a consequence of the daily updates described above, the default variances would change daily and there would be no scale-factor to amplify the effect of the variance on risk factor coverage.[77]

ii. Proposed Change in Time Series

Under the proposal, OCC would use a shorter time series to enable calibration of the model for all securities.[78] Currently, OCC does not calibrate parameters for defaulting securities that have historical data of less than two years.[79] OCC is proposing to shorten this time period to around 6 months (180 days) to enable calibration of the model for all securities within OCC systems.[80] OCC believes that this shorter time series is sufficient to produce stable calibrated parameters.[81]

iii. Proposed Default Correlation

Under the proposal, returns scenarios for defaulting securities[82] would be simulated using a default correlation with the driver RUT.[83] The default correlation of the RUT index is roughly equal to the median of all positively correlated securities with the index.[84] Since 90% of the risk factors in OCC systems correlate positively to the RUT index, OCC would only consider those risk factors to determine the median.[85] OCC believes that the median of the correlation distribution has been steady over a number of simulations and is therefore proposing that it replace the current methodology of simulating uncorrelated scenarios, which OCC believes is not a realistic approach.[86]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposed Rule Change should be approved or disapproved.[87] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change and provide arguments to support the Commission's

[58] *See* Notice, 82 FR at 57310.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *See supra* note 25.
[83] *See* Notice, 82 FR at 57310. OCC notes that, in certain limited circumstances where there are reasonable grounds backed by the existing return history to support an alternative approach in which the returns are strongly correlated with those of an existing risk factor (a ''proxy'') with a full price history, the margin methodology allows OCC's Financial Risk Management staff to construct a ''conditional'' simulation to override any default treatment that would have otherwise been applied to the defaulting security. *See* Notice, 82 FR at 57310, note 26.
[84] *See* Notice, 82 FR at 57310.
[85] *Id.*
[86] *Id.*
[87] 15 U.S.C. 78s(b)(2)(B) (providing that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension).

analysis as to whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[88] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from, commenters with respect to the Proposed Rule Change's consistency with the Act and the rules thereunder. Specifically, the Commission believes that the Proposed Rule Change raises questions as to whether the proposal is consistent with (i) Section 17A(b)(3)(F) of Act, which requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; [89] (ii) Rules 17Ad–22(b)(1) and (b)(2) under the Act, which require a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part: (1) Measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control; and (2) use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements; [90] and (iii) Rule 17Ad–22(e)(6) under the Act, which requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things: (i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (ii) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (iii) uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.[91]

[88] 15 U.S.C. 78s(b)(2)(B).

[89] 15 U.S.C. 78q–1(b)(3)(F).

[90] 17 CFR 240.17Ad–22(b)(1) and (2).

[91] 17 CFR 240.17Ad–22(e)(6).

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is inconsistent with Section 17A(b)(3)(F) of the Act [92] and Rules 17Ad–22(b)(1)–(2) [93] and 17Ad–22(e)(6) [94] under the Act, or any other provision of the Act or rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[95]

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved on or before March 28, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before April 11, 2018. 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–2017–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2017–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principle office of OCC. 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–2017–022 and should be submitted on or before March 28, 2018. If comments are received, any rebuttal comments should be submitted on or before April 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–04624 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] 17 CFR 240.17Ad–22(b)(1)–(2).

[94] 17 CFR 240.17Ad–22(e)(6).

[95] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[96] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82796; File No. SR–NYSE–2017–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Amend the NYSE Listed Company Manual To Modify Its Requirements With Respect to Physical Delivery of Proxy Materials to the Exchange

March 1, 2018.

I. Introduction

On November 22, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules that require listed companies to provide the Exchange with hard copies of proxy material sent to shareholders. The proposed rule change was published for comment in the **Federal Register** on December 12, 2017.[3] On January 22, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 12, 2018.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Currently, Sections 204.00(B) and 402.01 of the NYSE Listed Company Manual (''Manual'') set forth requirements with respect to the physical delivery of hard copies of proxy materials to the Exchange. Among other things, Section 204.00(B) requires listed companies to file with the Exchange six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders, and one hard copy of any filing made on Form 6–K that is not required to be filed through the SEC's EDGAR system not later than the date on which the Form 6–K is filed with the Commission. Section 402.01 requires listed companies to provide the Exchange with three hard copies of definitive proxy material (together with proxy card) not later than the date on which such material is sent, or given, to any security holders, which satisfies the copies required to be provided to the Exchange under Rule 14a–6(b) of the Exchange Act.[5]

In addition to the Exchange's own requirements mandating that any listed company provide the Exchange with hard copies of proxy materials that are sent to shareholders, all U.S. domestic listed companies that are subject to the Commission's proxy rules are required to electronically file their proxy materials on the SEC's EDGAR system.[6] The Exchange stated that its staff is notified when a listed company submits a filing to the Commission on EDGAR and generally reviews proxy materials on the EDGAR system shortly after they are filed.[7] The Exchange also stated that its staff generally has completed its review of proxy materials prior to receiving the hard copies of the materials, and therefore the Exchange has no real need to receive hard copies.[8] As to listed foreign private issuers, while their securities are exempt from the Commission's proxy rules,[9] the Exchange rules require listed companies, including foreign private issuers, to hold annual shareholder meetings and solicit proxies for such meetings.[10] A foreign private issuer, including those listed on the Exchange, will generally furnish proxy material on EDGAR using Form 6–K or may file its proxy material on Form 8–K if the foreign private issuer chooses to file periodic reports under the provisions for domestic companies.

Accordingly, the Exchange proposed to amend its paper filings requirements related to proxy materials in Sections 204.00(B) and 402.01 of the Manual to eliminate ''a significant amount of unnecessary use of paper and of resources devoted to processing unneeded materials received through the mail.'' [11]

Specifically, the Exchange has proposed to amend Section 402.01 of the Manual to provide that listed companies will not be required to provide proxy materials to the Exchange in physical form, provided such proxy materials are included in a Commission filing available on the SEC's EDGAR filing system.[12] If such proxy materials are available on EDGAR but not filed pursuant to Schedule 14A under the Exchange Act, the listed company would be required to provide to the Exchange information sufficient to identify such filing (by one of the means specified in Section 204.00(A)) [13] not later than the date on which such material is sent, or given, to any security holders.[14] Notwithstanding the foregoing, any listed company whose proxy materials are not included in their entirety (together with proxy card) in an SEC filing available on EDGAR will continue to be required to provide three definitive copies of any proxy material not available on EDGAR to the Exchange not later than the date on which such material is sent, or given, to any security holders. This is consistent with the number of copies required to be filed with the Exchange under Rule 14a–6(b) under the Exchange Act.[15]

The Exchange has also proposed conforming amendments to Section 204.00(B) of the Manual for consistency with the proposed amendments to Section 402.01. Specifically, the Exchange would amend Section 204.00(B) so as to require listed companies to file three hard copies of any proxy materials required to be submitted to the Exchange in physical form pursuant to Section 402.01 (as proposed to be amended) not later than the date on which the material is physically or electronically delivered to shareholders.[16] In addition, the Exchange would amend Section 204.00(B) to require companies to file one hard copy of any filing that is not required to be filed through EDGAR, including pursuant to a hardship exemption granted by the Commission.[17]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82225 (December 6, 2017), 82 FR 58473 (''Notice'').

[4] *See* Securities Exchange Act Release No. 82565, 83 FR 3812 (January 26, 2018).

[5] The copies required to be submitted to the Exchange pursuant to Rule 14a–6(b) under the Exchange Act only apply to domestic companies. *See infra* notes 9–11 and accompanying text. The Commission notes, however, that the Exchange's rules require listed companies, including foreign private issuers, to provide multiple hard copies of proxy materials under Sections 204.00 and 402.01 of the Manual.

[6] *See* Regulation S–T, 17 CFR 232.101.

[7] *See* Notice, *supra* note 3, at 58473.

[8] *See id.*

[9] 17 CFR 240.3a12–3(b).

[10] *See* Sections 302.00 (Annual Meetings) and 402.04 (Proxy Solicitation Required) of the Manual.

[11] *See* Notice, *supra* note 3, at 58474.

[12] *See* proposed Section 402.01.

[13] Section 204.00(A) of the Manual generally requires that prompt notice to the Exchange must be provided via a web portal or email address specified by the Exchange on its website.

[14] Domestic listed companies occasionally file their proxy materials on the SEC's EDGAR system using forms other than Schedule 14A, which may not be readily identified by Exchange staff. *See* Notice, *supra* note 3, at 58474. The Exchange stated that, as there is no easy way to identify which SEC report includes a company's proxy materials, the Exchange proposed to require listed companies not filing proxies using Schedule 14A under the Exchange Act to provide to the Exchange information needed to identify the submission containing proxy materials. *Id.* at 58474.

[15] *See* proposed Section 402.01. The Exchange also proposed to correct an erroneous reference to SEC Rule 14a–6(c) in Section 402.01 to refer instead to SEC Rule 14a–6(b). SEC Rule 14a–6(b) requires listed companies subject to the proxy rules to file three copies of such proxy material with the Exchange.

[16] *See id.* The Exchange also proposed to delete from this provision a cross-reference to Section 402.00 (Proxies) in the Manual.

[17] *See* proposed Section 204.00(B); *see also* 17 CFR 232.201 and .202. As noted above, the current language in Section 204.00(B) only requires the Exchange to provide one hard copy of any filing made on Form 6–K that is not required to be filed through EDGAR to be provided to the Exchange, and does not include the reference to a hardship exemption that the Exchange now proposes to add. In addition, the Exchange has proposed non-substantive changes to Section 204.00(B), including removing from Section 204.00(B)'s introductory paragraph a sentence stating that listed companies are required to file hard copies of certain SEC reports and other materials (such as proxies) with the Exchange. *See* proposed Section 204.00(B). The Exchange noted that this provision would be inconsistent with the Exchange's proposed revised

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments to the Manual are consistent with Section 6(b)(5) of the Exchange Act because, by allowing the Exchange to rely on electronic copies of proxy materials available on EDGAR, the proposed amendments are reasonably designed to allow Exchange staff to review all listed company proxy material in a timely manner and to ensure compliance with Exchange rules and the federal securities laws[20] while eliminating the need for unnecessary paper copies when warranted.[21] At the same time, the proposed rule changes furthers the purposes of Section 6(b)(5), and in particular the protection of investors and the public interest, because Sections 204.00(B) and 402.01 of the Manual will still require listed companies that do not file proxy materials electronically on EDGAR, or that do not include their entire proxy materials (including the proxy card) on EDGAR, to submit three hard copies of such materials to the Exchange.

The Commission notes that it has previously granted the Exchange no-action relief, on behalf of listed companies and third party filers, from the obligation to provide paper copies to the Exchange with respect to materials filed with the Commission through the EDGAR system, including proxy materials (''1998 No-Action Letter'').[22] The Exchange, however, had previously decided not to rely on the 1998 No-Action Letter with respect to proxy material but now has, for the reasons described in its proposal, decided to do so. Given that the Exchange currently uses EDGAR to review proxies, the Commission would expect there should be little impact on the Exchange's proxy review process if it no longer also receives paper submissions of proxies filed on EDGAR. As the Exchange noted in its filing, it generally completes its review ''. . . long before [it] receives hard copies of proxy materials,''[23] so there appears to be little risk in eliminating the paper copy requirement for proxy material where the complete filing is available on EDGAR. Further, to the extent the Exchange cannot rely on the 1998 No-Action Letter because proxy material is not submitted on EDGAR (such as when a hardship exemption is granted) or is not available in its entirety on EDGAR, the Exchange rules will continue to require listed companies to provide three hard copies of such proxy material to the Exchange, which would meet the requirements of Rule 14a–6 under the Exchange Act for companies subject to the U.S. proxy rules.

The Commission notes that the proposed changes to the Exchange rules are drafted to enable the Exchange to eliminate outdated paper copy requirements in the Manual only in those cases where the Exchange is able to review proxy material in a timely manner on EDGAR, for purposes of compliance with Exchange rules and the federal securities laws, and as long as consistent with the conditions of the 1998 No-Action Letter.

The Exchange's proposal also requires listed companies to provide to the Exchange information sufficient to identify proxy materials that have been submitted through EDGAR, but not filed pursuant to Schedule 14A under the Exchange Act. This provision should enable the Exchange to identify the documents it needs to review proxy materials on EDGAR quickly to review for compliance with both Exchange rules and the federal securities laws consistent with investor protection and the public interest. In particular, this should help the Exchange more readily identify proxy materials filed on EDGAR by foreign private issuers, which, as the Exchange notes, often furnish and submit their proxy materials to the Commission as part of a Form 6–K or Form 8–K,[24] as well as proxy materials occasionally filed by domestic listed companies on forms other than Schedule 14A under the Exchange Act.

Finally, the proposal to require companies to file with the Exchange one hard copy of any filing that is not required to be filed through EDGAR should help enable the Exchange to continue to receive all filings made by its listed companies, which in turn should aid the Exchange in fulfilling its regulatory responsibilities to oversee companies for compliance with listing, and other Exchange, rules and the federal securities laws.[25] This situation may arise, for example, when a listed company has been granted a hardship exemption under Regulation S–T to file in paper rather than electronically on EDGAR.[26]

Accordingly, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Exchange Act.

approach to the review of SEC filings. *See* Notice, *supra* note 3, at 58473.

[18] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] Generally, the Exchange reviews proxies for purposes of Exchange rules concerning broker voting and for other matters that may arise concerning compliance with Exchange rules and the federal securities laws. In addition, the Commission notes that NYSE Listing Agreement requires listed companies to comply with the requirements of the federal securities laws, as well as NYSE rules. *See https://www.nyse.com/publicdocs/nyse/listing/Domestic_Co_Listing_Agreement.pdf.*

[21] The Commission notes that other national securities exchanges, such as The Nasdaq Stock Market LLC (''Nasdaq''), also have rules that allow listed companies to satisfy the exchange's filing requirements, including for proxies, by virtue of filing on EDGAR. *See, e.g.,* Nasdaq Rules 5005(a)(16), 5620(b), and 5250(c)(1).

[22] *See* letter to Michael J. Simon, Milbank, Tweed, Hadley & McCloy from Ann M. Krauskopf, Special Counsel, Division of Corporation Finance, Commission, and Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 22, 1998. The 1998 No-Action Letter also granted the Exchange relief in relation to documents available for review on EDGAR from the recordkeeping requirements of Rule 17a–1 under the Exchange Act. The Exchange stated that at the time such no-action relief was granted, the Exchange decided not to rely on it in relation to proxy materials. *See* Notice, *supra* note 3, at 58474.

[23] *See* Notice, *supra* note 3, at 58473.

[24] *See* Notice, *supra* note 3, at 58473. As the Exchange also noted, while foreign private issuers are not required to comply with the Commission's proxy rules, the Exchange requires them to solicit proxies. *See id.*

[25] The Commission notes that this change broadens the Exchange's current rule which had been limited to filings on Form 6–K not submitted on EDGAR. *See supra* note 17. The requirement to submit to the Exchange one copy of any filing not filed in EDGAR covers all listed company filings with the Commission, including Form 6–Ks, with the exception of proxy material, for which three copies of all the proxy material not filed in EDGAR must be filed with the Exchange. *See also* General Instructions to Form 6–K.

[26] The Commission notes that the 1998 No-Action Letter stated that the no-action relief may not be relied upon and a paper filing with the Exchange would be required if a listed company or third party filer files a document with the Commission in paper pursuant to a hardship exemption.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[27] that the proposed rule change (SR–NYSE–2017–42), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04557 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78f(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension: Rule 12f–3, SEC File No. 270–141, OMB Control No. 3235–0249.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 12f–3 (17 CFR 240.12f–3), under the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 12f–3 (''Rule''), which was originally adopted in 1955 pursuant to Sections 12(f) and 23(a) of the Act, and as further modified in 1995, sets forth the requirements to submit an application to the Commission for termination or suspension of unlisted trading privileges in a security, as contemplated under Section 12(f)(4) of the Act. In addition to requiring that one copy of the application be filed with the Commission, the Rule requires that the application contain specified information. Under the Rule, an application to suspend or terminate unlisted trading privileges must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security, the public trading volume and price history in the security for specified time periods on the subject exchange and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as 18 responses annually for an aggregate burden for all respondents of 18 hours. Each respondent's related internal cost of compliance for Rule 12f–3 would be $221.00, or, the cost of one hour of professional work of a paralegal needed to complete the application. The total annual cost of compliance for all potential respondents, therefore, is $3,978.00 (18 responses × $221.00/response).

Compliance with the application requirements of Rule 12f–3 is mandatory, though the filing of such applications is undertaken voluntarily. Rule 12f–3 does not have a record retention requirement *per se.* However, responses made pursuant to Rule 12f–3 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–3 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 1, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04573 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82795; File No. SR–NYSEArca–2018–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E

March 1, 2018.

On January 4, 2018, NYSE Arca, Inc. (''NYSE Arca'') 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 list and trade the shares of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Direxion Daily Bitcoin 2X Bull Shares and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E. The proposed rule change was published for comment in the **Federal Register** on January 24, 2018.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 24, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2018–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04556 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 82532 (Jan. 18, 2018), 83 FR 3380 (Jan. 24, 2018).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82802; File No. SR–NYSEAMER–2018–05]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change for New Rule 971.2NY for An Electronic Price Improvement Auction for Complex Orders

March 2, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 15, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a new Rule 971.2NY for an electronic price improvement auction for complex orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its electronic crossing mechanism offering, which is the Customer Best Execution or ''CUBE'' Auction described in Rule 971.1NY, to make it available for complex orders. To effect this change, the Exchange proposes new Rule 971.2NY (Complex Electronic Cross Transactions) to establish the CUBE for complex orders (''Complex CUBE Auction'' or ''Auction''). The proposed Complex CUBE Auction would operate in a manner substantially similar to the CUBE Auction for single-leg orders (the ''Single-Leg CUBE''). Accordingly, proposed Rule 971.2NY is based on Rule 971.1NY with differences as necessary to account for different processing of and priority rules for Complex Orders.[4] In addition to being substantially similar to the Single-Leg CUBE (discussed below), the proposed Complex CUBE Auction would operate in a manner consistent with electronic price improvement auctions for complex auctions available on other options markets.[5]

As proposed, the Complex CUBE Auction (like the Single-Leg CUBE) would be available to ATP Holders both on and off the Trading Floor of the Exchange, subject to the requirements of Section 11(a) of the Act (discussed below). In addition to the Complex CUBE Auction, Floor-based ATP Holders may continue to use existing Floor-based crossing rules.

The Exchange also proposes to amend Rule 900.2NY(7)(a), make minor updates to the Single-Leg CUBE, and amend other Exchange rules (as noted herein) for purposes of clarity, transparency and internal consistency.

Single-Leg CUBE[6]

The Single-Leg CUBE provides a mechanism through which an ATP Holder may seek to guarantee the execution of a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (the ''CUBE Order''). The ATP Holder that

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 980NY sets forth how the Exchange conducts trading of Electronic Complex Orders (referred to herein simply as Complex Orders). Per Rule 980NY, ''an 'Electronic Complex Order' means any Complex Order as defined in Rule 900.3NY(e) that is entered into the System.'' Rule 900.3NY defines Complex Order as ''any order involving the simultaneous purchase and/or sale of two or more different option 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.''

[5] *See* Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.74A—Automated Improvement Mechanism (''AIM''); Nasdaq PHLX, LLC (''PHLX'') Rule 1087—Price Improvement XL (''PIXL''); BOX Options Exchange LLC (''BOX'') Rule 7245—Complex Order Price Improvement Period (''COPIP''); Nasdaq ISE, LLC (''ISE'') Rule 723—Price Improvement Mechanism (''PIM''); Miami International Securities Exchange, LLC (''MIAX'') Rule 515A, Interpretation and Policies .12—Price Improvement Mechanism (''PRIME'').

[6] *See* Rule 971.1NY. *See* Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2017 [sic]) (SR–NYSEMKT–2014–17) (order approving CUBE Auction for single-leg orders) (''Single-Leg CUBE Approval Order''). To make clear that Rule 971.1NY relates to the CUBE Auction for single leg orders, the Exchange proposes to re-title this rule, and modify cross-references to this rule, to ''Single-Leg Electronic Cross Transactions.'' *See* proposed Rules 971.1NY; 900.2NY(18A) (regarding the definition of a Professional Customer); 935NY (regarding order exposure requirements). The Exchange also proposes to modify Rules 900.2NY(18A) to exclude Professional Customers from the definition of ''Customer'' for purposes of this proposed rule. *See* proposed Rule 900.2NY(18A).

submits the CUBE Order (the ''Initiating Participant'') agrees to guarantee the execution of the CUBE Order by submitting a contra-side order (''Contra Order'') representing principal interest or interest it has solicited to trade with the CUBE Order at a specified price (''single stop price'') or by utilizing auto-match or auto-match limit features. The Auction starts with an initiating price that is displayed (while the price(s) at which the Contra Order has guaranteed the CUBE Order is not displayed). Except as specified by rule, a CUBE Order to buy (sell) may trade at prices equal to or between the initiating price as the upper (lower) bound and the National Best Bid (''NBB'') (National Best Offer (''NBO'')) as the lower (upper) bound.[7]

Although the Contra Order would guarantee the CUBE Order an execution, the purpose of the Single-Leg CUBE is to provide the opportunity for price improvement for the CUBE Order as well as the opportunity for other market participants to interact with the CUBE Order. Accordingly, the Exchange notifies market participants with a Request for Response (''RFR'') when an Auction is occurring so that they have an opportunity to participate by submitting RFR Responses in the form of GTX Orders (though unrelated quotes and order received during the Auction may be eligible to participate in the CUBE as well). The Response Time Interval (''RTI'') for the Auction is determined by a random timer, but will never be less than 100 milliseconds or more than 1 second. However, the CUBE may end prior to the end of the RTI if during an Auction, the Exchange receives quotes or orders that are marketable to allow such incoming orders or quotes an opportunity to interact with interest in the Auction and then continue with regular order processing without delay.[8]

At the conclusion of the Single-Leg CUBE, the CUBE Order may execute at multiple prices within a permissible range but would always trade at the best-priced interest in the Auction.[9] Generally, the CUBE mechanism will determine whether the total RFR Responses can fill the CUBE Order at a price or prices better than the initiating price. If so, the CUBE Order is matched against the better-priced RFR Responses granting the CUBE Order the maximum amount of price improvement possible. As noted above, certain unrelated orders may be considered RFR Responses and may interact with the CUBE Order (thus maximizing opportunities for price improvement) and any portion of these unrelated orders remaining thereafter would be placed on the Consolidated Book.

The Exchange proposes to make the CUBE mechanism available to Complex Orders, as described below.

Complex CUBE Overview

The purpose of the Complex CUBE Auction is to provide the opportunity for price improvement for a Complex Order in an electronic paired auction as well as the opportunity for other market participants to interact with such Complex Order. Accordingly, just as in the Single-Leg CUBE, the Exchange would notify market participants when an Auction is occurring so that they may have an opportunity to participate.

Like the Single-Leg CUBE, the Complex CUBE Auction is designed to work in conjunction with the Exchange's Consolidated Book—the Exchange's single electronic order book that contains all quotes and limit orders, including Complex Orders.[10] Any orders executed in the Complex CUBE Auction would occur in the Complex Matching Engine (''CME''), which is the mechanism that ranks and maintains priority of Complex Orders, and monitors the bids and offers in the leg markets for possible execution of a Complex Order.[11] By integrating the Complex CUBE Auction into the CME, the Exchange would assure that the Complex CUBE Auction respects the priority of interest in the Consolidated Book.[12]

As discussed in more detail below, the Auction may conclude early (to preserve priority) if, during the Auction, the Exchange receives trading interest that improves the interest that existed on the Consolidated Book at the start of the Auction. If such incoming trading interest is a Complex Order, that order would have an opportunity to participate in the Auction; if such trading interest updates the legs markets, it would be processed per Rule 980NY after the Complex Order that initiated the Auction is fully executed.[13]

The Exchange believes that the operation of the proposed Complex CUBE Auction is consistent with processing of Complex Orders in the CME and respects the processing of updates to the leg markets consistent with Rule 980NY. In addition, the Exchange believes that the Complex CUBE Auction would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater opportunities for price improvement. The Exchange also believes this proposal would result in tighter markets, and ensure that each order receives the best possible price.

Definitions

Because of different processing of and priority rules for Complex Orders, the Exchange proposes to both amend current definitions in Exchange rules relating to Complex Orders and add new terms that would be used for purposes of the Complex CUBE Auction.

First, the Exchange proposes to amend Rule 900.2NY(7), which currently defines the term ''Complex BBO,'' to mean ''the BBO for a given complex order strategy as derived from the best bid on OX and best offer on OX for each individual component series of a Complex Order.'' The Exchange proposes both (i) a non-substantive amendment to rename the ''Complex BBO'' as the ''Derived BBO,'' and revise the description, and (ii) a substantive amendment to add a new definition of ''Complex BBO'' to refer to the best-priced Complex Orders in the Consolidated Book.

To effect this change, the Exchange proposes to amend current Rule 900.2NY(7)(b) to provide that a Complex BBO means complex orders with the lowest-priced net debit/credit price on each side of the Consolidated Book for the same complex order strategy.[14] The Exchange believes that defining the Complex BBO to refer to Complex Orders would promote transparency and clarity in Exchange rules because the definition would be more closely correlated to prices of Complex Orders, and not a derived price from the leg markets. As discussed below, the

[7] *See* Rule 971.1NY(b)(1) (regarding exceptions to general parameters, including tighter execution parameters when there is Customer interest on the Book and for CUBE Orders for 50 or fewer contracts).

[8] *See* Rule 971.1NY(c)(4).

[9] *See* Rule 971.1NY(c)(5).

[10] *See* Rule 900.2NY(14) (defining Consolidated Book (or ''Book'') and providing that all quotes and orders ''that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY'').

[11] *See* Rule 980NY(b) (''Priority of Electronic Complex Orders in the Consolidated Book''). *See also* proposed Rule 971.2NY (regarding processing of Complex CUBE Orders purposes to Rule 980NY).

[12] *See* proposed Rule 971.2NY(a).

[13] The Exchange notes that, as described in the ''Conclusion of the Complex CUBE Auction and Order Allocation'' section, the allocation of the Complex CUBE Order is consistent with the allocation of orders executed in the Complex Order Auction. *See* Rule 980NY(c)(7)(B) [sic].

[14] *See* Rule 980NY(b) (providing that Electronic Complex Orders are ranked in the Consolidated Book, in part, based on their ''total or net debit or credit'' price). Complex orders are entered with a plus (''+'') sign when the order sender wants to receive money (''credit'') or a negative (''−'') to indicate they are willing to pay out money (''debit'') when the order executes. In the examples used herein, prices are assumed to be credit, unless it is preceded by negative sign (indicating a debit).

Exchange proposes to use this amended term ''Complex BBO'' in the rule text describing the Complex CUBE Auction.

The Exchange proposes this definition of Complex BBO to reflect the distinctions between pricing of Complex Orders (which are entered at net debit/credit prices) and single-leg orders. Among Complex Orders with the same complex strategy, a Complex Order willing to pay money, which is expressed with a negative sign, is lower priced than a Complex Order willing to pay out a smaller amount or a Complex Order that wants to receive money. For example, a Complex Order with a net debit price of −$2.00 is lower-priced than a Complex Order with a net debit price of −$1.00, and both those orders are lower-priced (and, as discussed below, better priced) than a Complex Order with a net credit of +$1.00. Accordingly, the concept of ''lower-priced'' for Complex Orders relates to the net debit/credit price associated with the order, and not whether such order is designated as a ''buy'' or ''sell'' order.

The Exchange also proposes new Rule 900.2NY(7)(c) to provide that the ''Derived BBO'' is calculated using the BBO from the Consolidated Book for each of the options series comprising the given complex order strategy.[15] This revised definition would not change how the Exchange determines what was formerly referred to as the ''Complex BBO.'' The Exchange proposes this change to terminology to make clear that the Derived BBO is derived from BBO of the leg markets, as is described in the current definition of a ''Complex BBO.'' The Exchange proposes to make conforming amendments to Rule 980NY to replace all references to ''Complex BBO'' in that rule to the new term ''Derived BBO.''[16]

Second, the Exchange proposes that Commentary .02 to proposed Rule 971.2NY would include terms used in Rule 971.2NY. The Exchange proposes to use the term ''interest'' in these definitions because these terms relate to any interest that could interact with a Complex Order, including quotes and orders in the leg markets that comprise the complex order strategy. As proposed:

- *Better-priced* or *more aggressive* interest would mean lower-priced net debit/credit interest on each side of the Consolidated Book for the same complex order strategy. As further proposed, higher-priced interest would be *worse-priced* or *less aggressive* than lower-priced interest. For example, a complex order entered with a price of −$4.00, indicating the sender is willing to pay out up to $4.00 when the order trades, is more aggressively priced than a complex order entered with a price of −$3.00, indicating the sender is only willing to pay out up to $3.00 when the order trades.
- Interest *improves* the Complex or Derived BBO if it would be priced lower than the same-side Complex or Derived BBO. As noted above, for Complex Orders, a lower-priced order is better priced, and therefore an improved price for a Complex Order would be lower-priced.
- Interest *locks* when it would be priced at the exact inverse price of any contra-side interest.
- Interest *crosses* when it would be priced lower than the exact inverse price of any contra-side interest.
- A Complex Order would be *executable* against contra-side interest price [sic] at the exact inverse value or lower. For example, a Complex Order with a debit price of $1.00 would be executable against a Complex Order with a credit price of $1.00 or lower, and vice versa.

The Exchange believes that defining these terms in the proposed rule would promote transparency and clarity regarding how the Complex CUBE Auction would function.

Criteria for Starting a Complex CUBE Auction

Under proposed Rule 971.2NY(a), a Complex CUBE Order is a Complex Order, as defined in Rule 900.3NY(e) (*see supra* note 4) submitted electronically by an ATP Holder (''Initiating Participant'') into the Complex CUBE Auction that the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or any other entity.

Proposed Rule 971.2NY(a)(1) would provide that the Initiating Participant would guarantee the execution of the Complex CUBE Order by submitting a contra-side order (''Complex Contra Order'') representing principal interest or non-Customer interest it has solicited to trade with the Complex CUBE Order at either (A) a specified price (''stop price'') (as described below in proposed Rule 971.2NY(b)(1)(A)), or (B) an auto-match limit price (as described below in proposed Rule 971.2NY(b)(1)(B)).[17]

Proposed Rule 971.2NY(a)(1)(A)–(B) is based on Rule 971.1NY(a), but differs in that it uses the term ''Complex'' and does not include details about the initiating price (see proposed Rule 971.2NY(a)(3)) or any reference to an auto-match feature.[18]

Proposed Rule 971.2NY(a)(2) would define the term ''CUBE BBO,'' which would be determined upon entry of a CUBE Order in the System, and is the more aggressive of (i) the Complex BBO improved by $0.01, or (ii) the Derived BBO improved by: $0.01 multiplied by the smallest leg of the complex order strategy.[19] As described below, the Exchange would use the CUBE BBO both for purposes of determining whether an Auction may begin or if an Auction must conclude early. Put another way, in order to initiate an Auction, the Complex CUBE Order must be priced better than the interest resting on the Consolidated Book, *i.e.,* the CUBE BBO, which ensures that price-time priority is respected. Accordingly, the Exchange proposes to embed within the definition of CUBE BBO the requirement for price improvement, which concept is described for the Single-Leg CUBE for CUBE Orders for fewer than 50 contracts in Rules 971.1NY(b)(1)(B) and (b)(6).

The Exchange also proposes to define in proposed Rule 971.2NY(a)(2) that the ''same-side CUBE BBO'' and ''contra-side CUBE BBO'' refer to the CUBE BBO on the same or opposite side of the market as the Complex CUBE Order, respectively. As described below, the Exchange proposes to use these terms

[15] Rule 900.2NY(7) (defining the BBO as the best bid or offer in the System).

[16] *See* proposed Rule 980NY(e)(2), (e)(3)(ii), (e)(6)(A)(i), (ii) and (iii), (e)(6)(B)(ii) and (iii), (e)(6)(C)(i)–(iv), and (e)(6)(7)(A), and Commentary .02 and .05(a) to Rule 980NY.

[17] The Exchange previously filed a proposed rule change that it would issue guidance advising ATP Holders that Contra Orders for the account of a Customer may not be entered into a CUBE Auction. *See* Securities Exchange Act Release No. 72389 (June 13, 2014), 79 FR 35201, 35203 (SR–NYSEMKT–2014–51). The Exchange proposes to amend Rule 971.1NY(a) relating to Single-Leg CUBE and to include in proposed Rule 971.2NY the requirement that any solicited interest included in the Contra Order be non-Customer interest.

[18] Because the Exchange does not offer Market Orders for Complex Orders, there is no auto-match feature for Complex CUBE (which is a feature that is offered in the Single-Leg CUBE). *See* Rule 971.1NY(c)(1)(B) (describing auto-match feature as allowing the Initiating Participant for a CUBE Order to buy (sell) to ''automatically match as principal or as agent on behalf of a Contra Order the price and size of all RFR Responses'' that are worse that are lower (higher) than the initiating price and within the range of permissible executions''). The Exchange proposes a clarifying amendment to Rule 971.1NY(c)(1)(B) relating to the Single-Leg CUBE to modify the auto-match text to remove, as redundant, the clause ''as principal or as agent on behalf of a Contra Order,'' given that the function of the Initiating Participant is already set forth in the Rule 971.1NY(a).

[19] A complex order strategy is entered with the ratio expressed in the fewest number of contracts for each leg of the ratio. For a complex order strategy with a ratio of 2, 3, and 6 contracts per leg, the $0.01 figure would be multiplied by 2 contracts, which represents the smallest leg. To calculate the CUBE BBO for this strategy, the Derived BBO would need to be priced improved by $0.02.

throughout the proposed rule to provide parameters for commencing and, in some cases, concluding an Auction early. As further proposed, the time at which the Auction is initiated would be considered the time of execution for the Complex CUBE Order.[20] Proposed Rule 971.2NY(a)(2) is based in part on Rule 971.1NY(b) for the Single-Leg Cube with differences to refer to the CUBE BBO (as opposed to the NBBO or BBO) to account for distinctions between single-leg orders and Complex Orders.

Proposed Rule 971.2NY(a)(3) would provide that the initiating price of a Complex CUBE Order would be the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO. Proposed Rule 971.2NY(a)(3) is similar to the second to last sentence of Rule 971.1NY(a) describing the initiating price at which a Single-Leg CUBE Auction begins. As described above in Commentary .02(a) to proposed Rule 971.2NY, for purposes of this Rule, ''less aggressive'' interest refers to higher-priced interest. Accordingly, to respect price-time priority of the Consolidated Book, the Exchange proposes that if the net debit/credit price of a Complex CUBE Order is crossing the contra-side CUBE BBO, the initiating price of such order would be the price that locks the contra-side CUBE BBO. The concept of an initiating price for Complex CUBE Orders set forth in proposed Rule 971.2NY(a)(3) is based on the same concept introduced for CUBE Orders in a Single-Leg CUBE (in Rule 971.1NY(a), (b)(1)), but the means of determining that price differs to account for distinctions between single-leg orders and Complex Orders.

Proposed Rule 971.2NY(a)(4) would establish the ''range of permissible executions'' for an Auction. Specifically, proposed Rule 971.2NY(a)(4) would provide that a Complex CUBE Order may trade at all prices equal to or between the initiating price and the same-side CUBE BBO. Proposed Rule 971.2NY(a)(4) is based in part on Rules 971.1NY(b)(1)(A) and (B) in that it sets forth the permissible range of executions for an Auction. However, because a Complex CUBE Auction would be based on the CUBE BBO rather than the NBBO, and the CUBE BBO already accounts for price improvement over the Consolidated Book, the Exchange would not need to differentiate permissible ranges of execution based on the size of the Complex CUBE Order or the presence of Customer interest, as set forth in Rule 971.1NY(b)(1)(A) and (B) for the Single-Leg CUBE. Moreover, because of distinctions between Complex Orders and single-leg orders, the Exchange proposes that the range of permissible executions for an Auction be based on the side of the Complex CUBE Order as it relates to the CUBE BBO.

Proposed Rule 971.1NY(a)(4)(A) would further provide that if the CUBE BBO updates during the Auction (referred to as the ''updated CUBE BBO''), the range of permissible executions would be adjusted with the updated CUBE BBO unless the incoming interest would cause the Auction to conclude early, as described below pursuant to paragraph (c)(3) of this Rule. This proposed rule text is based on Rule 971.1NY(b)(1)(C), which similarly provides that the range of permissible executions will adjust if the BBO on the same side of the Single-Leg CUBE Order updates. The proposed requirement that the initiating price improve the best-priced interest in the Consolidated Book, including interest that arrives during the Auction, is designed to ensure that the Auction is integrated with the Consolidated Book such that it respects and preserves the priority of interest in the Book.

Example: Complex CUBE Auction Initiating Price and Range of Permissible Executions (proposed Rule 971.2NY(a)(2)–(4)):

LMM Jan 50 C 10 × 7.03–7.05 × 10
LMM Jan 55 C 10 × 3.00–3.02 × 10
Derived BBO for {S 1 Jan 50 C/B 1 Jan 55 C} = −$4.01 to $4.05
Complex BBO for {S 1 Jan 50 C/B 1 Jan 55 C} = N/A (no complex orders on book)
Complex CUBE Order: Cust1 {B 1 Jan 50 C/S 1 Jan 55 C} × 700 −$4.05
Complex Contra Order: Firm1 {S 1 Jan 50 C/B 1 Jan 55 C} × 700 $4.02 Auto-match limit price
CUBE BBO: −$4.02 to $4.04

RFR sent identifying the complex order strategy, side and size, with initiating price of −$4.04.

Permissible range of executions = −$4.02 to −$4.04

In the above example, the initiating price is −$4.04 because the initiating price for a Complex CUBE Order will be the less aggressive of the limit price of such order (*i.e.,* −$4.05) or the price that locks the contra-side CUBE BBO (*i.e.,* −$4.04). If during the Auction the LMM Jan 50C bid were to update to $7.04, the updated CUBE BBO would be −$4.03 to $4.04 and therefore the new range of executions would be −$4.03 to −$4.04 (per proposed Rule 971.2NY(a)(4)(A)).

Proposed Rule 971.2NY(b) sets forth the eligibility requirements for initiating a Complex CUBE Auction, which Auction is available to all options traded on the Exchange. To initiate a Complex CUBE Auction, pursuant to proposed Rule 971.2NY(b)(1), the Initiating Participant must mark the Complex CUBE Order for Auction processing and must specify one of two ways in which it would guarantee the execution of a Complex CUBE Order—a single stop price or ''auto-match limit,'' which is consistent with the operation of the Single-Leg CUBE as well as the rules of other options exchanges that offer electronic price improvement auctions.[21] The Exchange believes that these guarantee alternatives would afford the Initiating Participant flexibility and control over the price(s) at which it would be willing to guarantee a Complex CUBE Order. Neither the stop price nor any use of auto-match limit would be displayed.

Pursuant to proposed Rule 971.2NY(b)(1)(A), if the Initiating Participant specifies a single stop price, the stop price must be executable against the initiating price of the auction.[22] When an Initiating Participant elects a single stop price, this would be the price at which the Complex Contra Order would trade with the Complex CUBE Order, pursuant to paragraph (c)(4) of this proposed Rule, as discussed below. As further proposed, if a stop price crosses the same-side CUBE BBO (*i.e.,* would be priced outside the permissible range of executions), the Complex CUBE Order would not be eligible to initiate an Auction and would be rejected along with the Complex Contra Order. Thus, using the information in the above Example, the CUBE BBO is −$4.02 to $4.04 and a Complex CUBE Order to buy starts an Auction with an initiating price of −$4.04, a stop price of $4.01 would be rejected because it crosses the same-side CUBE BBO (of −$4.02). The

[20] Pursuant to Rule 991NY(b)(7), option transactions effected as part of a Complex Trade are exempt from NBBO trade through liability and therefore an individual leg market of a Complex Order may trade at or between the Exchange Exchange's best bid/offer, without regard to the NBBO. *See also* Rule 980NY (providing that ''[n]o leg of an Electronic Complex Order will be executed at a price outside the Exchange's best bid/offer for that leg'').

[21] *See* Rule 971.1NY(c)(1)(A) and (C). As previously stated (*supra* note 18), because the Exchange does not offer Complex Orders to be entered as market orders, the Exchange does not propose to offer the ''auto-match'' option described in Rule 971.1(c)(1)(B) for the Complex CUBE Auction. *See also* CBOE Rule 6.74A(b)(1)(A).

[22] *See* proposed Commentary .02 to Rule 971.2NY (defining executable for purposes of this Rule). The Exchange proposes to modify the definition of the single stop price in the Single-Leg CUBE to similarly refer to the stop price being ''equal to,'' as opposed to ''at'' the initiating price, which would add clarity and consistency to Exchange rules. *See* proposed Rule 971.1NY(c)(1)(C).

proposal to allow a Complex CUBE to be guaranteed by a single stop price is based in part on how the single-stop price feature operates with the Single-Leg CUBE, but with differences to reflect the permissible range of executions for a Complex CUBE Order.[23]

Rather than opt for a single stop price, an Initiating Participant may, pursuant to proposed Rule 971.2NY(b)(1)(B), elect the ''auto-match limit price'' alternative, which price must be executable against the initiating price of the Auction.[24] As further proposed, the Complex Contra Order may trade with the Complex CUBE Order at prices that are better than or equal to the initiating price up to the auto-match limit price, if applicable, pursuant to paragraph (c)(4) of this proposed Rule.[25] Accordingly, a Complex Contra Order with an auto-match limit price is eligible to trade at all prices within the range of permissible executions for such Auction, subject to the specified limit price.

As proposed, if the auto-match limit price crosses the same-side CUBE BBO (*i.e.,* would be outside the range of permissible executions), the Complex Contra Order would be priced back to lock the same-side CUBE BBO. The Exchange believes that if an Initiating Participant specifies an auto-match limit price, such ATP Holder has indicated that it is willing to trade with the Complex CUBE Order at more than one price. The Exchange therefore believes it would be consistent with the intent of the auto-match limit price election to adjust the price of such order so that it would be eligible to trade within the range of permissible executions for a Complex CUBE Order. Accordingly, if the auto-match limit price selected is *inferior* to the same-side CUBE BBO bound of permissible execution prices, the auto-match limit price would be re-priced to within the permissible execution range. Thus, using the information in the above Example, if the Initiating Participant submitted an auto-match limit price of $4.01 (which is outside the permissible range of executions of −$4.02 to −$4.04), it would be re-priced to −$4.02 and an Auction would be initiated.

The manner in which a Complex CUBE Order would be guaranteed by an auto-match limit price is consistent with how the Single-Leg CUBE functions, as described in Rule 971.1NY(c)(1)(C). The Exchange proposes to amend Rule 971.1NY(c)(1)(C) to update the Single-Leg CUBE rule to reflect this functionality. As proposed, the Exchange proposes to specify for the Single-Leg CUBE that, when selecting auto-match limit, the Initiating Participant may specify an ''auto-match limit price'' that is equal to or below (above) the initiating price of the Auction and that the Contra Order may trade with the CUBE Order at prices that are lower (higher) than the initiating price down (up) to the auto-match limit price. The Exchange also proposes to specify that it would adjust the auto-match limit price to within the range of permissible executions by adding a new sentence to that Rule that would provide: ''An auto-match limit price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions will be repriced to the lower (upper) bound.''

Paragraphs (b)(2)–(5) of proposed Rule 971.2NY set forth additional requirements for initiating a Complex CUBE Auction, including specifying the various reasons that a proposed Complex CUBE Order would be deemed ineligible to commence an Auction and thus would be rejected along with the Complex Contra Order. The enumerated bases for rejecting a Complex CUBE Order (and Complex Contra Order) are substantially similar to the bases for rejecting a CUBE Order (and Contra Order) in the Single-Leg CUBE.

1. Proposed Rule 971.2NY(b)(2) would provide that a Complex CUBE Order that does not have a net debit/credit price that is equal to or better than the same-side CUBE BBO would be rejected, along with the Complex Contra Order. The Exchange believes that rejecting such Complex CUBE Orders would be appropriate because they are not the best-priced interest available and should not trade ahead of better-priced interest on the same side of the market. This proposed rule text is based on Rule 971.1NY(b)(2), which similarly provides that a Single-Leg CUBE Order would be rejected if priced less aggressively than the permissible range of executions.

2. Proposed Rule 971.2NY(b)(3) would provide that Complex CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order. Because a Complex CUBE Order is deemed executed at the initiation of the Auction, any Complex CUBE Orders entered before the opening of trading would not be able to execute, and therefore the Exchange believes it would be appropriate to reject these Complex CUBE Orders. This proposed treatment of the Complex CUBE Order is the same as for a Single-Leg CUBE Order, per Rule 971.1NY(b)(4).

3. Proposed Rule 971.2NY(b)(4) would provide that Complex CUBE Orders submitted during the final second of the trading session in the component series would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order. As discussed below, the length of the Auction may be a random time between 100 milliseconds and 1 second, to be determined and announced by the Exchange. The Exchange believes, however, that it would be appropriate to reject Complex CUBE Orders submitted during the final second of the trading session to assure that the processing of a Complex CUBE Order may be completed. This proposed treatment of the Complex CUBE Order is the same as for a Single-Leg CUBE Order, per Rule 971.1NY(b)(5).

4. Proposed Rule 971.2NY(b)(5) would provide that Complex CUBE Orders submitted during a trading halt would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order. Because a Complex CUBE Order is deemed executed at the initiation of the Auction, any Complex CUBE Orders entered during a trading halt would not be able to execute, and therefore the Exchange believes it would be appropriate to reject these Complex CUBE Orders. This functionality mirrors that of the Single-Leg CUBE and the Exchange similarly proposes to amend the Rule 971.1NY to add sub-paragraph (b)(10) to set forth the same feature in the rule for Single-Leg CUBE.

The Exchange notes that Complex Orders may be expressed in any decimal price, and the legs(s) of a complex order may be executed in one cent increments regardless of the minimum price increment (''MPV'') otherwise applicable to the individual legs of the order.[26] Accordingly, the Exchange does not propose rule text based on Rule 971.1NY(b)(7) for the Single-Leg CUBE, because this pricing requirement is already provided for in Rule 980NY.

The Exchange believes that the above-described restrictions and requirements would ensure that the existing priority and display rules for Electronic Complex Orders, as well as quotes and orders making up the leg markets for a complex order strategy, are preserved, while still providing ATP Holders an

[23] *See* Rule 971.1NY(c)(1)(A). The Exchange notes however that it would re-price a stop price to be within the range of permissible executions on the Single-Leg CUBE, which feature the Exchange does not allow in the Complex CUBE Auction.

[24] *See* proposed Commentary .02 to Rule 971.2NY (defining executable for purposes of this Rule).

[25] *See* proposed Rule 971.2NY(c)(1)(C) [sic].

[26] *See* Commentary .01 to Rule 980NY.

opportunity to guarantee either price improvement, more liquidity beyond the displayed size, or both, for orders they represent as agent.[27]

Complex CUBE Auction Process: RFRs, RTI and Responses

Proposed Rule 971.2NY(c) sets forth the Auction process, which is substantially similar to the Single-Leg CUBE. Proposed Rule 971.2NY(c), which is based on Rule 971.1NY(c), would provide that the time at which the Auction is initiated would be considered the time of execution for the Complex CUBE Order.[28] As further proposed, only one Auction may be conducted at a time in any given complex order strategy and, once commenced, the Complex CUBE Order, as well as the Complex Contra Order, may not be cancelled or modified. This functionality is consistent with the Single-Leg CUBE as well as rules of other options exchanges that operate electronic price improvement auctions for complex orders.[29]

Proposed Rule 971.2NY(c)(1) would describe the Auction Request for Responses (''RFR'') and Response Time Interval. Pursuant to proposed Rule 971.2NY(c)(1)(A), upon receipt of a valid Complex CUBE Order, the Exchange would announce the Auction by disseminating an RFR to all participants who subscribe to receive Auction messages for options. The RFR would identify the following characteristics of a Complex CUBE Order: The complex order strategy, the side of the market, the size, and the initiating price. Proposed Rule 971.2NY(c)(1)(A) is based on Rule 971.1NY(c)(2)(A) with differences only to add the term ''complex'' as applicable.[30]

The Exchange proposes to define the term ''Response Time Interval'' or ''RTI'' in proposed Rule 971.2NY(c)(1)(B) as the period of time during which responses to the RFR may be entered. As proposed, the Response Time Interval would last for a random period of time within parameters determined by the Exchange and announced by Trader Update. The proposed minimum/maximum parameters for the Response Time Interval would be no less than 100 milliseconds and no more than one (1) second. The proposed duration of an Auction would be determined in the same manner as the Response Time Interval is determined for a Single-Leg CUBE under Rule 971.1NY(c)(2)(B). The proposed use of a random Response Time Interval would provide each Complex CUBE Auction with a functional difference that distinguishes it from similar price improvement mechanisms offered by other exchanges.[31]

Pursuant to proposed Rule 971.2NY(c)(1)(C), during the RTI, any ATP Holder may respond to the RFR, provided such response is properly marked specifying price, size, and side of the market (each, an ''RFR Response''). This proposed rule text is based on Rule 971.1(c)(2)(C).

As proposed, any RFR Response (including unrelated Electronic Complex Orders) that crosses the same-side CUBE BBO would be eligible to trade in the Auction at a price that locks the same-side CUBE BBO. In such instance, the RFR Response would have been priced more aggressively than the contra-side range of permissible execution prices, and it would trade with the Complex CUBE Order at a price both within the range of permissible executions and within the limit price of the RFR Response. Thus, using the information in the above Example, if the Initiating Participant submitted an auto-match limit price of $4.01 (which is outside the permissible range of executions of −$4.02 to −$4.04), it would be re-priced to −$4.02. The Exchange notes that this re-pricing is consistent with treatment of RFR Responses in the Single-Leg CUBE.[32]

Similar to Rule 971.1NY(c)(2)(C), proposed Rule 971.2NY(c)(1)(C) would specify that the Auction would accept RFR Responses as described in proposed sub-paragraphs (i) and (ii) to that Rule. Proposed Rule 971.2NY(c)(1)(C)(i) would define a ''Complex GTX Order,'' which would operate in the same manner as GTX Orders in the Single-Leg CUBE.[33] As proposed, a Complex GTX Order would be an Electronic Complex Order, as defined in Rule 980NY, with a time-in-force contingency for the RTI, and must specify the price, size, and side of the market:

- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(a), Complex GTX Orders would not be displayed on the Consolidated Book or disseminated to any participants. Any portion of a Complex GTX Order that is not fully executed as provided for in paragraphs (c)(3) and (4) of this Rule would be cancelled at the conclusion of the Auction. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(a) for Single-Leg CUBE without any substantive differences.
- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(b), Complex GTX Orders with a size greater than the size of the Complex CUBE Order would be capped at the size of the Complex CUBE Order. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(c) for Single-Leg CUBE without any substantive differences.
- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(c), Complex GTX Orders may be cancelled or modified, which would afford ATP Holders opting to utilize this order type additional flexibility and control. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(d) for Single-Leg CUBE. The Exchange proposes to amend Rule 971.1NY(c)(2)(C)(i)(d) for Single-Leg CUBE to similarly provide that in addition to being cancelled, GTX Orders submitted to the Single-Leg CUBE may be modified.
- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(d), Complex GTX Orders on the same side of the market as the Complex CUBE Order would be rejected. Because Complex GTX Orders can only trade against a Complex CUBE Order or an unrelated order on the same side as a Complex CUBE Order, same-side Complex GTX Orders are unnecessary to the Complex CUBE Auction process. Therefore, the Exchange proposes that same-side Complex GTX Orders would be rejected. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(e) for Single-Leg CUBE without any substantive differences.

In addition to being substantively identical to GTX Orders in the Single-Leg CUBE, other options exchanges that offer electronic price improvement auctions for complex orders similarly enable market participants to enter non-displayed interest that would participate in the auction only, which interest generally operates in the same

[27] *See* Rule 980NY.

[28] Pursuant to Rule 991NY(b)(7), option transactions effected as part of a Complex Trade are exempt from NBBO trade through liability and therefore an individual leg market [sic] of a Complex Order may trade at or between the Exchange [sic] Exchange's best bid/offer, without regard to the NBBO. *See also* Rule 980NY (providing that ''[n]o leg of an Electronic Complex Order will be executed at a price outside the Exchange's best bid/offer for that leg'').

[29] *See, e.g.,* Rule 971.1NY(b),(c); CBOE Rule 6.74A(b); ISE Rule 723(b)(4); ISE Rule 723 Supplementary Material .04.

[30] *See also* CBOE Rule 6.74A(b)(1)(B); ISE Rule 723(c).

[31] *See e.g.,* CBOE Rule 6.74A(b)(2)(C) [sic]; PHLX Rule 1087(b)(1)(D); ISE Rule 723(c)(1).

[32] *See* Rule 971.1NY(c)(2)(i)(f) [sic] (providing that ''[f]or a CUBE Order to buy (sell), GTX Orders priced below (above) the lower (upper) bound of executions shall be repriced to the lower (upper) bound of executions, as specified in paragraph (b)(1) of this Rule).

[33] *See* Rule 971.1NY(c)(2)(C)(i).

manner as the proposed Complex GTX Order.[34]

Pursuant to proposed Rule 971.2NY(c)(1)(C)(ii), the Exchange proposes to define ''Unrelated Electronic Complex Orders'' as Electronic Complex Orders (as defined in Rule 980NY, including COA-eligible orders [35]) on the opposite side of the market as the Complex CUBE Order that are received during the RTI, even if not marked for consideration in the Auction (*i.e.,* as a Complex GTX Order), provided such orders can participate within the range of permissible executions specified for the Auction pursuant to paragraph (a)(4) of this Rule. Accordingly, similar to Rule 971.1NY(c)(2)(C)(ii), which provides for unrelated quotes and orders that are entered during the RTI for the Single-Leg CUBE to be considered RFR Responses, the Exchange would consider Electronic Complex Orders that are entered during the RTI for an Auction to be RFR Responses if they could participate in the range of permissible executions. The Exchange believes that considering these unrelated complex orders as RFR Responses would increase the number of orders against which the Complex CUBE Order may be executed, and should thus maximize opportunities for price improvement of the Complex CUBE Order.

However, unlike the Single-Leg CUBE, because quotes and orders in the leg markets for a complex strategy underlying a Complex CUBE Order would not be eligible to participate in the Auction, such quotes and orders would not be considered ''unrelated orders'' and therefore would not be RFR Responses. As described in more detail below in proposed Rule 971.2NY(c)(3)(B)–(F), updates to the leg markets during the Auction may cause it to conclude early to preserve priority of that interest at a price. Limiting participation in the Complex CUBE Auction to Complex Orders, but allowing certain updates to the leg markets to cause an Auction to conclude early, is consistent with how the Exchange treats interest in the COA process, as described in Rule 980NY(e)(7)(B). Because the Exchange would not consider quotes and orders in the leg markets to be RFR Responses for an Auction, the Exchange does not propose rule text based on Rule 971.1NY(c)(2)(C)(ii)(a)–(c).

Conclusion of the Complex CUBE Auction

As proposed in Rule 971.2NY(c)(2), just as with the Single-Leg CUBE, the Complex CUBE Auction would conclude at the end of the RTI.[36] This proposed functionality is similar to the operation of electronic price improvement mechanisms for complex orders offered by other exchanges.[37] Consistent with the Single-Leg CUBE and the rules of other exchanges that operate electronic price improvement auctions for complex orders, this rule would further provide that an Auction would conclude in the event of a trading halt in any of the component series [38] and the Complex CUBE Order would be executed per proposed Rule 971.2NY(c)(4).[39] As described in proposed Rule 971.2NY(c)(3) (and discussed below), specified additional events may result in the early conclusion of the Auction. Proposed Rule 971.2NY(c)(2) would further provide that any RFR Responses that do not execute in the Auction would execute in accordance with Rule 980NY, Complex Order Trading, and any remaining balance of Complex GTX Orders would cancel, because such orders have a time-in-force for the duration of the Auction.

Early Conclusion of a Complex CUBE Auction

As noted earlier, like the Single-Leg CUBE, a Complex CUBE Auction would conclude early (*i.e.,* before the end of the RTI) as a result of certain events that would otherwise disrupt the priority of the Auction within the Consolidated Book.[40] Such early conclusion events are consistent with how the electronic price improvement auctions for complex orders on other markets operate.[41]

Proposed Rule 971.2NY(c)(3) would provide that an Auction would conclude early before the end of the RTI as described in paragraphs (c)(3)(A)–(F) of the proposed Rule and that when it concludes, the Complex CUBE Order would execute as provided for in proposed Rule 971.2NY(c)(4), described below.[42] While the precise circumstances that result in the early end of a Complex CUBE Auction differ from those of a Single-Leg CUBE, the tenets of honoring price/time are the same. Specifically, the Exchange proposes to use references to the same-side and contra-side CUBE BBO to describe early conclusion scenarios for Complex CUBE Auctions because these definitions take into consideration updates to both the leg markets and better-priced Electronic Complex Orders in the Consolidated Book.

- First, pursuant to proposed Rule 971.2NY(c)(3)(A), an Auction would conclude early if, during the RTI, the Exchange receives a new Complex CUBE Order in the same complex order strategy that meets the conditions of proposed Rule 971.2NY(b). As proposed, after the first Auction concludes, the incoming Complex CUBE Order would initiate its own Auction and proceed as described in proposed Rule 971.2NY(c). Proposed Rule 971.1NY(c)(3)(A) functions in the same manner as Rule 971.1NY(c)(4)(A) relating to the Single-Leg CUBE with non-substantive differences to refer to the same complex order strategy instead of the same series. This proposed basis for an early conclusion of an Auction is also consistent with the rules of other exchanges operating electronic auctions for complex orders.[43]
- Second, pursuant to proposed Rule 971.2NY(c)(3)(B), an Auction would conclude early if, during the RTI, the Exchange receives any interest that would adjust the same-side CUBE BBO to be better than the initiating price. The Exchange proposes to conclude the Auction early in such circumstance to honor the priority of the Consolidated Book, which would now be equal to or better-priced than the initiating price of the Auction. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(D) for Single-Leg CUBE, but uses Complex CUBE terminology.

[34] *See, e.g.,* CBOE 6.74A(b)(1)(I) (non-displayed interest intended only for the auction may be cancelled); ISE 723(c)(3) (non-displayed interest intended only for the auction may be modified, but not cancelled). See also supra note 26 (regarding the MPV for Complex Orders).

[35] Rule 980NY(e) describes the Complex Order Process or COA, which is designed to offer price improvement to Complex Orders; however, the COA is not a crossing mechanism and a COA-eligible order is not guaranteed an execution. *See* Rule 980NY(e)(1) (defining COA-eligible orders).

[36] *See* Rule 971.1NY(c)(3).

[37] *See, e.g.,* CBOE Rule 6.74A(b)(2)(A); PHLX Rule 1087(b)(2)(A); ISE Rule 723(c)(5)(i).

[38] *See, e.g.,* Rule 971.1NY(c)(3); CBOE Rule 6.74A(b)(2)(F); PHLX Rule 1087(b)(2)(D).

[39] Because the execution [sic] of the Auction would be deemed the time the Complex CUBE Auction is initiated, if a trading halt occurs in the series during the RTI and the Auction concludes early, the Exchange does not believe that such execution needs to be nullified pursuant to Rule 953NY Commentary .03 [sic].

[40] *See* Rule 971.1NY(c)(4).

[41] *See, e.g.,* CBOE Rule 6.74A(b)(2)(B),(C),(E); PHLX Rule 1087(b)(2)(C); ISE Rule 723(c)(5)(ii)–(iii); BOX IM 7150.

[42] Pursuant to proposed Rule 971.2NY(c)(2), and as discussed herein, a trading halt in the affected series would also result in the early conclusion of an Auction and contracts would be allocated pursuant to proposed paragraph (c)(4).

[43] *See, e.g.,* CBOE Rule 6.74A(b); ISE Rule 723 Supplementary Material .04. The Exchange notes that although these rules specify that auctions may not overlap or queue in any manner, the rules are nonetheless silent on how this is enforced (*i.e.,* by rejecting new auction orders or by concluding an ongoing auction early).

• Third, pursuant to proposed Rule 971.2NY(c)(3)(C), an Auction would conclude early if, during the RTI, the Exchange receives any interest that adjusts the same-side CUBE BBO to cross any RFR Responses. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(B) for Single-Leg CUBE in that the interest would be on the same side as the Complex CUBE Order and would be marketable against RFR Responses, but uses Complex CUBE terminology.

• Fourth, pursuant to proposed Rule 971.2NY(c)(3)(D), an Auction would conclude early if, during the RTI, the Exchange receives any interest that adjusts the same-side CUBE BBO to cross the single stop price specified by the Initiating Participant. This early end scenario would not apply to instances where the Initiating Participant specified an auto-match limit price. The Exchange proposes to conclude the Auction early in such circumstances because the stop price would not be eligible to trade as part of an updated CUBE BBO.[44] Accordingly, the Exchange proposes to conclude such Auction early and execute the Complex CUBE Order as provided for in proposed Rule 971.2NY(c)(4).

• Fifth, pursuant to proposed Rule 971.2NY(c)(3)(E), an Auction would conclude early if, during the RTI, the Exchange receives interest that crosses the same-side CUBE BBO. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(C) for the Single-Leg CUBE because arriving interest that crosses the same-side CUBE BBO would be marketable against interest in the Consolidated Book, but uses Complex CUBE terminology.

• Finally, pursuant to proposed Rule 971.2NY(c)(3)(F), an Auction would conclude early if, during the RTI, the Exchange receives interest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(C) for the Single-Leg CUBE because arriving interest that crosses the contra-side CUBE BBO would be marketable against interest in the Consolidated Book, but uses Complex CUBE terminology.

In each of the above scenarios, the Auction would conclude early to preserve priority of incoming interest. When the Auction concludes, the Complex CUBE Order would be matched with the best-priced interest received during the Auction and, once the Complex CUBE Order is filled, the incoming interest (that caused the Auction to conclude early) would be ranked and prioritized. If the incoming interest is a Complex Order and on the opposite side, it may execute against the Complex CUBE Order; if the incoming interest is on the same side as the Complex CUBE Order, it may execute against any unfilled RFR Responses before being posted to the Consolidated Book. If the incoming interest (that caused the Auction to conclude early) is an updated quote or order in the leg markets, it would be processed after the Complex CUBE Auction pursuant to Rule 980NY. Again, the rationale for concluding the Auction early in each of the above scenarios is to operate seamlessly with the Consolidated Book and honor the price-time priority model on the Exchange—while still affording the Complex CUBE Order an opportunity to receive price improvement.

Complex CUBE Order Allocation

Proposed Rule 971.2NY(c)(4) sets forth the order allocation process for the Auction. Generally, at the conclusion of the Complex CUBE Auction, the Auction mechanism would determine whether the total RFR Responses can fill the Complex CUBE Order at a price or prices better than the stopped price or auto-match limit price.[45] If so, the Complex CUBE Order is matched against the better-priced RFR Responses granting the Complex CUBE Order the maximum amount of price improvement possible.

When there are multiple RFR Responses at a given price, the Complex CUBE Order would be executed against the RFR Responses on a pro-rata basis pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3), except that Customers at a given price would be executed first in priority. The Exchange believes that, as proposed, the Auction would maximize the opportunity for price improvement while maintaining the priority of Customer orders.

Proposed Rule 971.2NY(c)(4) would provide that any RFR Response that exceeds the size of the Complex CUBE Order would be capped at the Complex CUBE Order for allocation purposes, per Rule 964NY(b)(3). This function is based on Rule 971.1NY(c)(5), which similarly caps the size of RFR Responses to a Single-Leg CUBE.

Pursuant to proposed Rule 971.2NY(c)(4)(A), at each price level, any Customer orders that arrived during the Complex CUBE Auction as RFR Responses would have first priority to execute and be allocated on a size pro rata allocation pursuant to Rule 964NY(b)(3). Allocating Customer interest first is consistent with the Exchange's allocation model and is based on Rule 971.1NY(c)(5)(A) for the Single-Leg CUBE.

Pursuant to proposed Rule 971.2NY(c)(4)(B), after Customer interest at a particular price level has been satisfied, any remaining size would be allocated among the Complex Contra Order and RFR Responses differently depending on whether the Initiating Participant designated a single stop price or auto-match limit. In each case, the proposed allocation of a Complex CUBE Order would follow the same allocation rules for a Single-Leg CUBE Order, as described below.

Proposed Rule 971.2NY(c)(4)(B)(i) would specify how remaining size of the Complex CUBE Order for which the Initiating Participant specifies a single stop price would trade with interest received during the Auction as follows:

• First, to RFR Responses priced better than the stop price, beginning with the most aggressive price within the range of permissible executions, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point. Proposed Rule 971.2NY(c)(4)(B)(i)(a) is based on Rule 971.1NY(c)(5)(B)(i)(a),with differences only to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY.

• Next, any remaining size of the Complex CUBE Order would execute at the stop price. At the stop price, if there is sufficient size of the Complex CUBE Order still available after executing at prices better than the stop price or against Customer interest, the Complex Contra Order would receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response). Any remaining size of the Complex CUBE Order at the stop price would be allocated among remaining RFR Responses pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3). If all RFR Responses are filled, any remaining size of the Complex CUBE Order would be allocated to the Complex Contra Order.

Proposed Rule 971.2NY(c)(4)(B)(i)(b) is based on Rule 971.1NY(c)(5)(B)(i)(b), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY and non-substantive differences to refer to ''size'' rather than ''contracts'' and to use ''will'' instead of ''shall.'' In addition, other exchanges that operate electronic pricing

[44] *See* proposed Rule 971.2NY(a)(4).

[45] *See* proposed Rule 971.2NY(c)(4)(A), (B)(i)–(ii).

mechanism for complex orders similarly guarantee minimum levels of participation for the initiating participant.[46]

• If there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the stop price. Proposed Rule 971.2NY(c)(4)(B)(i)(c) is based on Rule 971.1NY(c)(5)(B)(i)(c) without any substantive differences.

Proposed Rule 971.2NY(c)(4)(B)(ii) would specify how remaining size of the Complex CUBE Order for which an Initiating Participant specifies an ''auto-match limit price'' would trade with interest received during the Auction as follows:

• First, to RFR Responses at each price level priced better than the auto-match limit price (if any) within the range of permissible executions, beginning with the most aggressive price, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point. Proposed Rule 971.2NY(c)(4)(B)(ii)(a) is based on Rule 971.1NY(c)(5)(B)(iii)(a), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY.

• Next, to RFR Responses at a price equal to the price of the Complex Contra Order's auto-match limit price, and if volume remains, to prices worse than the auto-match limit price. At each price point equal to or worse than the auto-match limit price, the Complex Contra Order would receive an allocation equal to the aggregate size of all other RFR Responses starting with the best price at which an execution against an RFR Response occurs within the range of permissible executions until a price point is reached where the balance of the CUBE Order can be fully executed (the ''clean-up price''). At the clean-up price, if there is sufficient size of the Complex CUBE Order still available after executing at better prices or against Customer interest, the Complex Contra Order would be allocated additional volume required to achieve an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response). If the Complex Contra Order meets its allocation guarantee at a price better than the clean-up price, it would cease matching RFR Responses that may be priced worse than the price at which the Complex Contra Order received its allocation guarantee. If there are other RFR Responses at the clean-up price, the remaining size of the Complex CUBE Order would be allocated to such interest pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3). Any remaining portion of the Complex CUBE Order would be allocated to the Complex Contra Order at the initiating price.

Proposed Rule 971.2NY(c)(4)(B)(ii)(b) is based on Rule 971.1NY(c)(5)(B)(iii)(b), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY and includes non-substantive differences to define the term ''clean-up price,'' which for the Single-Leg CUBE, is defined in Rule 971.1NY(c)(5)(B)(ii)(a).

• If there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the initiating price. Proposed Rule 971.2NY(c)(4)(B)(iii)(c) without any substantive differences.

As noted above, certain unrelated orders may be considered RFR Responses and may interact with the Complex CUBE Order (thus maximizing opportunities for price improvement) and any portion of these unrelated orders remaining thereafter would be processed in accordance with Rule 980NY, Electronic Order Trading. Proposed Rule 971.2NY(c)(4)(C) is based on Rule 971.1NY(c)(5)(C) without any substantive differences.

Finally, proposed Rule 971.2NY(c)(4)(D) would provide that a single RFR Response would not be allocated a volume that is greater than its size. This proposed rule text is based on Rule 971.1NY(c)(4)(D) without any substantive differences.

Conduct Inconsistent With Just and Equitable Principles of Trade

The Exchange is proposing Commentary .01 to Rule 971.2NY to set forth that certain activity in connection with the Complex CUBE Auction would be considered conduct inconsistent with just and equitable principles of trade to discourage ATP Holders from attempting to misuse or manipulate the Auction process. Proposed Commentary .01 to the Rule is based on Commentary .02 to Rule 971.1NY relating to the Single-Leg CUBE without any substantive differences and is consistent with the rules of other options exchanges that offer electronic price improvement auction mechanisms.[47] Specifically, pursuant to proposed Commentary .01 (a)–(d) to Rule 971.2NY, the Exchange proposes that the following conduct would be considered conduct inconsistent with just and equitable principles of trade:

(a) An ATP Holder entering RFR Responses to a Complex CUBE Auction for which the ATP Holder is the Initiating Participant. The Exchange believes this would prevent Initiating Participants from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

(b) Engaging in a pattern and practice of entering unrelated orders and quotes for the purpose of causing a Complex CUBE Auction to conclude early, *i.e.,* before the end of the RTI. The Exchange believes this would prevent an ATP Holder from shortening the duration of the Auction thus possibly reducing the number Responses to an Auction in order to gain a higher allocation than the percentage the ATP Holder may have otherwise received had the Auction not concluded early.

(c) An Initiating Participant that breaks up an agency order into separate Complex CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in proposed paragraph (c)(5) to proposed Rule 971.2NY. The Exchange believes this would prevent Initiating Participants from manipulating the Complex CUBE Orders size and number to gain a higher guaranteed execution than the Initiating Participant would have otherwise received.

(d) Engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the Complex CUBE Order. The Exchange believes this will prevent ATP Holders from attempting to misuse or manipulate the process.

Order Exposure and Prohibited Conduct

Current Rule 935NY prohibits Users[48] from executing as principal any orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User

[46] *See, e.g.,* PHLX Rule 1087(b)(5)(B)(iv) (providing up to 50% allocation with participation guarantees); ISE Rule 713 Commentary .03 (providing up to 60% allocation for participation guarantees); CBOE Rule 6.74A(b)(3)(F).

[47] *See, e.g.,* Rule 971.1NY, Commentary .02; PHLX 1087(c)–(e); ISE 723 Supplementary Material .01; BOX IM–7150–2(a) and (b). The Exchange proposes to correct a typographical error in Commentary .02 of the Single-Leg CUBE rule by adding the word ''of,'' which was inadvertently omitted, to add clarity and consistency to the Rule. *See* proposed Commentary .02(b) to Rule 971.1NY (providing, as updated, that ''[e]ngaging in a pattern and practice of trading or quoting activity for the purpose of causing a CUBE Auction to conclude before the end of the Response Interval Time'').

[48] Rule 900.2NY(87) defines User as any ATP Holder that is authorized to obtain access to the System.

has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule helps to ensure that orders are properly exposed to market participants, affording them a reasonable amount of time in which to participate in the execution of the agency order.

As previously stated in this filing, the Exchange believes that the proposed RTI, with a random length of no less than 100 milliseconds and no greater than 1 second (to be determined and announced by the Exchange), is of sufficient length so as to permit ATP Holders time to respond to a Complex CUBE Auction thereby enhancing opportunities for competition among participants and increasing the likelihood of price improvement for the Complex CUBE Order. Accordingly, the Exchange proposes to amend Rule 935NY to stipulate that a User may execute as principal an order that the User represents as agent, provided that the User avails him or herself of the Complex CUBE Auction process, pursuant to Rule 971.2NY. Such Complex CUBE Order would not be subject to the one-second order exposure requirement of Rule 935NY, which exclusion from the one-second order exposure requirement is consistent with the treatment of similar orders on the Exchange.[49] Consistent with Rule 935NY Commentary .01, ATP Holders would only utilize the Auction where there is a genuine intention to execute a bona fide transaction.[50]

Modification to Complex Order Trading Rule Regarding COA

Consistent with the principle that the Exchange would only conduct one auction in a given complex order strategy at a time, the Exchange proposes to amend Rule 980NY(e)(6) to make clear that a COA in progress would end upon receipt of a better-priced Complex CUBE Order received during the COA.[51]

Section 11(a) of the Exchange Act

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (''covered accounts''), unless, as discussed below, an exception applies.[52] The Commission, in its order to approve the Single-Leg CUBE, determined that orders effected utilizing this mechanism complied with the requirements of Section 11(a).[53] As noted herein, the Complex CUBE Auction operates in a manner substantially similar to the Single-Leg CUBE and the argument supporting the Exchange's position that the proposed Complex CUBE Auction is consistent with the requirements of Section 11(a) and the rules thereunder mirror those made (and accepted by the Commission) in regards to the Single-Leg CUBE.

First, Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. Specifically, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. The Exchange believes that orders sent by on- and off-floor market makers, for covered accounts, to the proposed Complex CUBE Auction would qualify for this exception from Section 11(a).

In addition to this market maker exception, Rule 11a2–2(T) under the Exchange Act, known as the ''effect versus execute'' rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.[54] To comply with the ''effect versus execute'' rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[55] (iii) may not be affiliated with the member executing the transaction on the floor, or through the facilities, of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[56]

The Exchange believes that orders sent by off-floor ATP Holders, for covered accounts, to the proposed Complex CUBE Auction would qualify for this ''effect versus execute'' exception from Section 11(a), as described below. In this regard, the first condition of Rule 11a2–2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts from off-floor ATP Holders sent to the Complex CUBE Auction would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means.[57] In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[58]

The second condition of Rule 11a2–2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.[59] The Exchange represents that, upon submission to the Complex CUBE Auction, an order will

[49] *See* Rule 935NY(iii), (iv) (exempting orders submitted into the Single-Leg CUBE and into the Complex Order Auction Process from the one second order exposure requirement).

[50] *See* Rule 935NY Commentary .01 (''Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book.'')

[51] *See* proposed Rule 980NY(e)(6)(A), (B) (making clear that Complex CUBE Orders are included in the category of ''[i]ncoming Electronic Complex Orders'' that may cause the COA in progress to end early'').

[52] 15 U.S.C. 78k(a)(1).

[53] *See* Single-Leg CUBE Approval Order, *supra* note 6, 79 FR at 24787–24788.

[54] 17 CFR 240.11a2–2(T).

[55] The member, however, may participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[56] 17 CFR 240.11a2–2(T).

[57] In the alternative, orders for a covered account may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the Complex CUBE Auction mechanism. Floor Brokers, however, may not enter orders for their own covered accounts into the Auction mechanism from on the floor, or transmit such orders from on the floor to off of the floor for entry into the Complex CUBE Auction mechanism.

[58] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving, among other things, the equity rules of the Boston Stock Exchange); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (approving the Boston Options Exchange as an options trading facility of BSE); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (approving the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) (''1979 Release''); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (approving NYSE's Designated Order Turnaround System) (''1978 Release'').

[59] The description above covers the universe of the types of ATP Holders (*i.e.,* on- and off-floor market makers, off-floor firms that are not market makers, and Floor Brokers).

be executed automatically pursuant to the proposed rules set forth for the Auction. In particular, execution of an order sent to the Auction depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.[60]

The third condition of Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the Complex CUBE Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[61] The Exchange represents that the CUBE Auction is designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

The fourth condition of Rule 11a2–2(T) requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member, nor any associated person thereof, may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract, referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[62] The Exchange recognizes that ATP Holders relying on Rule 11a2–2(T) for transactions effected through the Complex CUBE Auction must comply with this condition of the Rule.

For all of the foregoing reasons, like the Single-Leg CUBE, the Exchange believes the Complex CUBE Auction promotes just and equitable principles of trade and is consistent with the general policy objectives of Section 11(a) of the Act.

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The implementation date will be no later than 60 days following publication of the Trader Update announcing Commission approval. The Exchange believes that this implementation schedule would provide ATP Holders with adequate notice of the Auction and would allow ample time for ATP Holders to prepare their systems for participation in the Auction process, if such participation is desired.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange proposes to add new Rule 971.2NY to allow Complex Orders to be submitted to the Complex CUBE Auction in substantially the same manner as orders for single options series instruments currently are submitted to the Single-Leg CUBE, except as necessary to account for distinctions between regular orders on the Book and Complex Orders. As described in greater detail above, the provisions in proposed Rule 971.2NY are substantially similar to those in Rule 971.1NY, with non-substantive differences to reflect their applicability to an Auction for a Complex Order as compared to a CUBE for orders in a single-leg options series. The Exchange believes that the Complex CUBE Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to afford Complex Orders the opportunity for price improvement in a paired auction, similar to the Single-Leg CUBE. The Exchange believes that the Complex CUBE would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater opportunities for price improvement for Complex Orders. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it result in tighter markets for complex orders, and ensure that each order receives the best possible price. Similar to how the Single-Leg CUBE operates, the Exchange believes that by integrating the Auction into the CME, the Exchange is able to assure that the Auction respects the priority of interest in the Consolidated Book.

The Exchange believes that this rule filing is reasonable, equitable and not unfairly discriminatory to customers and Participants because it follows the fundamental principles of the existing Single-Leg CUBE mechanism[63] and the Exchange's priority and allocation rules in the context of the auction for Complex Orders,[64] each of which has been previously approved by the Commission. The Exchange further believes the proposal is not unfairly discriminatory because the benefits of the proposed Complex CUBE on the Exchange, like the Single-Leg CUBE, are equally available to all ATP Holders.

The Exchange believes this proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would increase opportunities for execution of Complex Orders. Further, the Exchange believes the proposed Complex CUBE Auction would provide greater flexibility to ATP Holders trading Complex Orders on the Exchange. The Exchange also believes that the proposed Complex CUBE would provide additional opportunities for ATP Holders to achieve better handling of Complex Orders and result in increased opportunities for execution and better pricing. These benefits have

[60] The Exchange notes that the Initiating Participant may not cancel or modify a Complex CUBE Order once a Complex CUBE Auction has started. *See* proposed Rule 971.2NY(c).

[61] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[62] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish, at least annually to the person authorized to transact business for the account, a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement, which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[63] *See* Rule 971.1NY, amended to reflect their applicability to a Complex CUBE on a Complex Order as compared to a CUBE on orders for single-leg options series.

[64] *See* Rule 980NY(e) (describing COA process generally).

been realized for orders on single option series under its existing Single-Leg CUBE mechanism and the same principles are expected to transfer readily to Complex Orders. As a result, the proposed Complex CUBE Auction mechanism would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

For purposes of the Complex CUBE Auction, only Complex Orders received during the Auction would be considered RFR Responses because quotes and orders in the leg markets would not be eligible to interact with the Complex CUBE Order. Although this aspect of the Complex CUBE Auction would differ from the Single-Leg CUBE, it is consistent with the current treatment of interest in auctions for complex orders on the Exchange, *e.g.,* the COA.[65] Similarly, to ensure that the Exchange preserves price/time priority, the Complex CUBE would conclude early when interest arrives during the Auction (including quotes and orders) that improve the best-priced interest at the start of the Complex CUBE, which is also consistent with COA processing.[66]

The Exchange believes that proposed Commentary .02 to Rule 971.2NY and amendments to Rule 900.2NY(7) relating to definitions that would be applicable to the Complex CUBE would remove impediments to and perfect the mechanism of a free and open market because these terms reflect the different processing of and priority of Complex Orders. The Exchange believes that use of these terms achieves the same results as the Single-Leg CUBE, but the terms for Complex CUBE are tailored to how Complex Orders function. The Exchange further believes that defining these terms in Exchange rules would promote transparency and clarity for members, the public, and the Commission to understand how the Complex CUBE functions, including circumstances when an Auction would conclude early. Accordingly, any such differences between the rule for Complex CUBE and Single-Leg CUBE are designed to provide clarity in the rules and promote just and equitable principles of trade.

Upon adoption of the proposal, the Exchange would operate price improvement auctions in both single-leg options series and Complex Orders.[67] As with the Single-Leg CUBE, the Exchange will not operate multiple, simultaneous Complex CUBE Auctions on the same complex order strategy. However, the Exchange proposes that it would accept orders designated for the CUBE on a single option series where a Complex CUBE on a Complex Order strategy that includes such series may be in progress. The Exchange would also accept Complex Orders designated for the Complex CUBE where a Single-Leg CUBE on either of the component series may be in progress. The Exchange believes this simultaneous price improvement auction functionality would reduce order cancelation and, thereby remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

ATP Holders must not use the Complex CUBE process to create a misleading impression of market activity (*i.e.,* the facilities may be used only where there is a genuine intention to execute a bona fide transaction). These provisions are substantially the same as the corresponding rules for the Single-Leg CUBE and are important customer protection features that prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.

In addition, the Complex CUBE Auction promotes equal access by providing any ATP Holder that elects to subscribe to receive auction messages with the opportunity to interact with orders in the Auction. As a result, no ATP Holder would have an information advantage and the proposal serves to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes to Rule 980NY(e)(6) that make clear that a COA in progress would end upon receipt of a better-priced Complex CUBE Order received during the COA would add clarity, transparency and internal consistency to Exchange rules and thereby remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange also believes that the proposed amendment to Rule 900.2NY to exclude Professional Customers from the definition of ''Customer'' for purposes of this rule is consistent with just and equitable principles of trade because it is intended to protect investors that are not broker dealers and ensure that their orders are protected regardless of whether there is an Auction, and is consistent with treatment for Single-Leg CUBE. The Exchange also believes the proposed changes to Rule 953NY to exempt Complex CUBE Orders from the 1-second order exposure requirement would add clarity, transparency and internal consistency to Exchange rules to the benefit of investors and the investing public.

As discussed herein, the Exchange proposes to make certain miscellaneous conforming and clarifying changes to Rules 900.2NY(18A), 935NY, 980NY to make them consistent with the adoption of the proposed Complex CUBE rule. These conforming and clarifying changes are required to make the Complex CUBE rules consistent with the Exchange's Single-Leg CUBE rule and are necessary to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

For the foregoing reasons, the Exchange believes this proposal is a reasonable modification to its rules, designed to facilitate increased interaction of Complex Orders on the Exchange, and to do so in a manner that ensures a dynamic, real-time trading mechanism that maximizes opportunities for trade executions for Complex Orders. The Exchange believes it is appropriate and consistent with the Act to adopt the proposed rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing the Auction as a market enhancement that should increase competition for Complex Order flow on the Exchange in a manner that would be beneficial to investors. Specifically, the Exchange believes that the Complex CUBE Auction would provide investors seeking to effect Complex Orders with an opportunity for increased liquidity available at improved prices, with competitive final

[65] *See* Rule 980NY(e)(7)(describing that only Complex Orders are eligible for execution in Auction).

[66] *See* Rule 980NY(e)(6)(describing that updates to the leg markets can end a COA early to preserve priority)

[67] Exchange rules governing events occurring during permitted, simultaneous auctions are clear. Processes on the Exchange System are sequential, which prevents any two orders (including CUBE Orders and Complex CUBE Orders) from having the same time stamp. Each order is processed in accordance with Exchange rules without race conditions.

pricing out of the Initiating Participant's complete control. The proposal is structured to offer the same enhancement to all market participants and would not impose a competitive burden on any participant. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges. The Exchange notes that not having the Complex CUBE Auction at the Exchange places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2018–05 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–NYSEAMER–2018–05. 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–NYSEAMER–2018–05 and should be submitted on or before March 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–04625 Filed 3–6–18; 8:45 am]

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[68] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82799; File No. SR–IEX–2018–03]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Auction Rules Governing the Pricing of Non-Displayed Orders Resting on the Continuous Book for the Opening and Closing Auctions

March 1, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 16, 2018, Investors Exchange LLC (''IEX'' or the ''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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend Rules 11.350(a)(2) and 11.350(a)(30) to properly reflect the manner in which the Exchange will handle non-displayed orders resting on the Continuous Book [6] within the Reference Price Range [7] in crossed and one-sided markets [8] in the Opening and Closing Auctions,[9] and resolve a conflict with the Exchange's existing rules regarding the pricing of such orders. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [10] and provided the Commission with the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CRF 240.19b–4.

[6] *See* Rule 11.350(a)(4).

[7] *See* Rule 11.350(a)(30).

[8] A crossed market refers to a scenario in which the protected national best bid (''Protected NBB'') is greater than the protected national best offer (''Protected NBO''). A one-sided market refers to a scenario in which there is only a Protected NBB or Protected NBO. *See* Rule 1.160(bb).

[9] *See* Rules 11.350(c) and (d), respectively.

[10] 15 U.S.C. 78s(b)(3)(A).

notice required by Rule 19b–4(f)(6) thereunder.[11]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rules 11.350(a)(2) and 11.350(a)(30) to properly reflect the manner in which the Exchange will handle non-displayed orders resting on the Continuous Book within the Reference Price Range in crossed and one-sided markets in the Opening and Closing Auctions, and resolve a conflict with the Exchange's existing rules regarding the pricing of such orders.

On August 4, 2017, the Commission approved a proposed rule change filed by the Exchange to adopt rules governing auctions in IEX-listed securities, including Opening and Closing Auction processes that establish IEX Official Opening and Closing Prices for each trading day.[12] The Exchange intends to launch a listings program for corporate issuers in 2018. IEX Rule 11.350 is applicable to auctions in IEX-listed securities.

IEX Opening Auction

Pursuant to Rule 11.350(c)(1), Users may submit orders eligible for execution in the Opening Auction[13] at the beginning of the Pre-Market Session,[14] which begins at 8:00 a.m.[15] Any orders designated for the Opening Auction Book[16] will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. In addition to orders on the Opening Auction Book, limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible to execute in the Opening Auction (''Pre-market Continuous Book'').[17] The Exchange does not place any restrictions on the entry of orders to the Pre-market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to proposed Rule 11.350(c)(2), beginning at the Opening Auction Lock-in Time[18] and updated every one second thereafter, the Exchange will disseminate IEX Auction Information[19] via electronic means. The Exchange will attempt to conduct an Opening Auction for all IEX-listed securities at the start of Regular Market Hours[20] (*i.e.,* 9:30 a.m.) in accordance with the clearing price determination process set forth in Rule 11.350(c)(2)(B). All orders eligible for execution in the Opening Auction (*i.e.,* orders on the Opening Auction Book and orders on the Pre-Market Continuous Book that are not Auction Ineligible Orders[21]) are Auction Eligible Orders.[22] Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2), non-displayed buy (sell) orders on the Pre-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price,[23] but will be ranked and eligible for execution in the Opening Auction match at the order's resting price.[24] Thus, non-displayed orders will influence the Opening Auction clearing price if such price is at or outside the Reference Price Range, but not if the clearing price is within the Reference Price Range.

IEX Closing Auction

Similar to the Opening Auction, pursuant to Rule 11.350(d)(1), the Exchange allows Users to submit orders eligible for execution in the Closing Auction[25] at the beginning of the Pre-Market Session, which begins at 8:00 a.m. Any orders designated for the Closing Auction Book[26] are queued until 4:00 p.m. (or such earlier time as the Regular Market Session[27] ends on days that IEX is subject to an early closing) at which time they will be eligible to be executed in the Closing Auction. In addition to orders on the Closing Auction Book, all limit and pegged orders resting on the Continuous Book with a time-in-force of DAY, GTX, GTT, or SYS are eligible for execution in the Closing Auction, (''Regular-Market Continuous Book'').[28] Similar to the Opening Auction, the Exchange does not place any restrictions on the entry of orders to the Regular-Market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to Rule 11.350(d)(2)(A), beginning at the Closing Auction Lock-in Time[29] and updated every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means. The Exchange will attempt to conduct a Closing Auction for all IEX-listed securities at 4:00 p.m., or such earlier time as the Regular Market Session ends on days that IEX is subject to an early closing, in accordance with the clearing price determination process set forth in Rule 11.350(d)(2)(B). All orders eligible for execution in the Closing Auction (*i.e.,* orders on the Closing Auction Book and orders on the Regular-Market Continuous Book) are Auction Eligible Orders. Auction Eligible Orders will be ranked in accordance with IEX Auction Priority set forth in Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2),

[11] 17 CFR 240.19b–4.

[12] *See* Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017). *See also* Rules 11.350(a)(12) and (10), respectively.

[13] *See* Rule 11.350(c).

[14] *See* Rule 1.160(z).

[15] All times are in Eastern Time.

[16] Pursuant to Rule 11.350(a)(1)(A), orders on the Opening Auction Book would include MOO orders, LOO orders, market orders with a time-in-force of DAY, and limit orders with a time-in-force of DAY or GTX. *See* Rules 11.350(a)(25), 11.350(a)(21), 11.190(a)(2)(E)(iii), and 11.190(a)(1)(E)(iii) and (v), respectively.

[17] *See* Rule 11.190(a)(1)(E)(iv) and (vi).

[18] *See* Rule 11.350(a)(22).

[19] *See* Rule 11.350(a)(9).

[20] *See* Rule 1.160(gg).

[21] *See* Rule 11.350(a)(3).

[22] *See* Rule 11.350(a)(2).

[23] Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price *and* the Indicative Clearing Price disseminated in IEX Auction Information as set forth in Rule 11.350(a)(9)(E).

[24] The Exchange notes that in the case of an IPO, Halt, or Volatility Auction, there is no continuous trading and therefore no Continuous Book. Accordingly, there would be no non-displayed interest on the Continuous Book to which this functionality would apply.

[25] *See* Rule 11.350(d).

[26] Pursuant to Rule 11.350(a)(1)(B), orders on the Closing Auction Book would include MOC orders and LOC orders. *See* Rules 11.350(a)(24), and 11.350(a)(20).

[27] *See* Rule 1.160(gg).

[28] The following types of orders are not eligible for execution in the Closing Auction: market orders (except MOC orders) and orders with a time-in-force of IOC or FOK, because Market orders entered during the Regular Market Session and orders marked IOC or FOK do not rest on the Continuous Book, and therefore are not eligible for the Closing Auction.

[29] *See* Rule 11.350(a)(22).

non-displayed buy (sell) orders on the Regular-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price,[30] but will be ranked and eligible for execution in the Closing Auction match at the order's resting price. Thus, as with the Opening Auction, non-displayed orders resting on the Regular-Market Continuous Book will influence the Closing Auction clearing price if such price is at or outside the Reference Price Range, but not if the clearing price is within the Reference Price Range.

As described in the rule filing proposing rules governing auctions in IEX-listed securities,[31] the Exchange's handling of non-displayed interest on the Continuous Book resting within the Reference Price Range in the Opening and Closing Auction is designed to protect the anonymity of resting non-displayed interest on the Continuous Book during the dissemination of IEX Auction Information. Specifically, the Exchange believes that without such treatment, information leakage would occur if the Indicative Clearing Price is closer to the midpoint of the NBBO than the Reference Price[32] that is disseminated via IEX Auction Information. This would indicate that there is non-displayed interest resting on the Continuous Book for at least the size of the imbalance and priced at least as aggressively as the Reference Price.

Reference Price Range

For the Opening or Closing Auction, the Reference Price Range is defined in Rule 11.350(a)(30) as the prices between and including the Protected NBB and Protected NBO, if the Protected NBBO is valid. The Protected NBBO is valid when there is both a Protected NBB and Protected NBO in the security (*i.e.,* the market is *not* one-sided or zero-sided), the Protected NBBO is not crossed, and the midpoint of the Protected NBBO is less than or equal to the Maximum Percentage[33] away from both the Protected NBB and Protected NBO. The Maximum Percentage values set forth in Rule 11.350(a)(26) are as follows:

- 5% if the Protected Midpoint Price[34] is less than or equal to $25.00;
- 2.5% if the Protected Midpoint Price is greater than $25.00 but less than or equal to $50.00; or
- 1.5% if the Protected Midpoint Price is greater than $50.00.

In the event that the Protected NBBO is not valid, the Reference Price Range will be equal to the IEX best bid and offer (''IEX BBO''), if the IEX BBO is valid. The IEX BBO is valid where there is both an IEX best bid and IEX best offer in the security (*i.e.,* the IEX BBO is *not* one-sided or zero-sided), and the midpoint of the IEX BBO is less than or equal to the Maximum Percentage away from both the IEX best bid and the IEX best offer. Where the IEX BBO is not valid, the Reference Price Range is set to the higher (lower) price of the Final Consolidated Last Sale Eligible Trade,[35] or the Protected NBB (NBO), if not crossed, or the IEX best bid (offer).

Proposed Changes

During development and testing of the functionality for Opening and Closing Auctions the Exchange identified that in crossed markets, Rule 11.350(a)(2) does not properly reflect the Exchange's planned handling of non-displayed orders resting on the Continuous Book within the Reference Price Range, and conflicts with the Exchange's existing rules regarding the pricing of orders. Specifically, Rule 11.350(a)(2) states in relevant part that non-displayed buy (sell) orders on the Continuous Book will be priced to the Protected NBB (NBO) for the purposes of determining the clearing price. However, as discussed above, the Reference Price Range is generally—but not always—equal to the Protected NBBO.[36] Therefore, when the Reference Price Range does not equal the Protected NBBO, pricing non-displayed buy (sell) orders to the Protected NBB (NBO) may result in such orders being priced beyond a User's defined limit price, or the Midpoint Price Constraint as set forth in Exchange Rule 11.190(h)(2) and 11.190(h)(3)(D)(i).

For example, if the Protected NBBO is $10.15 x $10.09 (crossed), and the IEX BBO is $10.05 x $10.10, the Reference Price Range would be equal to the IEX BBO. However, pursuant to current Rule 11.350(a)(2), non-displayed orders to buy resting at their limit price on the Continuous Book between $10.05 and $10.09 would be priced to the Protected NBB of $10.15 for purposes of determining the clearing price, which is more aggressive than their User defined limit prices, as well as the Midpoint Price Constraint of $10.09 (pursuant to Rule 11.190(h)(3)(D)(i)).

Thus, the Exchange proposes to amend Rule 11.350(a)(2) to clarify that for Opening and Closing Auctions, non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be priced at the lower (upper) threshold of the Reference Price Range. As a result, when the Reference Price Range does not equal the Protected NBBO (*e.g.,* when the Protected NBBO is crossed), non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be adjusted to less aggressive prices, consistent with the User defined limit price, if any, as well as the Midpoint Price Constraint.[37]

In addition to the clarification above, the Exchange further identified that Rule 11.350(a)(2) does not explicitly reflect the Exchange's handling of non-displayed orders resting on the Continuous Book within the Reference Price Range in one-sided markets. Specifically, as described above, Rule 11.350(a)(2) states in relevant part that non-displayed buy (sell) orders resting on the Continuous Book within the Reference Price Range will be priced to the Protected NBB (NBO) for the purposes of determining the clearing price. However, when there is no valid Protected NBBO or IEX BBO, and thus the Reference Price Range is a single price (*e.g.,* when the Reference Price Range is equal to the Final Consolidated

[30] Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price *and* the Indicative Clearing Price disseminated in IEX Auction Information as set forth in Rule 11.350(a)(9)(E).

[31] *See* Securities Exchange Act Release No. 80583 (May 3, 2017), 82 FR 21634 (May 9, 2017). *See also supra* note 12.

[32] *See* Rule 11.350(a)(9)(A).

[33] *See* Rule 11.350(a)(26).

[34] *Id.*

[35] *See* Rule 11.350(a)(6), which defines the Final Consolidated Last Sale Eligible Trade as the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. If no such transaction was executed in accordance with the preceding sentence, then the Final Consolidated Last Sale Eligible Trade will be the previous official closing price.

[36] For example, when the Protected NBBO is crossed, the Reference Price Range would be equal to the IEX BBO (assuming it was valid). In addition, when the Protected NBBO is one-sided (and therefore the IEX BBO is also necessarily one-sided), the Reference Price Range would be equal to the higher (lower) of the Final Consolidated Last Sale Eligible Trade, or the Protected NBB (NBO).

[37] Modifying the example above under the proposed Rule, if the Protected NBBO is $10.15 x $10.09 (crossed), and the IEX BBO is $10.05 x $10.10, the Reference Price Range would be equal to the IEX BBO. Pursuant to proposed Rule 11.350(a)(2), non-displayed orders to buy resting at their limit price on the Continuous Book between $10.05 and $10.09 would be priced to the IEX best bid of $10.05 for purposes of determining the clearing price, which is consistent with User defined limit prices, as well as the Midpoint Price Constraint of $10.09 (pursuant to Rule 11.190(h)(3)(D)(i)).

Last Sale Eligible Trade), the Exchange's rules do not explicitly identify that non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range will be priced equal to the Reference Price Range for purposes of determining the clearing price.

As discussed above, the treatment of non-displayed interest on the Continuous Book resting within the Reference Price Range is generally designed to protect the anonymity of resting non-displayed interest on the Continuous Book during the dissemination of IEX Auction Information. Accordingly, the Exchange's proposed handling of non-displayed interest on the Continuous Book when the Reference Price Range is a single price (*i.e.,* when in a one-sided market the Reference Price Range is equal to either the Final Consolidated Last Sale Eligible Trade, Protected NBB, Protected NBO, IEX best bid, or IEX best offer) is designed with the same goal of avoiding unnecessary information leakage.

For example, if the Final Consolidated Last Sale Eligible Trade is $10.20, the Protected NBBO is $10.15 x $10.09 (crossed), and the IEX BBO is $10.05 x $10.50 (beyond the Maximum Percentage), both the Protected NBBO and IEX BBO would be invalid. Thus, pursuant to Rule 11.350(a)(30), the Reference Price Range would be equal to the Final Consolidated Last Sale Eligible Trade of $10.20, which is higher than the IEX best bid, ($10.05) and lower than the IEX best offer ($10.50).[38] Assuming IEX has non-displayed sell orders resting at a price more aggressive than the Reference Price Range between $10.15 and $10.19, such orders would be priced to $10.20 for purposes of determining the clearing price. Pricing such sell orders more passively to $10.20 for purposes of determining the clearing price would prevent such interest from pushing the Indicative Clearing Price[39] lower than the Reference Price, while the Auction Book Clearing Price[40] remains above the Reference Price. Ordinarily, one would expect the Reference Price to be more aggressive than both the Indicative Clearing Price and the Auction Book Clearing Price. However, in this example, because the Indicative Clearing Price is more aggressive than both the Reference Price and the Auction Book Clearing Price, IEX Auction Information would have signaled the presence, size, and side of the non-displayed orders resting on the Continuous Book between $10.15 and $10.19. However, because current Rule 11.350(a)(2) only addresses orders resting *within* the Reference Price Range, and the Reference Price Range in the example above is a single price, Rule 11.350(a)(2) does not specify how non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range will be priced. Accordingly, the Exchange proposes to clarify that such order will be priced equal to the Reference Price Range for the purpose of determining the clearing price.

Furthermore, the Exchange is proposing to make a change to the language in Rule 11.350(a)(30)(C) in order to more clearly describe the method of calculating the Reference Price Range when both the Protected NBBO and IEX BBO are not valid. The fundamental purpose of existing Rule 11.350(a)(30)(C) is to constrain the Reference Price Range to prices that reflect the broader market for the security. With regard to the pricing of non-displayed buy (sell) orders resting on the Continuous Book, the upper (lower) threshold of the Reference Price Range is utilized as a passive benchmark to which such buy (sell) orders will be effectively pegged for purposes of determining the clearing price, in order to avoid information leakage as discussed above. Thus, as described above, the Reference Price Range is generally the Protected NBBO, or alternatively the IEX BBO, when such prices are valid. However, in the event both the Protected NBBO and IEX BBO are not valid, the Exchange determines what price—between the Final Consolidated Last Sale Eligible Trade, and the available Protected NBB and/or NBO, or IEX best bid and/or offer—best reflects the market for the security.

Current Rule 11.350(a)(30), however, pre-supposes that when evaluating subsection (C), the market is necessarily one-sided, and thus does not account for when the market is two-sided (*i.e.,* when there is both a Protected NBB and Protected NBO, and/or both an IEX best bid and best offer, neither of which are valid). Accordingly, the Exchange is proposing to amend Rule 11.350(a)(30)(C) to more clearly describe the method of determining the Reference Price Range when neither the Protected NBBO nor IEX BBO are valid and the market is one-sided. Additionally, the Exchange proposes to re-letter current sub-paragraph (D) of Rule 11.350(a)(30) as new sub-paragraph (E), and insert a new sub-paragraph (D) to clearly describe the method of determining the Reference Price Range when neither the Protected NBBO nor IEX BBO are valid and the market is two-sided.

Specifically, proposed Rule 11.350(a)(30)(C) clarifies that if there is neither a Valid Protected NBBO nor a Valid IEX BBO, and the market is one-sided, the Reference Price Range is equal to the price of the Final Consolidated Last Sale Eligible Trade, unless such price is:

- Lower than the Protected NBB, in which case the Reference Price Range shall be the price of the Protected NBB; or
- Higher than the Protected NBO, in which case the Reference Price Range shall be equal to the price of the Protected NBO.

Moreover, proposed Rule 11.350(a)(30)(D) clarifies that if there is neither a Valid Protected NBBO nor a Valid IEX BBO and the market is two-sided, the Reference Price Range is equal to the price of the Final Consolidated Last Sale Eligible Trade, unless:

- The Protected NBBO is not crossed and the price of the Final Consolidated Last Sale Eligible Trade is either:
  - ○ Lower than the Protected NBB, in which case the Reference Price Range shall be equal to the price of the Protected NBB; or
  - ○ Higher than the Protected NBO, in which case the Reference Price Range shall be equal to the price of the Protected NBO.
- The Protected NBBO is crossed and the price of the Final Consolidated Last Sale Eligible Trade is either:
  - ○ Lower than the IEX best bid, in which case the Reference Price Range shall be equal to the price of the IEX best bid; or
  - Higher than the IEX best offer, in which case the Reference Price Range shall be equal to the price of the IEX best offer.

The Exchange believes the proposed modifications to Rule 11.350(a)(30) are designed to avoid any potential confusion regarding the Exchange's determination of the Reference Price Range, and therefore further clarifies the Exchange's handling of non-displayed interest resting on the Continuous Book within the Reference Price Range pursuant to Rule 11.350(a)(2).

Lastly, as announced in IEX Trading Alerts #2017–015 and #2017–046, the Exchange intends to become a primary listing exchange and support its first

[38] Note, the Exchange evaluates the Final Last Sale Eligible Trade against the IEX BBO (even though it is beyond the Maximum Percentage) because the Protected NBBO is crossed, and therefore does not accurately reflect the market for the security.

[39] *See* Rule 11.350(a)(9)(E).

[40] *See* Rule 11.350(a)(9)(F).

IEX-listed security in 2018.[41] In addition, as part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.[42] Accordingly, the Exchange is proposing to clarify its handling of non-displayed orders resting on the Continuous Book within the Reference Price Range in advance of the industry wide testing period in order to avoid potential confusion, and allow Members and other market participants time to develop, test, and deploy any necessary changes to support such handling.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[43] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[44] in particular, in that it is 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.

The Exchange believes that the proposed rule changes regarding the handling of non-displayed orders resting on the Continuous Book within the Reference Price Range, as well as non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range in one-sided markets, are consistent with the protection of investors and the public interest in that they do not substantially alter the substantive functionality governing the pricing of such orders for the Opening and Closing Auction. Specifically, as discussed above, the proposed rules are designed to achieve the Exchange's existing objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges existing rules regarding pricing constraints (*i.e.,* any User defined limit price, and the Midpoint Price Constraint).

Furthermore, the Exchange believes the proposed rule changes are consistent with the protection of investors and the public interest in that they are designed to avoid any potential confusion regarding the Exchange's handling of orders for Opening and Closing Auctions as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a primary listing exchange. Additionally, the Exchange believes the proposed change to rule 11.350(a)(30)(C) to more clearly describe the method of calculating the Reference Price Range is consistent with the Act and the protection of investors and the public interest, because as described above, it is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality. Furthermore, the Exchange believes that by enhancing the clarity regarding the method of deriving the Reference Price Range, the proposed rule change compliments the rule changes regarding the pricing of non-displayed orders resting on the Continuous Book within the Reference Price Range.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed correction does not impact inter-market competition in any respect since it is designed to achieve the Exchange's existing design objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges [sic] existing rules regarding pricing constraints (*i.e.,* any User defined limit price, and the Midpoint Price Constraint), without substantially altering the substantive functionality governing the pricing of such orders for the Opening and Closing Auction. Thus, the Exchange believes there are no new inter-market competitive burdens imposed as a result of the proposed rule changes.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition. Specifically, as discussed above, the proposed rule changes do not substantively alter the functionality governing the Opening and Closing Auctions, and instead are designed to achieve the Exchange's existing design objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges [sic] existing rules regarding pricing constraints (*i.e.,* any User defined limit price, and the Midpoint Price Constraint). Furthermore, the Exchange believes the proposed rule changes are designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Lastly, the Exchange notes that the proposed changes will apply to all Members on a fair and equal basis. Accordingly, the Exchange believes there are no new intra-market competitive burdens imposed as a result of the proposed rule changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[47]

[41] *See* IEX Trading Alert #2017–015 (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. *See also* IEX Trading Alert #2017–046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017.

[42] *See, e.g.,* IEX Trading Alert #2017–028 (First Listings Functionality Industry Test on Saturday, August 26), August 17, 2017; IEX Trading Alert #2017–037 (Second Listings Functionality Industry Test on Saturday, September 9), September 7, 2017; IEX Trading Alert #2017–039 (Third Listings Functionality Industry Test on Saturday, September 23), September 18, 2017; IEX Trading Alert #2017–040 (Rescheduled 4th Listing Functionality Industry Test), September 29, 2017; IEX Trading Alert #2017–046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017; and IEX Trading Alert #2017–047 (Fourth Listings Functionality Industry Test on Saturday, November 4), October 31, 2017.

[43] 15 U.S.C. 78f.

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

[47] 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 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.

A proposed rule change filed under Rule 19b–4(f)(6) [48] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[49] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, IEX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, IEX states that the proposed changes do not substantially alter the functionality governing the pricing of non-displayed orders in the Opening and Closing Auctions and are designed to achieve IEX's objective of preserving the anonymity of non-displayed orders resting on the Continuous Book. In addition, IEX notes that the proposed changes also resolve an inconsistency between the handling of non-displayed orders and the Exchange's existing pricing constraints. IEX states that the waiver of the operative delay will allow IEX to implement the proposed changes while the Exchange continues industry-wide testing of the technology changes that IEX and its Members are making to support the Exchange as a listings market. IEX notes that the proposed clarifications regarding the handling of non-displayed orders will provide Members and other market participants with time to develop, test, and deploy any changes necessary to support the handling of non-displayed orders. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes to the operation of the Opening and Closing Auctions, and in particular the treatment of non-displayed orders resting on the Continuous Book in a manner that preserves the anonymity of those orders, are consistent with the Commission's prior approval of IEX's auctions rules and do not raise new or novel regulatory issues.[50] In addition, waiver of the operative delay will provide IEX and its Members with time to incorporate the revised functionality into their testing as they continue to prepare for IEX's functioning as a listings market, which, among other things, will require IEX to conduct Opening and Closing Auctions of IEX-listed securities. Therefore, the Commission designates the proposed rule change operative upon filing.[51]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [52] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2018–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2018–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–IEX–2018–03, and should be submitted on or before March 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Eduardo A. Aleman,

Assistant Secretary.

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[48] 17 CFR 240.19b–4(f)(6).

[49] 17 CFR 240.19b–4(f)(6)(iii).

[50] *See supra* note 12.

[51] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78s(b)(2)(B).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82798; File No. SR–ICC–2018–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Operational Risk Management Framework

March 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 23, 2018, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to update ICC's Operational Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

ICC proposes updates to the ICC Operational Risk Management Framework. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

(a) Summary of Proposed Changes

The ICC Operational Risk Management Framework details ICC's dynamic and independent program of operational risk assessment and oversight, which aims to reduce operational incidents, encourage process and control improvement, bring transparency to operational performance standard monitoring, and fulfill regulatory obligations. ICC proposes changes to its Operational Risk Management Framework to incorporate the Intercontinental Exchange, Inc. (''ICE, Inc.'') Enterprise Risk Management Department into its operational risk management program.

ICC proposes to revise the Operational Risk Management Framework to reflect the role of the ICE, Inc. Enterprise Risk Management Department with respect to ICC's operational risk management processes. The ICE, Inc. Enterprise Risk Management Department provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization. This department has dedicated resources focused on the various ICE, Inc. business units. Specifically, the ICE, Inc. Enterprise Risk Management Chief Risk Officer for North American Clearing Houses (''ERM'') is assigned responsibility for the ICE, Inc. Enterprise Risk Management Department's coverage of ICC. The ERM in conjunction with the ICC Compliance Committee is responsible for overseeing the management of the Operational Risk Management Framework. Under the revised framework, ICC proposes removing all references to the role of the Operational Risk Manager (''ORM''), who was previously responsible for managing the Operational Risk Management Framework, since the role of the ORM was incorporated into the ICE, Inc. Enterprise Risk Management Department and the ORM is no longer a position at ICC.

ICC proposes removing all references to the ORM from the risk assessment process and assigning several of the ORM's responsibilities to the ERM, including the ORM's responsibilities under the operational risk lifecycle components. Under the ''identify'' component, the ERM will identify clearing processes and risk scenarios for evaluation. Under the ''monitor'' component, the ERM will track control enhancements resulting from the risk assessment process. Under the ''mitigate'' component, the ERM will recommend increasing control effectiveness where residual risk could be further mitigated. Under the ''report'' component, the ERM will present operational risk reporting to senior management, committees, and the ICC Board.

ICC similarly proposes removing all references to the ORM from the performance objective setting and monitoring process and assigning several of the ORM's responsibilities under the operational risk lifecycle components to ICC Systems Operations and the ERM. Under the ''mitigate'' component, ICC proposes removing reference to the ORM's monitoring process and adding language to describe ICC Systems Operations' incident management and mitigation process and the ERM's role within it. Under the ''report'' component, ICC proposes assigning the ORM's reporting obligations to ICC Systems Operations and the ERM.

ICC proposes enhancements within the operational risk focus areas to reflect the removal of the ORM position and make clarifying edits to reflect current practices. ICC, not the ORM, will consider operational risk focus areas which address business concerns, regulation and industry best practices. Under the revised framework, certain functions remain outsourced to ICE, Inc. Further, the proposed enhancements to the ''Business Continuity Planning and Disaster Recovery'' risk focus area eliminate the ORM's responsibilities related to business continuity planning (''BCP'') and disaster recovery (''DR''), including serving as the chair of the ICC BCP and DR Oversight Committee (''BDOC'') and ensuring completion of BCP and DR documentation and testing. ICC also proposes adding language to note that BDOC assists the ICC Compliance Committee with the approval of ICC BCP and DR program documentation. In addition, ICC, not the ORM, will ensure that ICC can recover from a disruption and will collaborate with departments to complete applicable surveys.

ICC also proposes revisions to the ''Vendor Assessment'' risk focus area. As the annual review and approval of the critical vendor inventory was re-assigned from the ICC Compliance Committee to BDOC and incorporated into BDOC governance documentation, ICC proposes removing reference to it from the framework. ICC also proposes to note that BDOC, not the ORM, reviews and recommends that the ICC Compliance Committee approve the critical vendor inventory and conducts a service provider risk assessment for each critical vendor. Further, ICC proposes adding procedures with respect to its assessment process for critical vendors. The revised framework describes how critical vendors receive risk rankings that determine the extent of oversight required and lists how often risk assessments for critical vendors are completed.

ICC proposes enhancements to the remaining three operational risk focus areas to reflect the removal of the ORM role. The proposed changes to the ''New Products, Processes and Initiatives'' risk focus area remove reference to the ORM's role on the ICC New Initiative Approval Committee, given that the ORM is no longer a position at ICC, and note that the ERM conducts post-implementation reviews of new initiatives. ICC proposes enhancing the ''ICE Information Security'' risk focus area to provide specific reference to the ICE Information Security Department's (''InfoSec Department'') overall governing document and to reflect changes to the membership of the InfoSec Department's governance committee. The proposed changes to the ''Technology Control Functions'' risk focus area note that the ERM, not the ORM, has access to incident management systems and reviews and escalates incidents.

ICC also proposes other non-material changes to the framework. ICC updated the appendix to the document to more clearly summarize and appropriately describe the regulatory requirements and industry guidance to which ICC is subject, including U.S. Commodity Futures Trading Commission Regulation 17 CFR 39.18. Minor grammatical and

structural changes were also made to the document to enhance readability.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[4] because ICC believes that the proposed rule changes will protect investors and the public interest, as the updates more accurately reflect ICC's operational risk program given the incorporation of the ICE, Inc. Enterprise Risk Management Department into ICC's existing operational risk management processes. In addition, the proposed revisions are consistent with the relevant requirements of Rule 17Ad–22.[5] The changes to the ICC Operational Risk Management Framework further ensure that ICC, through its operational risk program, is able to identify sources of operational risk and minimize them through the development of appropriate systems, control, and procedures. Thus, the changes are reasonably designed to meet the operational risk requirements of Rule 17Ad–22(d)(4).[6] As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F) [7] of the Act.

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The ICC Operational Risk Management Framework applies uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice 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–ICC–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 SR–ICC–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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2018–003 and should be submitted on or before March 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04558 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Id.

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(d)(4).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 22c–2, SEC File No. 270–541, OMB Control No. 3235–0620.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c–2 (17 CFR 270.22c–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act'') requires the board of directors (including a majority of independent directors) of most registered open-end investment companies (''funds'') to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Rule 22c–2 also requires a fund to enter into written agreements with their financial intermediaries (such as broker-dealers and retirement plan administrators) under which the fund, upon request, can obtain certain shareholder identity and trading information from the intermediaries. The written agreement must also allow the fund to direct the intermediary to prohibit further purchases or exchanges by specific shareholders that the fund has identified as being engaged in transactions that violate the fund's market timing policies. These requirements enable funds to obtain the information that they need to monitor the frequency of short-term trading in omnibus accounts and enforce their market timing policies.

The rule includes three ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1] First, the rule requires boards to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Second, funds must enter into information sharing agreements with all of their ''financial intermediaries'' [2] and maintain a copy of the written information sharing agreement with each intermediary in an easily accessible place for six years. Third, pursuant to the information sharing agreements, funds must have systems that enable them to request frequent trading information upon demand from their intermediaries, and to enforce any restrictions on trading required by funds under the rule.

The collections of information created by rule 22c–2 are necessary for funds to effectively assess redemption fees, enforce their policies in frequent trading, and monitor short-term trading, including market timing, in omnibus accounts. These collections of information are mandatory for funds that redeem shares within seven days of purchase. The collections of information also are necessary to allow Commission staff to fulfill its examination and oversight responsibilities.

Rule 22c–2(a)(1) requires the board of directors of all registered open-end management investment companies and series thereof (except for money market funds, ETFs, or funds that affirmatively permit short-term trading of its securities) to approve a redemption fee for the fund, or instead make a determination that a redemption fee is either not necessary or appropriate for the fund. Commission staff understands that the boards of all funds currently in operation have undertaken this process for the funds they currently oversee, and the rule does not require boards to review this determination periodically once it has been made. Accordingly, we expect that only boards of newly registered funds or newly created series thereof would undertake this determination. Commission staff estimates that 42 funds (excluding money market funds and ETFs) are newly formed each year and would need to make this determination.[3]

Based on conversations with fund representatives,[4] Commission staff estimates that it takes 2 hours of the board's time as a whole (at a rate of $4465 per hour) [5] to approve a redemption fee or make the required determination on behalf of all series of the fund. In addition, Commission staff estimates that it takes compliance personnel of the fund 8 hours (at a rate of $66 per hour) [6] to prepare trading, compliance, and other information regarding the fund's operations to enable the board to make its determination, and takes internal compliance counsel of the fund 3 hours (at a rate of $345 per hour) [7] to review this information and present its recommendations to the board. Therefore, for each fund board that undertakes this determination process, Commission staff estimates it expends 13 hours [8] at a cost of $10,493.[9] As a result, Commission staff estimates that the total time spent for all funds on this process is 546 hours at a cost of $440,706.[10]

Rule 22c–2(a)(2) also requires a fund to enter into information-sharing agreements with each of its financial intermediaries. Commission staff understands that all currently registered funds have already entered into such agreements with their intermediaries. Funds enter into new relationships with intermediaries from time to time, however, which requires them to enter into new information sharing agreements. Commission staff understands that, in general, funds enter into information-sharing agreement when they initially establish a relationship with an intermediary, which is typically executed as an addendum to the distribution agreement. The Commission staff understands that most shareholder information agreements are entered into by the fund group (a group of funds with a common investment adviser), and estimates that there are currently 850 currently active fund groups.[11] Commission staff estimates that, on average, each active fund group enters into relationships with 3 new intermediaries each year. Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and modifies that agreement according to the

[1] 44 U.S.C. 3501–3520.

[2] The rule defines a Financial Intermediary as: (i) Any broker, dealer, bank, or other person that holds securities issued by the fund in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(i)(E) of the Act; and (iii) in the case of a participant directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 316(A) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002(16)(A) or any person that maintains the plans' participant records. Financial Intermediary does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund. Rule 22c–2(c)(1).

[3] This estimate is based on the number of registrants filing initial Form N–1A or N–3. This estimate does not carve out money market funds, ETFs, or funds that affirmatively permit short-term trading of their securities, so this estimate corresponds to the outer limit of the number of registrants that would have to make this determination.

[4] Unless otherwise stated, estimates throughout this analysis are derived from a survey of funds and conversations with fund representatives.

[5] The estimate of $4465 per hour for the board's time as a whole is based on conversations with representatives of funds and their legal counsel.

[6] The $66 per hour figure for a compliance clerk is from SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[7] The $345 per hour figure for internal compliance counsel is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[8] This calculation is based on the following estimates: (2 hours of board time + 3 hours of internal compliance counsel time + 8 hours of compliance clerk time = 13 hours).

[9] This calculation is based on the following estimates: ($8,930 ($4,465 board time × 2 hours = $8,930) + $528 ($66 compliance time × 8 hours = $528) + $1,035 ($345 attorney time × 3 hours = $1,035) = $10,493).

[10] This calculation is based on the following estimates: (13 hours × 42 funds = 546 hours); ($10,493 × 42 funds = $440,706).

[11] ICI, 2017 Investment Company Fact Book at Fig 1.8 (2017) (*https://www.ici.org/research/stats/factbook*).

requirements of each intermediary. Commission staff estimates that negotiating the terms and entering into an information sharing agreement takes a total of 4 hours of attorney time (at a rate of $392 per hour) [12] per intermediary (representing 2.5 hours of fund attorney time and 1.5 hours of intermediary attorney time). Accordingly, Commission staff estimates that it takes 12 hours at a cost of $4704 each year [13] to enter into new information sharing agreements, and all existing market participants incur a total of 10,200 hours at a cost of $3,998,400.[14]

In addition, newly created funds advised by new entrants (effectively new fund groups) must enter into information sharing agreements with all of their financial intermediaries. Commission staff estimates that there are 47 new fund groups that form each year that will have to enter into information sharing agreements with each of their intermediaries.[15] Commission staff estimates that fund groups formed by new advisers typically have relationships with significantly fewer intermediaries than existing fund groups, and estimates that new fund groups will typically enter into 100 information sharing agreements with their intermediaries when they begin operations.[16] As discussed previously, Commission staff estimates that it takes 4 hours of attorney time (at a rate of $392 per hour) [17] per intermediary to enter into information sharing agreements. Therefore, Commission staff estimates that each newly formed fund group will incur 400 hours of attorney time at a cost of $156,800 [18] and that all newly formed fund groups will incur a total of 18,800 hours at a cost of $7,369,600 to enter into information sharing agreements with their intermediaries.[19]

Rule 22c–2(a)(3) requires funds to maintain records of all information-sharing agreements for 6 years in an easily accessible place. Commission staff understands that most shareholder information agreements are stored at the fund group level and estimates that there are currently approximately 850 fund groups.[20] Commission staff understands that information-sharing agreements are generally included as addendums to distribution agreements between funds and their intermediaries, and that these agreements would be stored as required by the rule as a matter of ordinary business practice. Therefore, Commission staff estimates that maintaining records of information-sharing agreements requires 10 minutes of time spent by a general clerk (at a rate of $59 per hour) [21] per fund, each year. Accordingly, Commission staff estimates that all funds will incur 141.67 hours at a cost of $8,358.53 [22] in complying with the recordkeeping requirement of rule 22c–2(a)(3).

Therefore, Commission staff estimates that to comply with the information sharing agreement requirements of rule 22c–2(a)(2) and (3), it requires a total of 29,141.67 hours at a cost of $11,403,358.53.[23]

The Commission staff estimates that on average, each fund group requests shareholder information once a week, and gives instructions regarding the restriction of shareholder trades every day, for a total of 417 responses related to information sharing systems per fund group each year, and a total 354,450 responses for all fund groups annually.[24] In addition, as described above, the staff estimates that funds make 42 responses related to board determinations, 2,550 responses related to new intermediaries of existing fund groups, 4,700 responses related to new fund group information sharing agreements, and 850 responses related to recordkeeping, for a total of 8,142 responses related to the other requirements of rule 22c–2. Therefore, the Commission staff estimates that the total number of responses is 362,592 (354,450 + 8,142 = 362,592).

The Commission staff estimates that the total hour burden for rule 22c–2 is 29,687.67 hours at a cost of $11,817,056.50.[25] Responses provided to the Commission will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. Complying with the information collections of rule 22c–2 is mandatory for funds that redeem their shares within 7 days of purchase. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

[12] The $392 per hour figure for attorneys is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[13] This estimate is based on the following calculations: (4 hours × 3 new intermediaries = 12 hours); (12 hours × $392 = $4,704).

[14] This estimate is based on the following calculations: (12 hours × 850 fund groups = 10,200 hours); (10,200 hours × $392 = $3,998,400).

[15] ICI, 2017 Investment Company Fact Book at Fig 1.8 (2017) (*https://www.ici.org/research/stats/factbook*).

[16] Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and then modifies that agreement according to the requirements of each intermediary.

[17] The $392 per hour figure for an attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[18] This estimate is based on the following calculations: (4 hours × 100 intermediaries = 400 hours); (400 hours × $392 = $156,800).

[19] This estimate is based on the following calculations: (47 fund groups × 400 hours = 18,800 hours) ($392 × 18,800 = 7,369,600).

[20] ICI, 2017 Investment Company Fact Book at Fig 1.8 (2017) (*https://www.ici.org/research/stats/factbook*).

[21] The $59 per hour figure for a general clerk is derived from SIFMA's Office Salaries in the Securities Industry 2013 modified to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

[22] This estimate is based on the following calculations: (10 minutes × 850 fund groups = 8,500 minutes); (8,500 minutes/60 = 141.67 hours); (141.67 hours × $59 = $8,358.53).

[23] This estimate is based on the following calculations: (10,200 hours + 18,800 hours + 141.67 hours = 29,141.67 hours); ($3,998,400 + $7,369,600 + $8,358.53 = $11,403,358.53).

[24] This estimate is based on the following calculations: (52 + 365 = 417); (417 × 850 fund groups = 354,450).

[25] This estimate is based on the following calculations: (546 hours (board determination) + 29,141.67 hours (information sharing agreements) = 29,687.67 total hours); ($440,706 (board determination) + $11,376,350.53 (information sharing agreements) = $11,817,056.50).

Dated: March 1, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04572 Filed 3–6–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at the Craig Field Airport, Selma, Alabama

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: The FAA is considering a request from the Craig Field Airport and Industrial Authority to waive the requirement that 13.19± acres of airport property located at the Craig Field Airport in Selma, Alabama, be used for aeronautical purposes.

DATES: Comments must be received on or before April 6, 2018.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA to the following address: Jackson Airports District Office, Attn: Kevin Morgan, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Craig Field Airport and Industrial Authority, Attn: Menzo Driskell, Executive Director, P.O. Box 1421, Selma, AL 36702–1421.

FOR FURTHER INFORMATION CONTACT: Kevin Morgan, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9891. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Craig Field Airport and Industrial Authority to release 13.19± acres of airport property at the Craig Field Airport (SEM) under the provisions of Title 49, U.S.C. Section 47153(c). The property will be purchased by Timewell-Southern Division for non-aeronautical purposes. The property is within the Craig Field Industrial Park and adjacent to other non-aeronautical property on west quadrant of airport property just off highway 41. The net proceeds from the sale of this property will be used for maintenance and improvements at the Craig Field Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Craig Field Airport (SEM).

Issued in Jackson, Mississippi, on February 27, 2018.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2018–04582 Filed 3–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of modified matching program.

SUMMARY: The Department of Veterans Affairs (VA) has a current 12 month computer matching agreement (CMA) re-establishment agreement with the Federal Bureau of Prisons (BOP) regarding Veterans who are in Federal prison and are also in receipt of compensation and pension benefits. The purpose of this CMA is to renew the agreement between VA, Veterans Benefits Administration (VBA) and the United States Department of Justice (DOJ), BOP. BOP will disclose information about individuals who are in federal prison. VBA will use this information as a match for recipients of Compensation and Pension benefits for adjustments of awards.

DATES: Comments on this new agreement must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to CMA between VA, VBA and Federal BOP. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Robinson (VBA), 202–443–6016 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This agreement continues an arrangement for a periodic computer-matching program between VA (VBA as the matching recipient agency) and DOJ (BOP as the matching source agency). This agreement sets forth the responsibilities of VBA and BOP with respect to information disclosed pursuant to this agreement and takes into account both agencies' responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder, including computer matching portions of a revision of OMB Circular No. A–130, 65 FR 77677 dated December 12, 2000. The matching agreement expired in June 2017. VA added more data elements to include ''date of conviction'', ''type of offense'', and ''date of scheduled release''.

Participating Agencies: VA (VBA as the matching recipient agency) and DOJ (BOP as the matching source agency).

Authority for Conducting the Matching Program: The legal authority to conduct this match is 38 U.S.C. 1505, 5106, and 5313. Section 5106 requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto. Section 1505 provides that no VA pension benefits shall be paid to or for any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony or misdemeanor, beginning on the 61st day of incarceration. Section 5313 provides that VA compensation or dependency and indemnity compensation above a specified amount shall not be paid to any person eligible for such benefit, during the period of that person's incarceration as the result of conviction of a felony, beginning on the 61st day of incarceration.

Purpose(s): The purpose of this matching program between VBA and BOP is to identify those Veterans and VA beneficiaries who are in receipt of certain VA benefit payments and who are confined (see Article II.G.) for a period exceeding 60 days due to a conviction for a felony or a misdemeanor. VBA has the obligation to reduce or suspend compensation, pension, and dependency and indemnity compensation benefit payments to Veterans and VA beneficiaries on the 61st day following conviction and incarceration in a Federal, State, or Local institution for a felony or a misdemeanor. VBA will use the BOP records provided in the match to update the master records of Veterans and VA beneficiaries receiving benefits and to adjust their VA benefits, accordingly, if needed.

Categories of Individuals: Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11; Veterans who have applied for nonservice-connected disability under 38 U.S.C. Chapter 15; Veterans entitled to burial benefits under 38 U.S.C. Chapter 23; Surviving spouses and children who have claimed pensions based on nonservice-connected death of a Veteran under 38 U.S.C. Chapter 15; Surviving spouses and children who have claimed death compensation based on service-connected death of a Veteran under 38 U.S.C. Chapter 11; Surviving spouses and children who have claimed dependency and indemnity compensation for service connected death of a Veteran under 38 U.S.C. Chapter 13; Parents who have applied for death compensation based on service connected death of a Veteran under 38 U.S.C. Chapter 11; Parents who have applied for dependency and indemnity compensation for service-connected death of a Veteran under 38 U.S.C. Chapter 13; Individuals who applied for educational assistance benefits administered by VA under title 38 of the U.S. Code; Individuals who applied for educational assistance benefits maintained by the Department of Defense under title 10 of the U.S. Code that are administered by VA; Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77; Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN) or the Veterans Service Network (VETSNET) computer processing systems; Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102- 484; Representatives of individuals covered by the system.

Categories of Records: The record, or information contained in the record, includes identifying information (*e.g.,* name, address, social security number); military service and active duty separation information (*e.g.,* name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether Veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration); payment information (*e.g.,* Veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of non-pay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA); medical information (*e.g.,* medical and dental treatment in the Armed Forces including type of service-connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment); personal information (*e.g.,* marital status, name and address of dependents, occupation, amount of education of a Veteran or a dependent, dependent's relationship to Veteran); education benefit information (*e.g.,* information arising from utilization of training benefits such as a Veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program); applications for compensation, pension, educate on and vocational rehabilitation benefits and training which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a Veteran or beneficiary's incarceration in a penal institution (*e.g.,* name of incarcerated Veteran or beneficiary, claims folder number, name and address of penal institution, date of commitment, date of conviction, type of offense, scheduled release date, Veteran's date of birth, beneficiary relationship to Veteran and whether Veteran or beneficiary is in a work release or half-way house program, on parole or has been released from incarceration); the VA employee's BDN or VETSNET identification numbers, the number and kind of actions generated and/or finalized by each such employee, the compilation of cases returned for each employee.

System(s) of Records: Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28)'', published at 74 FR 29275 (June 19, 2009), last amended at 77 FR 42593 on July 19, 2012. Justice/BOP–005,'' published on June 7, 1984 (48 FR 23711); republished on May 9, 2002 (67 FR 31371); January 25, 2007 (72 FR 3410) (rescinded by 82 FR 24147); April 26, 2012 (77 FR 24982); April 18, 2016 (81 FR 22639), routine use (i); and last modified on May 25, 2017 (82 FR 24147).

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Executive Director for Privacy, Department of Veterans Affairs approved this document on March 1, 2018 for publication.

Dated: March 1, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy Information and Identity Protection, Office of Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs.

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Vol. 83, No. 45

Wednesday, March 7, 2018

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FEDERAL REGISTER PAGES AND DATE, MARCH

8743–8922 1
8923–9134 2
9135–9418 5
9419–9682 6
9683–9792 7

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9700 9405
9701 9407
9702 9409

Executive Orders:
10830 (Amended by EO 13824) 8923
13265 (Amended by EO 13824) 8923
13545 (Revoked by EO 13824) 8923
13824 8923

Administrative Orders:
Notices:
Notice of March 2, 2018 9413
Notice of March 2, 2018 9415
Notice of March 2, 2018 9417

Memorandums:
Memorandum of February 20, 2018 9681

7 CFR

Proposed Rules:
210 9447
235 9447
925 8802
959 8804

12 CFR

265 9419
347 9135
Ch. XI 9135

14 CFR

1 9162
21 9162
23 9176
25 9162
26 9162
27 ..... 9162, 9419
29 9419
34 9162
39 ..... 8743, 8745, 8927, 9178, 9424, 9683, 9685, 9688, 9692
43 9162
45 9162
60 9162
61 9162
63 9162
65 9162
71 9181
91 9162
97 9162
107 9162
110 9162
119 9162
121 9162
125 9162
129 9162
133 9162
135 9162
137 9162
141 9162
142 9162
145 9162
183 9162

Proposed Rules:
39 ..... 8807, 8810, 8951, 9238
71 ..... 9242, 9243, 9451, 9452

15 CFR

Proposed Rules:
922 8812

17 CFR

143 9426

18 CFR

35 ..... 9580, 9636
157 9697

21 CFR

573 8929
878 9698

Proposed Rules:
73 9715
101 8953

26 CFR

801 9700

29 CFR

1910 9701
1915 9701
1926 9701

Proposed Rules:
4001 9716
4022 9716
4041 9716
4043 9716
4044 9716

30 CFR

550 8930
553 8930

31 CFR

510 9182

33 CFR

117 ..... 8747, 8748, 8933, 8936, 8937, 9204, 9429, 9430, 9431, 9432
165 ..... 8748, 8938, 9205

Proposed Rules:
100 ..... 8955, 8957, 9454
165 ..... 9245, 9247, 9249, 9252, 9456

34 CFR

230 9207

36 CFR

7 8940

Proposed Rules:

2 8959
1007 9459
1008 9459
1009 9459
1011 9459

38 CFR

17 9208
36 8945
42 8945

39 CFR

265 9433

40 CFR

52 ....8750, 8752, 8756, 9213, 9435, 9438,
63 9215
81 8756
82 9703
180 ....8758, 9440, 9442, 9703

Proposed Rules:

52 ....8814, 8818, 8822, 8961
63 9254
174 8827
180 9471

44 CFR

Proposed Rules:

9 9473

47 CFR

Proposed Rules:

54 8962
73 8828

48 CFR

752 9712

49 CFR

225 9219
1102 9222

50 CFR

635 ....8946, 9232
648 8764
679 ....8768, 9235, 9236, 9713

Proposed Rules:

218 9366
635 9255
679 9257

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 28, 2018

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2018

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
March 1	Mar 16	Mar 22	Apr 2	Apr 5	Apr 16	Apr 30	May 30
March 2	Mar 19	Mar 23	Apr 2	Apr 6	Apr 16	May 1	May 31
March 5	Mar 20	Mar 26	Apr 4	Apr 9	Apr 19	May 4	Jun 4
March 6	Mar 21	Mar 27	Apr 5	Apr 10	Apr 20	May 7	Jun 4
March 7	Mar 22	Mar 28	Apr 6	Apr 11	Apr 23	May 7	Jun 5
March 8	Mar 23	Mar 29	Apr 9	Apr 12	Apr 23	May 7	Jun 6
March 9	Mar 26	Mar 30	Apr 9	Apr 13	Apr 23	May 8	Jun 7
March 12	Mar 27	Apr 2	Apr 11	Apr 16	Apr 26	May 11	Jun 11
March 13	Mar 28	Apr 3	Apr 12	Apr 17	Apr 27	May 14	Jun 11
March 14	Mar 29	Apr 4	Apr 13	Apr 18	Apr 30	May 14	Jun 12
March 15	Mar 30	Apr 5	Apr 16	Apr 19	Apr 30	May 14	Jun 13
March 16	Apr 2	Apr 6	Apr 16	Apr 20	Apr 30	May 15	Jun 14
March 19	Apr 3	Apr 9	Apr 18	Apr 23	May 3	May 18	Jun 18
March 20	Apr 4	Apr 10	Apr 19	Apr 24	May 4	May 21	Jun 18
March 21	Apr 5	Apr 11	Apr 20	Apr 25	May 7	May 21	Jun 19
March 22	Apr 6	Apr 12	Apr 23	Apr 26	May 7	May 21	Jun 20
March 23	Apr 9	Apr 13	Apr 23	Apr 27	May 7	May 22	Jun 21
March 26	Apr 10	Apr 16	Apr 25	Apr 30	May 10	May 25	Jun 25
March 27	Apr 11	Apr 17	Apr 26	May 1	May 11	May 29	Jun 25
March 28	Apr 12	Apr 18	Apr 27	May 2	May 14	May 29	Jun 26
March 29	Apr 13	Apr 19	Apr 30	May 3	May 14	May 29	Jun 27
March 30	Apr 16	Apr 20	Apr 30	May 4	May 14	May 29	Jun 28

Note: Due to a technical error, the table of effective dates that appeared in the issue of Thursday, March 1st included an incorrect date. The correct table is published here in its entirety.